



# Leigh-on-Sea Town Council

71-73 Elm Road, Leigh-on-Sea, Essex SS9 1SP - Tel: 01702 716288  
[council@leighonseatowncouncil.gov.uk](mailto:council@leighonseatowncouncil.gov.uk) [www.leighonseatowncouncil.gov.uk](http://www.leighonseatowncouncil.gov.uk)

Chairman:..Cllr Caroline Parker  
Vice Chairman:..Cllr Paul Lawrence  
Town Clerk:..Paul Beckerson



Notice is hereby given that the next meeting of the **PERSONNEL SUB-COMMITTEE** of the Leigh-on-Sea Town Council will take place on **Thursday 6<sup>th</sup> February 2014** at the Leigh Community Centre, 71 - 73 Elm Road, Leigh-on-Sea commencing at **7.30pm**, when it is hoped to transact the following business.

## AGENDA

1. APOLOGIES FOR ABSENCE
2. DECLARATION OF MEMBERS' INTERESTS
3. MINUTES OF PREVIOUS MEETING 20<sup>th</sup> JANUARY 2014
4. MOTION TO EXCLUDE PUBLIC – The Public Bodies (Admission to Meetings) Act 1960

That in view of the confidential nature of the business to be transacted in item 5,6 and 7 the public and press be temporarily excluded and they are instructed to withdraw (SO.1(c)) - (staffing)

### ***Start of Confidential Business***

5. TO AGREE REVISED JOB DESCRIPTION FOR SENIOR JANITOR & SELECTION PROCESS
6. TO DETERMINE THE SELECTION PROCESS FOR LCC MANAGER AND AGREE INTERVIEW PANEL
7. SUPPORT STAFF – Confidential Report 2316A/TC

### ***End of Confidential Business***

8. TO CONSIDER DRAFT DIGNITY AT WORK / BULLYING AND HARASSMENT POLICY – Report 2244/TC (Appendix 1)
9. TO CONSIDER MODEL PROTOCOL ON MEMBER / OFFICER RELATIONS – Report 2189/FGP (Appendix 2)
10. REPORT ON PROGRESS OF REVIEW OF COUNCIL'S GRIEVANCE PROCEDURE (Appendix 3)



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Report 2244/TC

## **\*Draft Dignity at Work/Bullying and Harassment Policy**

### **1. Purpose and Scope**

1.1 **Statement:** In support of our value to respect others Leigh-on-Sea Town Council will not tolerate bullying or harassment by, or of, any of its employees, officials, members, contractors, visitors to the Council or members of the public from the community which we serve. The Council is committed to the elimination of any form of intimidation in the workplace.

This policy reflects the spirit in which the Council intends to undertake all of its business and outlines the specific procedures available to all employees in order to protect them from bullying and harassment. It should be read in conjunction with the Council's policies on Grievance and Disciplinary handling and the Elected Members Code of Conduct.

The Council will issue this policy to all employees as part of their induction and to all members as part of their Welcome Pack. The Council may also wish to share this policy with contractors, visitors and members of the public.

### **1.2 Definitions**

#### **Bullying is**

*"Bullying may be characterised as a pattern of offensive, intimidating, malicious, insulting or humiliating behaviour; an abuse of this use of power or authority which tends to undermine an individual or a group of individuals, gradually eroding their confidence and capability, which may cause them to suffer stress."*

#### **Harassment is**

*"unwanted conduct that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment." This usually covers, but is not limited to, harassment on the grounds of sex, marital status, sexual orientation, race, colour, nationality, ethnic origin, religion, belief, disability or age.*

These definitions are derived from the ACAS guidance on the topic.

Bullying and Harassment are behaviours which are unwanted by the recipient. They are generally evidenced by a pattern of conduct, rather than being related to one-off incidents. Bullying and harassment in the workplace can lead to poor morale, low productivity and poor performance, sickness absence, mental health issues, lack of respect for others, turnover, damage to the Council's reputation and ultimately, legal proceedings against the Council and payment of legal fees and potentially unlimited compensation.

1.3 **Examples** of unacceptable behaviour are as follows; (this list is not exhaustive)

Spreading malicious rumours, insulting someone, ridiculing or demeaning someone, exclusion or victimisation, unfair treatment, overbearing supervision or other misuse of position or power,

unwelcome sexual advances, making threats about job security, making threats of physical violence against a person or their family, deliberately undermining a competent worker by overloading work and/or constant criticism, blaming a person for others' mistakes, preventing an individual's promotion or training opportunities. Bullying and harassment may occur face-to-face, in meetings, through written communication, including electronic communication such as e-mail or on social media, by telephone or through automatic supervision methods. It may occur on or off work premises, during work hours or non-work time.

**1.4 Penalties:** Bullying and harassment by any employed persons can be considered examples of serious misconduct which will be dealt with through the Disciplinary Procedure at Gross Misconduct level and may result in summary dismissal from the Council. If elected Members are bullying or harassing employees, contractors, fellow Councillors, others then a referral through the Standards process in place at the time reported as a contravention of the Member's Code of Conduct could be an appropriate measure (nb. the alternative arrangements post- Standards for England in the Localism Act 2011 are yet to be fully determined). If an employee is experiencing bullying or harassment from a third party the Council will act reasonably in upholding its duty of care towards its own employees. In extreme cases harassment can constitute a criminal offence and the Council should take appropriate legal advice, sometimes available from the Council's insurer, if such a matter arises.

