



# **Midsomer Norton Town Council**

## **HARASSMENT & BULLYING POLICY & PROCEDURE**

**Adopted by Council: 7<sup>th</sup> April 2014**

**(Minute Number: 209)**

# Midsomer Norton Town Council

## HARASSMENT & BULLYING POLICY & PROCEDURE

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## 1. STATEMENT OF INTENT

1.1 Midsomer Norton Town Council is committed to providing a safe and secure environment for all staff and service users and through its Equal Opportunities Policies to taking action against all forms of discrimination and harassment. The harassment and bullying policy supplements existing policies and procedures.

1.2 The Council considers harassment can include behaviour which:

- ◆ Causes humiliation, offence and distress
- ◆ Creates an unpleasant working environment
- ◆ Is unwanted and unwarranted
- ◆ Is unprovoked
- ◆ Interferes with job performance

It is important to note that the above can also be perceived as harassment/bullying by the victim

1.3 Harassment may be deliberate or unintentional.

1.4 The Council wholeheartedly supports the commitment and practices implemented throughout this policy document.

1.5 This policy applies to all staff. It details procedures considered appropriate in tackling harassment or bullying incidents and is to be followed by all relevant staff.

## 2. INTRODUCTION

2.1 Midsomer Norton Town Council has a legal and moral responsibility to protect its staff from the humiliation and indignity of all forms of harassment. All staff, particularly Managers, have a responsibility to abide by the policy to ensure its effectiveness and follow the procedure laid down.

2.2 An assumption should not be made that if there are no complaints of harassment of any type that there is not a problem within the Council. Most incidents of harassment are never reported, and as an employer, the Council needs to understand why people may be putting up with the harassment.

- ◆ They may feel too intimidated to do any thing about it.
- ◆ They may be afraid of reprisals.
- ◆ They may not want to make a fuss, especially if they think they will not be believed or understood.
- ◆ They may think that nothing will be done about their complaint.
- ◆ They may not know or understand the complaint procedure, or to whom they can complain, especially if the perpetrator of the harassment is a line manager or supervisor.
- ◆ The fear that they will be perceived as having a “chip on their shoulder”.
- ◆ The fear of being labelled a troublemaker and the possible effect of that on their career.

- ◆ They may have difficulty in communicating about their experiences.
  - ◆ They may fear that others may not validate their experiences.
- 2.3 There is also a need to be alert to indicators of possible harassment/bullying by observing changes in behaviour of employees.
- 2.4 For anyone who is a target of harassment, being at work means being in a permanent state of fear, being unable to concentrate, and failing to realise their full potential. The tension this situation causes will invariably affect others and therefore have an adverse effect on the working environment and the organisation as a whole.
- 2.5 Where a member of the public is harassing the employee they should immediately report the matter to their supervisor or manager so that effective action can be taken at a senior level.
- 2.6 Where a member of the public brings forward an allegation of harassment by one, or more, of the Council's staff, the Council's Complaint Procedure must be used.

