

PROTOCOL ON MEMBER/OFFICER RELATIONS

[Extract from Governance Toolkit for Parish and Town Councils, jointly published by the Association of Council Secretaries and Solicitors, National Association of Local Councils, (former) Standards Board for England and Society of Local Council Clerks]

Mutual trust and respect between Councillors and Officers is essential to ensure good governance and the effective running of a council. To help ensure that relationships do not go awry, it is advisable to have a written protocol, which can cover:

- The respective roles and responsibilities of the Councillors and the Clerk, and any other staff employees;
- Relationships between Councillors and Officers;
- Where/Who the Clerk should go to if they have concerns;
- Who is responsible for making decisions.

The same fundamental principles apply regardless of the nature and size of the Council. This protocol has been written in a way that will be particularly relevant to larger councils but personal relationships and personnel matters can be particularly problematic in smaller councils where the Clerk may be the sole employee and means having an agreed protocol is very important.

It is the National Association of Local Councils' (NALC) policy that party politics should have no place in parish councils, the concept being that parish councillors are there to serve their community as members of that community and should not be sidetracked by party political issues. NALC does not therefore encourage parish councils to adopt political groupings.

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. Close personal familiarity should be avoided.

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 Councillors will at all times comply with the council's adopted Code of Conduct.

3.3 Some General Principles:

- Close personal relationships between Councillors and Officers can confuse their separate roles and get in the way of the proper conduct of Council business, not least by creating a perception in others that a particular Councillor or Officer is getting preferential treatment.
- 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 sidetracked 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 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.

PROTOCOL ON BULLYING AND HARASSMENT

Introduction

An analysis of complaints made against Councillors (previously assessed by the Standards Board for England and now dealt with by local standards committees) indicates that there is a significant problem of bullying and harassment occurring at parish level between Members and Officers. It may be that this is caused in part because of the lack of clarity between the respective roles of Officers and Members and of the relatively isolated nature of the position of the Clerk. Other factors that may contribute to a breakdown in relations between Members and Officers include the absence of authoritative Member/Officer protocols, proper disciplinary and grievance procedures and (in some cases) written contracts of employment.

Bullying is specifically prohibited in the Member Code of Conduct (paragraph 3(2)(b) of the Model Code). Councillors must not bully any person, including other Councillors, Officers or members of the public.

The attached protocol is therefore commended for adoption to ensure that Members and Officers operate in an environment of mutual trust and respect. It should assist in the development of a culture of clear and honest communication between Officers and Members.

Model Protocol on Bullying and Harassment (including Grievance Procedures and Whistle Blowing)

1. Background

- 1.1 The relationship between Councillors and Officers is an essential ingredient that should contribute to the successful working of the organisation. This relationship within the authority should be characterised by mutual respect, informality and trust. Councillors and Officers must feel free to speak to one another openly and honestly. Nothing in this Protocol is intended to change this relationship. Objective criticism is usually acceptable but can be unacceptable if the criticism becomes personal. This protocol gives guidance on what to do on the rare occasions when things go wrong.
- 1.2 Everyone should be treated with dignity and respect at work. Bullying and harassment of any kind are in no-one's interest and should not be tolerated in the workplace.

2. What is bullying and harassment?

- 2.1 Examples and definitions of what may be considered bullying and harassment are provided below for guidance. For practical purposes, those making a complaint usually define what they mean by bullying or harassment – something has happened to them that is unwelcome, unwarranted and causes a detrimental effect. If employees complain they are being bullied or harassed, then they have a grievance which must be dealt with regardless of whether or not their complaint accords with a standard definition.

3. How can bullying and harassment be recognised?

- 3.1 There are many definitions of bullying and harassment. Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means to undermine, humiliate, denigrate or injure the recipient.
- 3.2 Harassment, in general terms, is unwanted conduct affecting the dignity of men and women in the workplace. It may be related to age, sex, race, disability, religion, nationality or any personal characteristic of the individual, and may be persistent or an isolated incident. The key is that the actions or comments are viewed as demeaning and unacceptable to the recipient.