**1.5 The Legal position:** Councils have a duty of care towards all their workers and liability under common law arising out of the Employment Rights Act 1996 and the Health and Safety at Work Act 1974. If an employer fails to act reasonably with regard to this duty of care by allowing bullying or harassment to continue unchallenged an employee may decide to resign and claim 'constructive dismissal' at an Employment Tribunal

Under the Equality Act 2010 bullying or harassment related to one of the protected characteristics covered by the Act (age, gender, marital status, sexual orientation, race, religion, belief, colour, disability) can be considered unlawful discrimination which could lead to an Employment Tribunal claim for discrimination against the corporate employer, the Council and the perpetrator(s) as individual named Respondents. The legal definition of "Third Party Harassment" has been introduced which makes the employer vicariously liable for harassment from other parties such as parishioners, contractors etc and it must take reasonable steps to manage such situations which could include seeking legal redress on behalf of an employee or Member of the Council.

In addition, the Criminal Justice and Public Order Act 1994 and Protection from Harassment Act 1997 created a criminal offence of harassment with a fine and/or prison sentence as a penalty and a right to damages for the victim. A harasser may be personally liable to pay damages if a victim complains to an Employment Tribunal on the grounds of discrimination. The 1997 Act was originally designed to assist in stalking situations but case law has demonstrated that it can be relevant to employment disputes, for instance; employers can be vicariously liable for harassment received in the workplace, that the conduct is viewed as 'serious', or 'oppressive and unacceptable', that a 'course of conduct' needs to be established but that this can link incidents which are separated by long time periods and that damages for personal injury and distress can be awarded under the Act.

## **2. Process for dealing with complaints of Bullying and Harassment**

**2.1 Informal approach** – Anyone; employee, contractor, member or visitor, who feels he or she is being bullied or harassed should try to resolve the problem informally, in the first instance. It may be sufficient to explain to the person(s) involved in the unwanted behaviour, or an intermediary, that their conduct is unacceptable, offensive or causing discomfort. Anyone concerned about being bullied or harassed is encouraged to maintain a journal or other record of the incidents.

## 2.2 **Formal approach**

**2.2.1 Employees:** Where the employee feels unable to resolve the matter informally any complaint about harassment or bullying can be raised confidentially and informally, initially with the Chair of the Personnel committee or another Councillor if more appropriate. It may be appropriate for the complaint to be put in writing after the initial discussion, as this will enable the formal Grievance Procedure to be invoked. The employee will be expected to provide evidence of the conduct about which s/he is complaining.

### 2.2.2 **Others**

Any other party to the Council, other than an employee, who feels he or she is being bullied or harassed should raise their complaint with the Council, where possible, if an informal notification to a member has been unsuccessful at eliminating the problem.. The complaint should then be investigated and a meeting held to discuss the facts and recommend the way forward. A member of the public who feels s/he has been bullied or harassed by any members or officers of a Council should use the Council's official Complaints Procedure. It is important that the Member(s) being complained about do not prevent the Council operating impartially in its investigation and decision-making in this regard.

**2.3 Grievance – Employees only** - A meeting to discuss the complaint with the aggrieved party will normally be arranged within five working days of a written complaint being received and will be held under the provisions of the Council's Grievance Procedure. This meeting will be to discuss the issues raised and a way forward for the member(s) of staff involved. Employees have a right to be accompanied by a work colleague or a trade union representative at this meeting. A full investigation of the complaint will be held by an officer as appointed by the committee of the Council which is handling the process. It may be appropriate for an external investigator to be involved in order to maintain objectivity and impartiality. The Hearing Panel will publish its recommendations following deliberation of the facts. An action plan should be made available to the aggrieved employee to demonstrate how the problem is to be resolved. It may be decided that mediation or some other intervention is required and the Council should contact NALC, an employer's body or ACAS to this effect or the Council may offer counselling. The employee will have a right of appeal.. At all times the confidentiality of the grievance will be of paramount importance in order to maintain trust in the process hence details of the full grievance will not be shared with the full Council without prior approval by the aggrieved. The Council will commit not to victimize the complainant for raising the complaint once the appropriate dispute resolution process has been concluded.

**2.4 Disciplinary Action** - Following a Grievance Hearing or investigation into allegations of bullying or harassment a full report will be made to all parties and this may result in disciplinary action being taken against the perpetrator of the alleged action/behaviour.

For an **Employee** found to have been bullying/harassing others this will follow the Council's Disciplinary procedure under the ACAS Code of Practice on Dispute Resolution and would normally be treated as Gross Misconduct.

For **Members** who the Council reasonably believe have been bullying or harassing another person(s) whilst undertaking Council activities the action taken must be reasonable and in some cases counselling or training in appropriate skill areas e.g. inter-personal communication, assertiveness, chairmanship etc., may be more appropriate than a penalty. The range of disciplinary sanctions available to the Council, where a member has been involved in bullying/harassment are limited but do include; admonishment and an undertaking not to repeat the process, removal of opportunities to further harass/bully, banning from committees of the Council and representation on any outside bodies, a referral under the Code of Conduct to the relevant reviewing body. There may also be a referral to the Police under the Protection from Harassment Act 1997, or a claim to an Employment Tribunal for Third Party harassment (for harassment relating to one of the protected characteristics under the Equality Act) in the most

extreme cases. This list is not exhaustive.

2.5 False or malicious allegations of harassment or bullying which damage the reputation of a fellow employee/Member will not be tolerated and will be dealt with as serious misconduct under the Disciplinary Procedure and/or a referral to the Standards process.

### **3. Responsibilities**

All parties to the Council have a responsibility to ensure that their conduct towards others does not harass or bully or in any way demean the dignity of others. If unacceptable behaviour is observed then each individual can challenge the perpetrator and ask them to stop. There needs to be agreement about how “robust people management” and “bullying” differ; effective management of performance will usually include feedback based on objective evidence, delivered by a committee specifically designated and often trained to manage and appraise staff, with dialogue occurring on a face to face basis in confidential surroundings. Bullying is more likely to be complained about when individual Members criticise staff, often without objective evidence, without the mandate from the corporate body of the Council and in environments which are open to the public or other employees or by way of blogs, Facebook comments, or in the pub or local playground.