### 3. THE PROCEDURES

#### INTRODUCTION

- 3.1 It is essential that no matter how minor they may seem, all incidents must be:
  - i. ACKNOWLEDGED
  - ii. ACTED UPON IMMEDIATELY, AND FOLLOWED UP
  - iii. RECORDED AND MONITORED
- 3.2 This policy involves both informal and formal procedures for dealing with harassment of staff; no distinction is drawn between the different types of harassment. The emphasis is on challenging and correcting unacceptable behaviour which individual staff and ultimately the Council finds offensive. The policy also supports the victims of harassment/bullying as well as acknowledging support for the perpetrator may be necessary.
- 3.3 Persons being harassed should be advised to keep an incident diary, with as much detail about the incident as possible, together with the names of any witness. These records will be useful if a complaint is made.
- 3.4 In line with the Disability Discrimination Act (1996) *reasonable adjustments* will be made to enable Disabled People to participate and gain the support of this policy and its procedures. Where the person “being harassed” or “the perceived harasser” is a Disabled Person, all meetings should be made accessible for all parties involved. For example wheelchair access, sign language interpreters or Personal Assistance provided. All documentation will be translated into accessible formats when required by any of the individuals involved. Adjustments can be made to this policy, see section on reasonable adjustments for Disabled People (section 13), this includes providing representation on behalf of the Disabled Person involved. Responsibility for identifying and ensuring adjustments are met, lies with the Town Clerk.
- 3.5 In some cases where the harassment is of a particular serious nature, it may be necessary for the complainant to go straight to the formal procedure.
- 3.6 Harassment complaints should be made as soon as possible, and all enquiries and investigations must be completed within the time-scales detailed in the procedure.
- 3.7 There may be cases where it is alleged that harassment and or bullying has been carried out by one or more elected Members on an individual employee. Where this is alleged then the matter must be referred in the first instance to the Town Clerk who will be responsible for taking the appropriate action in the first instance.

## 4. A THE INFORMAL PROCEDURE

4 A.1 Any complaint must be acknowledged in writing.

4 A.2 Informal steps can be taken to get the harassment stopped. Under this part of the procedure it is important that the harassment is tackled quickly and the unwanted behaviour stopped, with no prospect of repeat.

- a) The complainant should raise the problem informally with the person(s) who are creating the problem, pointing out that their conduct is unwelcome and unacceptable. However if the person experiencing harassment finds this difficult then they can seek advice from a manager or a Trade Union representative.

The person experiencing harassment must

- ◆ Describe the behaviour or comments that upset them
- ◆ Describe the effect it has on them
- ◆ Request that the behaviour must stop

a) The complainant should also

- ◆ Make a note of the time and date of the meeting/discussion
  - ◆ Take notes of the meeting/discussion and send a copy to the alleged harasser(s).
- b) The intention of the meeting/discussion is to inform the alleged harasser of the effect their behaviour, irrespective of their intentions. **NB** it may not always be possible to obtain an apology but an agreement to stop the unwanted behaviour must be reached.
  - c) If the informal procedure is followed all notes of meetings and or discussions must remain confidential unless further action is to be taken.
  - d) The complainant at any time may ask that the formal procedure be applied, especially if an agreement cannot be reached through the informal process.
  - e) If the complainant suffers any further harassment after the informal process has taken place, they should continue to keep a diary and seek support and advice from any person listed in 4a.2a.
  - f) The manager or Trade Union representative may also help where the allegation may be denied by the harasser. The meeting held to discuss the matter should attempt to resolve the issues informally and a balanced opinion reached which can be accepted by both sides surrounding the circumstances leading to the allegation.

## 4. B THE FORMAL PROCEDURE

4 B1 Where it has not been possible or appropriate to use the informal procedure, or in appropriate cases the Council's Confidential Reporting Policy or where the unreasonable behaviour has persisted in spite of it, the complainant may make a formal complaint in accordance with the following procedure. All parties concerned should retain the right to be treated fairly and offered the appropriate help and support.

- a) A member of staff who wishes to use the formal procedure should make their complaint either, verbally, in writing or in any format accessible to the complainant to one of the following:
- ◆ Immediate line manager or supervisor
  - ◆ Town Clerk
  - ◆ Chair of Personnel Working Party

**NB If any of the above named people is the alleged harasser, other named persons from the list can be used.**

In cases where the treatment suffered by the individual is very serious the formal procedure will be instigated immediately.