The Council undertakes to share its policy with all members and workers and request that each party signs to demonstrate acceptance of its terms. All new members and employees will be provided with a copy of this policy.

A review of the policy shall be undertaken each year (or as appropriate) and necessary amendments will be undertaken by the Clerk and reported to the full Council for approval.

The Council will undertake to ensure that its members and workers are trained in the processes required by this policy as deemed appropriate.

### **4. Useful contacts**

- ACAS [www.acas.org.uk](http://www.acas.org.uk) tel: 0845 7 47 47 47
- Local Government Ombudsman for Wales [www.ombudsman-wales.org.uk](http://www.ombudsman-wales.org.uk) tel:0845 601 0987
- Local Government Ombudsman for England [www.lgo.org.uk](http://www.lgo.org.uk) 0300 061 0614
- Equalities and Human Rights Commission [www.equalityhumanrights.com](http://www.equalityhumanrights.com)
- SLCC [www.slcc.co.uk](http://www.slcc.co.uk)
- DirectGov website  
[www.direct.gov.uk/en/Employment/ResolvingWorkplaceDisputes/DiscriminationAtWork/DG\\_10026670](http://www.direct.gov.uk/en/Employment/ResolvingWorkplaceDisputes/DiscriminationAtWork/DG_10026670)

*\*Reference: SLCC Model Dignity At Work Policy published 2012*



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Chairman: Cllr Carole Mulroney  
Vice Chairman: Cllr Caroline Parker  
Town Clerk: Paul Beckerson



Report 2189/FGP

## \*Model Protocol on Member/Officer Relations

### 1. Background

- 1.1 This protocol is intended to assist Councillors and the Clerk, in approaching some of the sensitive circumstances which arise in a challenging working environment.
- 1.2 The reputation and integrity of the council is significantly influenced by the effectiveness of Councillors, the Clerk and other staff working together to support each other's roles.
- 1.3 The aim is effective and professional working relationships characterised by mutual trust, respect and courtesy.

### 2. Roles of Councillors and Employees

- 2.1 The respective roles of Councillors and employees can be summarised as follows:  
Councillors and Officers are servants of the public and they are indispensable to one and other, but their responsibilities are distinct. Councillors are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the council. Their job is to give advice to Councillors and to the council, and to carry out the council's work under the direction and control of the council and relevant committees.

#### 2.2 Councillors

- 2.2.2 Councillors have four main areas of responsibility:
  - To determine council policy and provide community leadership;
  - To monitor and review council performance in delivering services;
  - To represent the council externally; and
  - To act as advocates for their constituents.
- 2.2.3 All Councillors have the same rights and obligations in their relationship with the Clerk and other employees, regardless of their status or political party, and should be treated equally.
- 2.2.4 Councillors should not involve themselves in the day to day running of the Council. This is the Clerk's responsibility, and the Clerk will be acting on instructions from the Council or its Committees, within an agreed job description.

#### 2.3 Chairmen and Vice-Chairmen of Committees

Committee Chairs and Vice-Chairs have additional responsibilities. These responsibilities mean that their relationships with employees may be different and more complex than those of other Councillors. However, they must still respect

the impartiality of Officers and must not ask them to undertake work of a party political nature, or to do anything which would prejudice their impartiality.

## 2.4 Officers

The role of Officers is to give advice and information to Councillors and to implement the policies determined by the Council.

In giving such advice to Councillors, and in preparing and presenting reports, it is the responsibility of the Officer to express his/her own professional views and recommendations. An Officer may report the views of individual Councillors on an issue, but the recommendation should be the Officer's own. If a Councillor wishes to express a contrary view they should not pressurise the officer to make a recommendation contrary to the officer's professional view, nor victimise an officer for discharging his/her responsibilities.

## 3. Expectations

### 3.1 All Councillors can expect:

- a commitment from Officers to the Council as a whole, and not to any individual Councillor, group of Councillor's or political group;
- a working partnership;
- Officers to understand and support respective roles, workloads and pressures;
- A timely response from Officers to enquiries and complaints;
- Officer's professional advice, not influenced by political views or personal preferences;
- regular, up to date, information on matters that can reasonably be considered appropriate and relevant to their needs, having regard to any individual responsibilities or positions that they hold;
- Officers to be aware of and sensitive to the public and political environment locally;
- Respect, courtesy, integrity and appropriate confidentiality from Officers;
- training and development opportunities to help them carry out their role effectively;
- not to have personal issues raised with them by Officers outside the council's agreed procedures;
- that Officers will not use their contact with Councillors to advance their personal interests or to influence decisions improperly;
- that Officers will at all times comply with the relevant code of conduct.

### 3.2 Officers can expect from Councillors:

- a working partnership;
- an understanding of, and support for, respective roles, workloads and pressures;
- leadership and direction;
- respect, courtesy, integrity and appropriate confidentiality;
- not to be bullied or to be put under undue pressure;
- that Councillors will not use their position or relationship with officers to advance their personal interests or those of others or to influence decisions improperly;
- that where Councillors are responsible for delivering a task that this should be expedited in a timely manner in order to meet any required deadlines;
- that Councillors will at all times comply with the council's adopted Code of Conduct.

### 3.3 Some General Principles:

- Relationships between Councillors and Officers should always be on a professional basis and not influence their professional judgement as this can confuse their separate roles and get in the way of the proper conduct of Council business.
- Special relationships with particular individuals or party political groups should be avoided as it can create suspicion that an employee favours that Councillor or political group above others.