- b) The person receiving the complaint must ask the complainant to complete the Harassment Complaint Form which outlines the alleged harassment, giving dates and details of the incident(s). The complainant must check and sign that the details are correct.
- c) Once the Harassment Complaint Form is complete and sent to the relevant person (see a above), the complainant should receive written acknowledgement of the complaint within 5 working days.
- d) On receipt of the Harassment Claim Form the alleged harasser's line manager/supervisor will be advised that:
- ◆ A complaint has been received;
  - ◆ Consideration of suspension or imposing restrictions to normal working practices may be advisable where the nature of the complaint is serious enough to warrant this.
- e) The Town Clerk will meet and advise the alleged harasser(s) of:
- ◆ The allegations made against them;
  - ◆ Their rights to support, Trade Union representation;
  - ◆ Any suspension or imposed restriction to normal working practices whilst an investigation is being carried out;
  - ◆ Their right to submit a written statement, if they wish to, within 5 working days to the Town Clerk.
- f) An Investigating Panel will be convened within 10 working days of the meeting outlined in e) above.

- g) The Town Clerk will give the complainant support and information on the harassment policy and procedure, and their rights to representation.

## **5. VICTIMISATION**

- 5.1 Claims of victimisation will be considered in any of the situations to which this policy applies.
- 5.2 A claim of victimisation can be made where the harasser or any person connected with the harassment complaint treats the complainant or any person providing support for the complainant less favourably than he would treat another employee once an informal or formal complaint has been made.

## **6. THE INVESTIGATING PANEL**

### **6.1 Composition of the Investigating Panel**

The panel will consist of three people and will include the Town Clerk, Chair of Personnel Working Party and a staff representative. Members of the panel shall be the only persons to investigate and determine the outcome of the complaint. Members of the panel will elect the chair of the Investigating Panel.

### **6.2 Training for the Panel**

As a minimum standard all panel members should read the Harassment and Bullying policy and procedures.

## **7. THE INVESTIGATION**

- 7.1 To conduct a thorough and impartial investigation it is essential that the panel interview the complainant, the alleged harasser(s) and all relevant witnesses.
- 7.2 It is essential that no member of the panel should have previously provided other than procedural advice to the complainant or the alleged harasser(s). This is vital to maintain objectivity and independence.
- 7.3 The complainant and alleged harasser will be notified of the membership of the Investigating Panel and be given an opportunity to make reasonable objections to the Town Clerk as to the composition of the panel.
- 7.4 The purpose of the investigation is to look at the facts of the case and make recommendations for any further action. To achieve this, the panel must examine the statements of all relevant parties concerned.
- 7.5 All written evidence submitted to the panel must be kept, properly recorded and held in the strictest confidence. The Town Clerk will arrange provision of administrative support to the panel who will be present during all the interviews.

## **8. THE INVESTIGATION PANEL DECISION**

8.1 Once the investigation is complete the panel may decide that:

- ◆ There is no case to answer;
- ◆ There was sufficient evidence of harassment and there is a case to answer, which should be dealt with under the Council's Disciplinary Procedure.

8.2 The Investigating Panel is required to produce a written report within 10 working days of first convening, outlining their findings and recommendations to the appropriate line manager/supervisor of the alleged harasser.

8.3 If the Town Clerk subsequently instigates disciplinary action a member of the Investigating Panel will be required to present its findings at the disciplinary hearing.

8.4 The Investigating Panel is required to produce a written summary of the report in accessible format to the complainant and the alleged harasser.

8.5 The Investigating Panel has the right to recommend that an investigation be carried out under the disciplinary procedures against the complainant if after the investigation the complaint is found to be malicious.

## **9. TIME-SCALE FOR COMPLETION OF THE INVESTIGATION**

The investigation must be completed as quickly as possible and, wherever practicable, within 30 working days from the date the formal complaint was logged.

## **10. APPEALS**

Under this procedure there is a right of appeal for the person lodging the complaint. The Council's Appeal Procedure should be used.

## **11. RECORDING AND MONITORING INCIDENTS**

All informal or formal incidents of Harassment no matter how minor must be recorded by the Town Clerk. The Town Clerk will submit six monthly reports to the Personnel Working Party Committee who will monitor harassment incidents.

## **12. SUMMARY OF TIME-SCALES**

- ◆ 5 working days for formal acknowledgement of the harassment complaint and to notify alleged harasser's line manager/supervisor.
- ◆ 5 working days for the alleged harasser to submit a statement once notified of the complaint.
- ◆ 5 working days to convene the investigating panel once the Town Clerk has met with the alleged harasser.
- ◆ 30 working days for the completion of the investigation.

### **13. REASONABLE ADJUSTMENTS FOR DISABLED PEOPLE**

Every effort will be made to ensure that this policy does not exclude Disabled People.

With adjustments this procedure can be adapted when necessary to meet specific circumstances and access requirements. The following checklist outlines some of the key adjustments that can be made for Disabled People to engage with this policy. This list is only a guide and not exhaustive. In any modified process it is important that careful monitoring takes place at key stages to ensure that the procedure in its adjusted form is meeting the access needs of the Disabled Person (People) involved. If through monitoring it is failing to meet people's needs then the process will need modifying.

- a) Complaints can be made directly or indirectly (i.e. somebody acting on behalf of the disabled person). Representations can be made by an agreed third party throughout. As good employers we have a duty of care, trust and confidence towards our staff. The level of representation can vary, as it may be necessary on occasion for the Council to take on the role of supporting the complaint.
- b) All documentation must be provided in accessible formats as identified by the Disabled person(s) involved, at the key stages and in accordance with the timetable outlined in this procedure.
- c) All meetings and venues must be made accessible to all the people involved, for example ensuring wheelchair access, sign language interpreters, the provision of personal assistants.
- d) Specialist Support Workers with specific skills may need to be provided, or when appropriate use existing support mechanisms for some Disabled People, especially when there may be communication and language barriers. For example for people with learning difficulties or people experiencing emotional and mental distress. The amount of support time offered to the individual can include preparation time at any key stage. Support will also be offered to those workers/people involved to ensure they are not in turn victimised as a consequence of involvement with this process.
- e) Providing information in the form a diary or other submissions may be submitted in any accessible format.
- f) When it is difficult for an individual to provide such a submission, due to their impairment, then another form of identifying the patterns of alleged harassment or bullying may be used.
- g) Every effort will be made to make sure effective communications strategies are used to ensure the full understanding of all the Disabled People involved, and in turn all opportunities given to enable Disabled people to express their opinions on the matter in question. For example the timetable for the panel adjusted etc.

- h) Witness evidence will be sought in an accessible manner and support provided to the witness in order for them to provide a statement when they are disabled themselves.
- i) The time-scales may be adjusted for a number of reasons. For example to ensure that there has been adequate time for Disabled People to communicate fully their grievances the investigation may need to be expanded in time or alternatively to prevent this procedure having an adverse effect on individuals impairments the time-scales may need to be reduced.
- j) Every effort will be made to ensure that the panel is not intimidating to the individuals involved, e.g. the work setting of the panel can be re-arranged at an alternative venue.
- k) The times of meetings will take into account the access requirements of the individual, for example avoiding first thing in the morning if employee has personal care at home at that time, therefore fitting into the Disabled Persons working pattern.

**Adopted by Council:** (Minute Number )

## **APPENDIX 1**

### **1. LEGAL AND POLICY FRAMEWORK**

#### **1.1 Racial Harassment**

The Race Relations Act 1976, does not give a formal definition of 'racial harassment' but Employment Tribunals are increasingly willing to conclude that racial harassment and abuse at work is a detriment amounting to 'less favourable treatment on racial grounds', and therefore constitutes unlawful racial discrimination. The Commission for Racial Equality has issued a Code of Practice for Employers; breaches of the Code are admissible in an Employment Tribunal. The Employment Tribunals have constantly ruled that there can be no degree of acceptability for racist banter and abuse in the workplace. The context is irrelevant, and any use of it is an expression of racial prejudice.

There is no longer an upper limit on the amount of compensation that can be awarded by Employment Tribunals for racial discrimination.

#### **1.2 Sexual Harassment**

The Sex Discrimination Act 1975 does not give a formal definition of sexual harassment, and many people have tried to define the boundaries of this type of harassment.

The European Commission's Code of Practice defines sexual harassment as:

'Unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work'.