#### **4. Political Groups**

- 4.1 The operation of political groups is becoming more of a feature within parish councils, but it is worth repeating that it is NALC policy that party politics should have no place in parish councils. Parish Councillors are there to serve their community as members of the community, and should not be side tracked by party political issues. Party politics within a parish council can pose particular difficulties in terms of the impartiality of the Clerk and other employees, and the relationship between Councillors and the staff generally.
- 4.2 Party political groups or groups of individual Councillors have no power to require the Clerk or any other employee to attend group meetings or to prepare written reports for them, and employees can legitimately refuse to do so. The Clerk and other Officers are responsible to the council as a whole and should not take action under instructions from any individual Councillor, even if he/she has been styled as 'Leader' of the council.
- 4.3 If your council has adopted party political groupings, the Clerk should ensure that any reports or advice offered to a political group are statements of relevant facts, with an appraisal of options and do not deal with the political implications of the matter or options, or make any recommendations. It is not the Clerk's job to make recommendations to a political group.
- 4.4 If a report is prepared for one political group, the Clerk should advise all other political groups that the report has been prepared, or that advice was given.
- 4.5 Any Clerk needing advice or guidance on matters relating to party groups or how to operate within a political environment, should seek advice from their County Association of NALC, or from the Society of Local Council Clerks.

#### **5. When things go wrong**

##### Procedure for officers

- 5.1 From time to time the relationship between Councillors and the Clerk (or other employees) may break down or become strained. Whilst it is always preferable to resolve matters informally, through conciliation by an appropriate third party, it is important that the council adopts a formal grievance protocol or procedure.
- 5.2 The district or unitary council's Monitoring Officer may be able to offer a mediation/conciliation role or it may be necessary to seek independent advice. For example, the Society of Local Council Clerks may be able to provide an independent person. The Chair of the council should not attempt to deal with grievances or work related performance or line management issues on their own. The council should delegate authority to a small group of Councillors to deal with all personnel matters.
- 5.3 The law requires all employers to have disciplinary and grievance procedures. Adopting a grievance procedure enables individual employees to raise concerns, problems or complaints about their employment in an open and fair way.

- 5.4 For an example grievance procedure, contact your district or unitary council's Personnel or HR Department or the County Association of NALC.
- 5.5 If a Councillor is dissatisfied with the conduct, behaviour or performance of the Clerk or another employee, the matter should be raised with the Clerk in the first instance. If the matter cannot be resolved informally, it may be necessary to invoke the council's disciplinary procedure.

\*Source NALC Toolkit for Local Councils 2010

# LEIGH-ON-SEA TOWN COUNCIL

## GRIEVANCE PROCEDURE

### 1. INTRODUCTION

This procedure applies to all employees of the council.

The objectives of the procedure are: -

- To foster good relationships between the council and its employees by discouraging the harbouring of grievances;
- To settle grievances as near as possible to their point of origin;
- To ensure the council treats grievances seriously and resolves them as quickly as possible; and
- To ensure that employees are treated fairly and consistently throughout the council.

Matters excluded from this procedure are as follows: -

- Appeals against salary or gradings;
- Appeals against disciplinary actions;
- Income tax, national insurance matters, rates of pay collectively agreed at the national or local level;
- Rules of pension schemes; and
- A grievance about a matter over which the council has no control.

### 2 INFORMAL GRIEVANCE PROCEDURE

In the interests of maintaining good working relations the employee is encouraged to first discuss any grievance with his/her immediate line manager with a view to resolving the matter informally if appropriate. If the employee feels that this is not appropriate or he or she wishes to pursue a formal grievance they should follow the procedure detailed below.

### FORMAL GRIEVANCE PROCEDURE

### 3 STANDARD COUNCIL GRIEVANCE PROCEDURE

- 3.1. The employee must set out his/her grievance in writing (“Statement of Grievance”) and provide a copy to his/her line manager with a copy to the Town Clerk.
- 3.2. Once the council has had a reasonable opportunity to consider its response to the information provided in the Statement of Grievance the employee will be invited to attend a grievance meeting to discuss the matter.
  - (i) The employee must take all reasonable steps to attend the meeting.
  - (ii) Grievance meetings will normally be convened within ten working days of the council receiving the Statement of Grievance.
  - (iii) The employee has the right to be accompanied to a grievance meeting by a fellow employee or by a Trade Union representative.

- (iv) If the meeting is inconvenient for either the employee or his or her companion, the employee has the right to postpone the meeting by up to five working days.
- 3.3. A grievance meeting may be adjourned to allow matters raised during the course of the meeting to be investigated, or to afford the employees manager time to consider the decision.
- 3.4. After the meeting the employee will be informed of the council's decision within seven working days. The meeting may be reconvened for this purpose. The council's decision will be confirmed to the employee in writing.
- 3.5. If the employee wishes to appeal against the council's decision he or she must inform the council in writing within five working days of receiving the decision.
- 3.6. If the employee notifies the council that they wish to appeal, the employee will be invited to attend a grievance appeal meeting before a member's panel that will ordinarily comprise the Chairman and Vice Chairman of the Personnel Sub-Committee. The employee must take all reasonable steps to attend that meeting. The employee has the right to be accompanied to a grievance appeal meeting by a fellow employee or by a Trade Union representative.
- 3.7. A grievance appeal meeting will normally be convened within seven working days of the council receiving notice that the employee wishes to appeal pursuant to 3.5. above. If the meeting time is inconvenient for the employee or his or her companion, the employee may ask to postpone the meeting by up to five working days.
- 3.8. After the grievance appeal meeting the employee will be informed of the council's final decision within five working days. The meeting may be reconvened for this purpose. The council's decision will be confirmed to the employee in writing.

#### 4 COUNCIL GRIEVANCE PROCEDURE (FOR FORMER EMPLOYEES)

- 4.1. If an ex-employee wishes to raise a grievance, he or she must set out their grievance and the basis for that grievance in writing and provide a copy to the Chairman of the Personnel Sub-Committee.
- 4.2. Following receipt of a statement of grievance pursuant to 4.1. above, the council will either write to the ex-employee inviting him or her to attend a meeting to discuss the grievance, or to ask for the ex-employee's agreement to the council responding to the grievance in writing. If the ex-employee does not agree to the matter being dealt with by correspondence within 7 working days of the council writing to them then
  - 4.2.1. pursuant to 4.2. above steps 3.1. to 3.4. of the standard council grievance procedure will be followed. The meeting will be conducted as set out in paragraph 3.6.
  - 4.2.2. If the ex-employee does agree to the matter being dealt with by correspondence, the nominated Councillors determining the grievance will consider his or her grievance and will respond to the ex-employee in writing within fourteen days of the receipt of such confirmation setting out the basis for the council's decision.

#### 5 GENERAL PROCEDURAL INFORMATION

- 5.1. Grievances raised under the standard council grievance procedure will normally be investigated, and any meetings to discuss the grievance conducted by the employee's line manager and/or the Town Clerk.
- 5.2. If an employee's grievance is about his/her line manager they should raise the matter with the Town Clerk, or if the Town Clerk is the line manager about who there is a grievance, with the Chairman of the Personnel Sub-Committee. In such circumstances the Town Clerk or the Chairman and Vice Chairman of the Personnel Sub-Committee will conduct all investigations and any grievance meeting respectively and three members of the Personnel Sub-Committee other than the Chairman and Vice Chairman will conduct any grievance appeal meeting.

- 5.3. Where a grievance is raised by the clerk to the council any grievance meeting will be conducted by two members of the Personnel Sub-Committee (to be agreed with the clerk) other than the Chairman and Vice Chairman and any grievance appeal meeting will be conducted by three members of the council (agreed with the clerk) who do not sit on the Personnel Sub-Committee. If the members and clerk cannot agree on membership then it will go to arbitration as set out in “The National Agreement on Pay and Conditions of Service”
- 5.4. A copy of the Statement of Grievance, a note of the decision taken at the first stage of the procedure, any notice of appeal and appeal decision will be placed on the employee’s/ex-employees personnel file, together with any notes or evidence taken or compiled during the course of the procedure.

## **DISCIPLINARY PROCEDURE**

### 1. INTRODUCTION

This disciplinary procedure is designed to help and encourage employees to achieve and maintain acceptable standards of conduct and job performance at all times, including the need to: -

- Fulfil the duties specified in their contract of employment.
- Be honest and act beyond suspicion of dishonesty.
- Maintain high standards of integrity and conduct to protect the council’s image and reputation with the public.

1.1 This policy indicates the disciplinary procedure that will normally be followed in the event of misconduct. The following list provides examples of conduct that will normally be regarded as misconduct leading to disciplinary proceedings. The list is not exhaustive. These are examples only:

- i. Unsatisfactory time keeping.
- ii. Absenteeism, including any absence from work during a working day without prior authorisation or instruction.
- iii. Failure to comply with rules and regulations applicable to job requirements.
- iv. Failure by an employee to perform the duties and responsibilities of his or her post to the standard expected by the council. Insubordination.
- v. Any other conduct that from time to time is defined by the council as amounting to misconduct.

1.2 For first instances of minor misconduct the employee’s line manager may speak to the employee informally before implementing a formal disciplinary procedure. However there is no obligation for the employee’s line manager to do this.

1.3 Before any disciplinary action is taken by the Council, a notice in writing giving details of the matter, either signed by the Chairman and authorised by the Council, or your line manager in accordance with their delegated responsibilities, shall be given to you.

### 2. SCOPE

**The procedure applies to all employees of Leigh-on-Sea Town Council.**

### 3. VERBAL WARNINGS

Verbal Warnings are issued for most first instances of general misconduct, depending on the seriousness of the offence. If the employee is given a Verbal Warning he or she will be warned of the likely consequences of any further disciplinary offences or a failure to improve his or her conduct to the satisfaction of the council. A note confirming the Verbal Warning will be placed on the employees personnel file and a copy will be provided to the employee. A Verbal Warning will normally remain in force for twelve months.

The Verbal Warning stage of the procedure may be omitted if the offence is of a sufficiently serious nature.

#### 4. FIRST WRITTEN WARNING

In the case of a serious offence or repetition of an earlier minor offence the employee will normally be given a First Written Warning. A First Written Warning will be issued by the employee's line manager and will set out:

- i. the nature of the offence and the improvement required (if appropriate) and over what period;
- ii. the likely consequences of any further offence or failure by the employee to improve his/her conduct to an acceptable standard;
- iii. that further offences will result in more serious disciplinary action; and
- iv. the employee's right of appeal.

**A first Written Warning will normally remain in force for twelve months.**

The First Written Warning stage of the procedure may be omitted if the offence is of a sufficiently serious nature.

#### 5. FINAL WRITTEN WARNING

If further misconduct occurs within the time period specified in a First Written Warning, or if the misconduct is sufficiently serious the employee will be given a Final Written Warning. A Final Written Warning will be issued by the employee's line manager and will set out:

- i. the nature of the offence and the improvement required (if appropriate) and over what period;
- ii. the likely consequences of any further offence or a failure by the employee to improve his/her conduct to an acceptable standard;
- iii. that further offences will result in more serious disciplinary action up to and including dismissal; and
- iv. the employees right of appeal.

Final Written Warnings may also be issued in circumstances where the misconduct does not amount to gross misconduct, but is sufficiently serious enough to warrant only one written warning.