The Code of Practice states that it will be unacceptable if:

- ◆ Such conduct is unwanted, unreasonable and offensive to the recipient.
- ◆ A person's rejection of or a submission to such conduct on the part of the employers or staff (including superiors or colleagues) is used explicitly or implicitly as a basis for a decision which affects a person's access to vocational training or access to employment decisions.
- ◆ Such conduct creates an intimidating, hostile or humiliating work environment for the recipient.

### 1.3 Disability Harassment

The Disability Discrimination Act (1995) is clear that harassment towards Disabled People in the work place is not justified. The present legislation protects Disabled People from discrimination in much the same way as the Race Relations Act and the Sex Discrimination Act. This means that it could or will be cited in claims of harassment in future cases at Employment Tribunals.

There is no upper limit on the amount of compensation that can be awarded by Employment Tribunals for discrimination against Disabled People. The legislation gives clear reference to victimisation, and in particular covers other employees who support disabled colleagues, with reference to this policy it would be to assist disabled people to challenge their harassment.

In accordance with the legislation and our Equal Opportunities Policy, Disabled People are defined as people with visual, hearing, mobility or sensory impairments; people who live with mental health issues or with HIV and AIDS; people with learning difficulties; and, people with long-term illnesses who because of their impairment are discriminated against.

### 1.4 Bullying

Bullying is an acknowledged form of harassment, which can occur in the workplace. It can be defined as 'offensive, intimidating, malicious, insulting or humiliating behaviour, abuse of power or authority which attempts to undermine an individual or a group of staff and which may cause them to suffer stress.

Bullying at work should be dealt with as a health and safety at work issue. Employers have a duty under the Health and Safety at Work Act 1974 to care for the health and safety of their staff. The Health and Safety Executive places responsibility for work place bullying with the employer, stating that:

"Staff cannot easily cope with inconsistency, indifference or bullying. Employers must look at their management styles and employers should ensure that people are treated fairly and that bullying and harassment of those who seem not to 'fit in' is not allowed."

## **OTHER LEGISLATION**

### 1.5 The Criminal Justice and Public Order Act 1994

The Act created the offence of intentional harassment, punishable by six months' imprisonment or a fine of £5000. The offence covers all forms of harassment, including harassment in the work place. Intentional harassment in the workplace will be relatively easy to prove once it can be shown that an offender has been warned that his or her behaviour has been causing distress.

### 1.6 Employment Rights Act 1996

An employer must not act in a manner which undermines the mutual duty of trust and confidence in the employment relationship. Where an employer breaches

this term the employee may, if the breach is repudiatory, claim that they have been unfairly dismissed.

#### 1.7 The Protection from Harassment Act 1997

The Act makes harassment both a civil tort and a criminal offence. The legislation also provides an additional remedy for those subjected at work to racial or sexual harassment or to harassment on the grounds of disability or sexual orientation.

#### 1.8 The Human Rights Act 1998

The Human Rights Act strengthens and locates anti-discrimination and equalities legislation within the broader rights based framework.

Article 3: The right to freedom from torture and inhuman or degrading treatment or punishment can be applied to serious cases of harassment.

Article 14 provides for people the enjoyment of convention rights without discrimination on any ground such as sex, race, impairment, colour, language, and religion.

## APPENDIX 2

### DEFINITION & EXAMPLES OF HARASSMENT

1.1 An interpretation of the definition used by the Metropolitan Police is:

*Any behaviour in which it appears to a member of staff that the complaint involves an element of racial, sexual, disability, religious, gender, etc motivation, or any behaviour in which an allegation of racial, sexual, disability, religious, gender, etc motivation is made by any person.*

1.2 Harassment can be a particularly serious form of discrimination, which can be defined as any action or practice by a person, or group of people, which is unwanted and causes humiliation, offence and distress to another.

1.3 In addition to deliberate harassment, a member of staff's behaviour may unintentionally give offence to others. This may amount to an isolated incident or in some cases a series of events, which can still constitute harassment.

1.4 Harassment can be the use of threatening, abusive or insulting words or behaviour or displays of writing, signs or other visible representation, which is threatening, abusive or insulting.

1.5 Examples of harassment could include:

- Using aggressive language, threatening, ridiculing, ignoring people or shouting
- Name calling, insults and or mimicry
- Blaming others
- Telephoning employees at home unnecessarily
- Focusing only on weaknesses
- Referring to someone's private life inappropriately
- Leaving impossibly long lists of tasks and making unreasonable demands
- Criticising people in their absence
- Racist comments or jokes of a derogatory nature, including those about distinctive nationalities
- Questioning an individual about his/her sexual relationships/preferences
- Frequent comments about aspects of physical appearance or using forms of address that are demeaning
- Repeated staring or leering or suggestive looks at parts of the body
- Physical contact ranging from unwanted touching of any kind through to physical assault
- Making unwanted sexual advances
- The use of pin ups, posters or electronic display e.g. offensive material or objectionable cartoons and/or circulating offensive materials
- Discriminatory comments ridiculing or excluding a colleague from workplace talk or activities because of their age, disability, race, ethnicity, sexuality, gender etc.

- Threatening behaviour or implying that you will cause the person to lose their job or fail to get a promotion or suffer some other form of career difficulty or financial disadvantage
- Using language and/or gestures in such a way that someone fears for their personal safety
- Use of bad language or gossip
- Coercing someone to join the harassment/bullying of another person
- Attempting to recruit people into racist, sexist, disablist, homophobic etc organisations or groups
- Writing graffiti giving offence to people because of their race, ethnicity, sexuality, impairment, gender etc
- Stereotyping
- Playing offensive music
- Wearing offensive badges or insignia
- Bullying
- Refusing to co-operate with other people because of their race, ethnicity, sexuality, impairment, gender etc
- Ridiculing this policy

## APPENDIX 3

**STRICTLY CONFIDENTIAL**

### HARASSMENT COMPLAINT FORM

#### PERSONAL DETAILS

NAME

ADDRESS (Work)

TELEPHONE NO

SERVICE AREA

WHAT ADDRESS DO YOU WISH ANY CORRESPONDENCE TO BE SENT TO IF DIFFERENT FROM ABOVE

#### ACCESS NEEDS

Please state if you require wheelchair access/induction loop/sign language interpreter/easy English interpretation/personal assistant or other requirement.

### DETAILS OF COMPLAINT

PLEASE GIVE DETAILS OF THE SERVICE AREA OR PERSON YOU ARE COMPLAINING ABOUT

NAME

ADDRESS (Work)

TELEPHONE NO.

JOB TITLE

WHAT IS THE YOUR COMPLAINT?

INCIDENT [SUMMARY]

DATE & TIME

KEY PARTIES

WITNESSES

ACTION TAKEN

FULL CIRCUMSTANCES OF THE HARASSMENT IN DETAIL  
(Please continue on a separate sheet if necessary)

PLEASE TRY AND SPECIFY THE GROUNDS OF YOUR COMPLAINT.  
e.g. IS IT RELATED TO COLOUR/RACE/ETHNIC OR  
NATIONALORIGIN/RELIGION/GENDER/DISABILITY/AGE/MARITAL STATUS/SEXUALITY/TRADE UNION  
ACTIVITY

HAVE INFORMAL ATTEMPTS BEEN MADE TO RESOLVE THIS MATTER? IF SO PLEASE DETAIL.

WOULD YOU BE WILLING TO RESOLVE THE PROBLEM INFORMALLY?

REPRESENTATIVE DETAILS.  
DO YOU HAVE A WORK COLLEAGUE/TRADE UNION REPRESENTATIVE YOU WISH TO ACCOMPANY YOU  
THROUGH THE PROCEDURE?

NAME

ADDRESS (Work)

TELEPHONE NO.

PLACE OF EMPLOYMENT