A Final Written Warning will normally remain in force for eighteen months.

#### 6. STANDARD COUNCIL DISCIPLINARY PROCEDURE

- 6.1. In the case of further misconduct within the time period specified in any Final Written Warning or if the misconduct is sufficiently serious and the council deems it to be appropriate to contemplate the dismissal, demotion or suspension (without pay) of the employee the following formal disciplinary procedure will be followed.
- 6.2. The council will investigate the alleged misconduct and will establish the facts surrounding the complaint as necessary, taking into account the statements of any available witnesses.
- 6.3. The council will set out in writing the alleged conduct or other circumstances which lead the council to contemplate dismissing the employee or taking disciplinary action against the employee and the basis for the allegation and will send the employee a copy of the statement inviting the employee to attend a disciplinary meeting to discuss the matter. The employee will be provided with a reasonable opportunity to consider his or her response to the information provided in the statement before attending the meeting. The employee must take all reasonable steps to attend the meeting.

- 6.4 Disciplinary meetings will normally be convened within five working days of the council sending the employee the written statement referred to in 6.3 above. The employee may be accompanied to any disciplinary meeting by a fellow employee or by a representative of a trade union. The employee's line manager and/or the Town Clerk will represent the council.
- 6.5 If the time or date proposed for the meeting is inconvenient (either for the employee or for the employee's companion should he or she wish to be accompanied to the meeting pursuant to 6.4 above) the employee may ask to postpone the meeting by up to five working days.
- 6.6 The meeting may be adjourned to allow matters raised during the course of the meeting to be investigated, or to afford the employee's line manager time to consider the decision.
- 6.7 After the meeting the council will inform the employee of their decision and any applicable sanction within five working days. The meeting may be reconvened for this purpose. The decision will be confirmed to the employee in writing.
- 6.8 If the employee wishes to appeal against the decision he or she must notify the council in writing within five days of receiving written notice of the decision.
- 6.9 If the employee notifies the council that he or she wishes to appeal, the employee will be invited to attend a disciplinary appeal meeting before the Chairman and Vice Chairman of the Council's Personnel Sub-Committee. The employee must take all reasonable steps to attend that disciplinary appeal meeting. The employee has the right to be accompanied to a disciplinary appeal meeting by a fellow employee or by a representative of a trade union.
- 6.10 A disciplinary appeal meeting will normally be convened within seven working days of the council receiving notification that the employee wishes to appeal pursuant to 6.8 above. If the meeting date is inconvenient for the employee or the employee's companion he or she may ask to postpone the meeting by up to five working days.
  - i. Any new evidence that the employee wishes to put forward will be considered, as will any new evidence from the council. The original disciplinary penalty will be reviewed.
  - ii. The disciplinary appeal sanction originally imposed cannot be increased upon appeal.
  - iii. The disciplinary appeal meeting will not necessarily take place before any disciplinary sanction imposed by the council takes effect. If the employee's appeal is against dismissal and the appeal is successful the employee will be reinstated and continuity of employment will be preserved.
  - iv. The meeting may be adjourned to allow matters raised during the course of the meeting to be investigated, or to afford the Council's representatives time to consider their decision.
- 6.11 After the disciplinary appeal meeting the council will inform the employee of its final decision within five working days. The meeting may be reconvened for this purpose. The decision will be confirmed to the employee in writing.

#### COUNCIL DISMISSAL PROCEDURE FOR USE IN GROSS MISCONDUCT

- 7.1. The following list provides examples of conduct that will normally be regarded by the council as Gross Misconduct. This list is not exhaustive. These are examples only:
  - i. Refusal or repeated failure by an employee to carry out his or her duties.
  - ii. Falsification of documents or information (including expense claims).
  - iii. Unauthorised disclosure of confidential information.

- iv. Assaulting a fellow employee or any other person whilst acting or purporting to act on behalf of the council.
  - v. Insulting, indecent or offensive behaviour towards a fellow employee or any other person whilst acting or purporting to act on behalf of the council.
  - vi. Serious or repeated harassment (including sexual and racial harassment).
  - vii. Incapacity at work due to the influence of alcohol, unprescribed drugs or any other substance.
  - viii. Wilful damage to council property.
  - ix. Theft, unauthorised use or possession of council property or theft of the property of a fellow employee.
  - x. Conduct bringing the council into disrepute.
  - xi. Any other conduct that from time to time is defined by the council as amounting to gross misconduct.
- 7.2. If an employee is accused of any Gross Misconduct he or she may be suspended from work on full pay pending the outcome of an investigation into the alleged offence(s). Such a period of suspension will not normally exceed ten working days unless there are exceptional circumstances.
- 7.3. The council will investigate the matter and will establish the facts surrounding the complaint as necessary, taking into account the statements of any available witnesses. As part of that investigation the employee will be interviewed.
- 7.4. If the council believes the employee is guilty of gross misconduct his or her employment will be terminated summarily without notice or pay in lieu of notice.
- 7.5. The council will send the employee a statement, setting out the allegations of misconduct that led to the employee's dismissal and the council's basis for thinking that the employee is guilty of that misconduct. The date on which the employment terminated will be confirmed to the employee and the employee may be reminded of any continuing obligations he or she may have following the termination of employment. This statement will also explain the employee's right to appeal against the council's decision.
- 7.6. If the employee wishes to appeal against the council's decision he or she must notify the council in writing within five working days of receiving notice of the council's decision pursuant to 7.5 above.
- 7.7. If the employee appeals the council will invite the employee to attend a disciplinary appeal meeting before the Chairman and Vice Chairman of the Council's Personnel Sub-Committee. The employee must take all reasonable steps to attend the meeting. The employee has the right to be accompanied to a disciplinary appeal meeting by a fellow employee or by a representative of a trade union.
- 7.8. Any disciplinary appeal meeting will normally be convened within seven working days of the council receiving notice from the employee that he or she wishes to appeal pursuant to 7.6 above. If the date of the meeting is inconvenient for the employee or his or her companion the employee may ask to postpone the meeting by up to five working days.
- i. Any new evidence that the employee wishes to put forward will be considered as will any new evidence from the council. The original disciplinary penalty will be reviewed.
  - ii. The disciplinary sanction originally imposed cannot be increased upon appeal.
  - iii. The disciplinary appeal meeting will not necessarily take place before any disciplinary sanction imposed by the council takes effect. If the employee's appeal is against dismissal and the appeal is successful he or she will be reinstated and continuity of employment will be preserved.

- iv. The meeting may be adjourned to allow matters raised during the course of the meeting to be investigated, or to afford the Council's representatives time to consider their decision.
- 7.9. After the disciplinary appeal meeting the employee will be informed of the council's final decision within five working days. The meeting may be reconvened for this purpose. The council's decision will be confirmed to the employee in writing.

#### GENERAL PROCEDURAL INFORMATION

- 8.1. Verbal Warnings and Written Warnings will normally be issued by the employee's line manager]. Disciplinary proceedings raised under the standard council disciplinary procedure will also normally be investigated and any meetings to discuss the disciplinary proceedings conducted by the employee's line manager and/or Town Clerk as appropriate.
- 8.2 Where disciplinary proceedings are instigated against the Town Clerk, the Chairman of Personnel Sub-Committee will issue verbal warnings and written warnings on behalf of the Council. Two members of the Personnel Sub-Committee other than the Chairman and Vice Chairman will carry out any investigations and any meetings. Any disciplinary appeal meeting will be conducted by three members of the council who do not sit on the Personnel Sub-Committee will conduct any appeal.



## **ADVICE NOTE: Grievance Procedure Model**

### **1. PURPOSE AND SCOPE**

It is the policy of the council to give employees the opportunity to air and seek redress for any individual employment grievance which they may have. Grievances may be any concerns, problems or complaints employees wish to raise with the council. This document describes the procedure which aims to facilitate a speedy, fair and consistent solution to an individual employee's employment grievance. This procedure is produced in line with the ACAS Code of Practice 2009 as set out in the Employment Act 2008.

### **2. PRINCIPLES**

- a) At every stage in the procedure the employee will be given the opportunity to state his or her case before any decision is made.
- b) Grievances will be dealt with promptly and consistently
- c) At all formal stages the employee will have the right to be accompanied by a work colleague or trade union representative during the Grievance Hearing.
- d) An employee will have the right to appeal against any outcome of a Grievance Hearing.
- e) At no time will an employee be penalised or victimised for having raised a Grievance against the council

### **3. PROCEDURE**

3.1 Wherever possible, any grievance should be raised informally with the employee's line manager, or if this is inappropriate with the next level of management. In the case of the Clerk to the council raising a grievance this should be directed to the Chair or Mayor of the council unless the complaint is about the Chair or Mayor in which case another Member can be identified to handle the Clerk's concerns. The recipient of the grievance from a clerk should share the grievance with the relevant committee established to handle employment matters and the issues should be treated with discretion and confidentiality at all times.

3.2 **Written Statement:** If the employee does not consider it appropriate to raise the grievance informally, or if requested by the person the employee spoke to informally, then the employee should submit a formal grievance in writing to their line manager, or if this is inappropriate to the next level of management.

3.3 **Meeting or Hearing:** Generally, within a reasonable period of time e.g. five working days of receipt of a written complaint, the line manager or Chair of the appropriately convened committee or hearing panel will arrange a meeting with the employee. The Hearing Manager will endeavour to make the meeting arrangements mutually convenient and will arrange a confidential location, free from interruptions. The manager will investigate the substance of

the complaint and hear submissions from the employee concerned together with such other submissions or evidence as s/he shall consider appropriate and take such steps as s/he shall consider necessary to resolve the issue raised. It may be necessary to adjourn the meeting in order for an investigation to take place. Careful consideration of the evidence and the necessary steps required to resolve the problems will be given to the grievance. The employee may call witnesses by prior arrangement with the panel. There is no right for a Member or employee implicated in an employee's grievance to cross examine the aggrieved during a grievance hearing but the panel may wish to make its own investigations through interviewing these individuals and/or other witnesses separately. The Panel may ask the employee what he or she would like to happen as a result of raising the grievance and bear this in mind when preparing the response.

**3.4 Response:** The Hearing Manager will advise the decision to the employee in writing and, where appropriate, include an action plan to assist in the resolution of the problem. Councils which handle internal disputes effectively generally consider the options and costs in a timely fashion, then agree and publicise the workable solutions, monitor, review and learn from the experience. There may be some value in exploring Mediation as a way in which to resolve differences between two parties. The SLCC can advise on approaches and bodies which may be able to assist (nb external organisations may levy a fee for such services)

**3.5 Appeal:** If the employee is dissatisfied with the decision of the line manager on his/her complaint, s/he may appeal against the decision to the Chair/Mayor or other elected Member by written notice within five working days of the decision. An Appeal may be raised if:

- The employee thinks the finding, or action plan, is unfair
- New evidence has come to light
- The employee thinks that the procedure was not applied properly

On receipt of the appeal the council's Appeals Panel shall arrange to meet and consult with the employee, the line manager or Members concerned and any other persons, as s/he shall consider appropriate without unreasonable delay. The Appeal Hearing Chair shall consider the issues and shall then take all such steps, as s/he may consider necessary to resolve those issues. Where the council's Chair or Mayor has chaired the initial grievance meeting the Vice Chair or Chair of another committee will hear the appeal as a hearing manager the decision of the Appeal Hearing will be final. The council will need to ensure that the Members involved in the hearings are able to act impartially and reasonably at all times. The outcome of the appeal should be conveyed to the employee in writing in a timely manner.

**3.6 Bullying or Harassment:** If a grievance concerns alleged bullying or harassment the matter should be reported promptly to the employee's Line Manager, or another manager/Member if more appropriate, with an indication of the required action. The complaint will then be investigated and any action taken and any resolution achieved will be reported back. If the solution is not satisfactory to the complainant, the matter will be discussed further and, if appropriate, an alternative solution agreed. The decision at this stage will generally conclude the enquiry. If a further appeal or review is available the employee will be notified. As a result of an investigation into a claim of harassment disciplinary action may be instigated against any alleged perpetrators of the action or in the case of alleged perpetrators being elected Members a Code of Conduct complaint lodged by the council through the Standards process/Ombudsman in Wales

Refer to the Dignity at Work/Bullying and Harassment Policy for further details

**3.7 Right to be Accompanied:** At any formal stage of the procedure an employee may be accompanied by a fellow employee of their choice or their trade union representative or

official of a trade union (appropriately accredited) but as this is an internal procedure they will not be entitled to be accompanied by any external supporter e.g. partner, parent, solicitor etc. This right to be accompanied is enshrined in the Employment Relations Act 1999. To exercise this right the employee should make a reasonable request. The companion will be allowed to address the hearing, put and sum up the employee's case, respond to views expressed at the hearing and to confer with the employee during the hearing (sometimes in an adjournment) but is not allowed to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the employer from explaining their case.

### **3.8 Hearing Panels**

The SLCC advise that councils establish hearing panels to hear disciplinary and grievance hearings on an annual basis so that if a dispute does arise in the workplace the elected members involved are already trained and briefed on their duties as a hearing or appeal panel member. In situations where individual members are implicated in the dispute or have undertaken an investigatory role then they will need to be substituted as panel members.

**3.9 Confidentiality:** So far as is reasonably practicable, the council will keep any grievance or complaint of harassment confidential between the manager or Member investigating the grievance or complaint, the employee and the person about whom the grievance or complaint is made. If it is necessary to investigate the matter with any other employee or person, the employee will be so advised.

**3.9 Record Keeping:** In all cases, written records of the nature of the grievance raised, the employer's response, action taken (with reasons), details of any appeal and subsequent developments will be retained and kept in accordance with the Data Protection Act 1998.

### **3.10 Grievances raised during Disciplinary**

In some circumstances when a disciplinary process has commenced an employee chooses to exercise his/her right to raise an internal grievance about the employment relationship with the council or individual Members. The SLCC recommends, in line with ACAS advice, that disciplinary matters are placed on hold until grievances have been aired and actions towards a resolution have been progressed. In exceptional circumstances it is pragmatic to deal with the two disputes concurrently but SLCC would advise caution and specialist advice should be sought if this arises.

## **4. GETTING IT WRONG**

Following the repeal of the 2004 Dispute Resolution regulations employees no longer HAVE to raise a grievance before going to an employment tribunal. However, establishing a mechanism for differences and disputes to be resolved internally can often allow the employment relationship to continue. Failure to follow the ACAS Code of Practice (available at [www.acas.org.uk](http://www.acas.org.uk)) when dealing with grievances can lead to an Employment Tribunal awarding an uplift of an award against the council of up to 25%. Tribunals dealing with constructive dismissal and discrimination claims are particularly interested in whether the employer followed a procedure when dealing with an internal dispute and whether the employer acted fairly and reasonably. One way in which to avoid such a penalty is to have an agreed procedure, communicate that procedure to staff and Members, revisit and review the procedure regularly and have some training for those who are expected to operate the procedure.



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## **ADVICE NOTE: Protocol for Hearings by the Staff Disciplinary and Grievance Committee**

### **1. INTRODUCTION**

The Staff Disciplinary and Grievance Committee has delegated authority to determine matters in relation to the formal stage of the Grievance Policy sections 2.1 to 2.6 and also to the formal stage of the Disciplinary Policy sections 4.1 to 4.6

At such a hearing the Committee is acting in a quasi-judicial capacity and must observe the principle of natural justice. This does not require the formality of a Court of Law but: -

- (i) there needs to be a proper procedure. (see below)
- (ii) the member of staff must be able to present their case and to question the employer either directly or through their representative.
- (iii) members of the Committee should be present throughout the hearing and remain until a decision is reached.

### **2. ROLE OF THE PARTIES**

The member of staff has the right to present their case in person to the Committee, with or without Union representation. The officer representing the Council should be the person who took the decision which gives rise to the hearing. Another person may also be required to act as the Committee's advisor on procedural matters.

### **3. PROCEDURE**

A written submission will be prepared by the member of staff and made available to Committee members prior to the hearing. Other relevant documentation relating to the hearing will be supplied by the Council representative.

The general principles applying to the procedure are as follows: -

- (a) the Council's representative should state their case first.
- (b) the member of staff or their representative should then be able to put any questions they may have to the Council's representative.
- (c) the Committee should then be able to put any questions they have to the Council's representative.
- (d) the member of staff or their representative should then put their case.
- (e) the Council's representative should then be able to put any questions they have to the member of staff or their representative.
- (f) the Committee can then ask questions of the member of staff or their representative.
- (g) the Council's representative then sums up the Council's case.
- (h) the member of staff or their representative sums up their case.
- (i) the parties withdraw and the Committee reaches its decision.
- (j) the Committee may confirm, amend or reject the original decision.