3.3 Behaviour that is considered bullying by one person may be considered firm management by another. Most people will agree on extreme cases of bullying and harassment but it is sometimes the “grey” areas that cause most problems. Examples of what is unacceptable behaviour include:

- “inappropriate behaviour”
- intimidation/humiliation
- excessive criticism
- autocratic/dictatorial behaviour
- shouting
- browbeating
- haranguing
- swearing
- ridiculing
- expressions of intolerance
- general discourtesy

3.4 Bullying and harassment are not necessarily face to face; they may be by written communications, e-mail (so called “flame mail”) and telephone.

4. Why does the Council need to take action on bullying and harassment?

4.1 There is an implied term of mutual trust and confidence in every contract of employment. Where the parish council is aware of a situation of bullying or harassment of an employee by one of its Councillors, but fails to act to stop it, it will be in breach of that implied term of employment contract and may be held liable for the constructive dismissal of that employee.

4.2 It is in every employer’s interest to promote a safe, healthy and fair environment in which people can work.

4.3 A parish council’s duty of care to an employee relates to all forms of personal injury, which will include mental as well as physical health. If a risk to health was foreseeable but no action was taken then the parish council could be at fault and compensation could be sought.

5. The Members’ Code of Conduct

5.1 Bullying is expressly forbidden under paragraph 2 of the Code of Conduct [NOTE. There are, in addition, complementary obligations to;

- not do anything which may cause the authority to breach any equality laws;
- treat others with respect;
- not intimidate any person who is or is likely to be a complainant, a witness or involved in an investigation relating to a breach of the Code; and;
- Not compromise or attempt to compromise the impartiality of those who work for, or on behalf of, the authority.

5.2 A proven allegation of bullying or harassment will always be a breach of the Code of Conduct and the Councillor involved is liable to be reported to the Local Standards Committee. Councillors are entitled to challenge Officers as to why they hold their views. However, if criticism amounts to a personal attack or is of an offensive nature, the Councillor is likely to have crossed the line of what is acceptable behaviour.

5.3 If there are instances of bullying or harassment by Councillors towards officers or other Councillors, then those Councillors who are aware of the incident should consider reporting it to the Standards Committee of the relevant principal authority. It is also open to Officers who are either the subject of bullying or harassment or

who witness such an incident to similarly report it to the Standards Committee (which is likely to have established an Assessment Sub-Committee to decide whether to investigate such complaints).

- 5.4 If Members or Officers are unsure what to do or how to report the matter, they should seek the advice of the Monitoring Officer.

6. Grievance and disciplinary procedures

- 6.1 Obviously it is best to try to avoid things getting to a state where an employee considers themselves dismissed or issues a personal injury claim against the Council. This can be done through having an accessible and useable grievance procedure.
- 6.2 Since October 2004 all employers have been required by law to have disciplinary and grievance procedures. These cover disciplinary rules and procedures for handling discipline, grievance and appeals. Details must be included in the employee's written statement of employment particulars or reference made to a separate document which is readily accessible to the employee.
- 6.3 A grievance procedure enables individual employees to raise concerns, problems or complaints with management about their employment. It should allow for both an informal and formal approach.

A grievance procedure provides an open and fair way for employees to make known their concerns, problems or complaints. It enables such grievances to be resolved quickly before they fester and become major problems. An employee who fails to raise a grievance with their employer using the statutory procedure may be prevented from taking a claim relating to that grievance to employment tribunal.

Grievance procedure should allow grievances to be dealt with fairly, consistently, speedily and should include:

- how and with whom to raise the issue
- whom next to appeal to if not satisfied
- time limits for each stage
- the right to be accompanied by a fellow worker or trade union representative
- the statutory grievance procedure

7. Whistle-blowing

Protection for employees, contractors or staff is relevant to allow any bullying or harassment to be reported without fear of victimisation or further harassment.

9. Guidance Notes on Whistle-Blowing

Whistle-blowing, sometimes referred to as confidential reporting or public interest disclosure, provides a link between employment concerns, such as bullying, and the more general complaints procedures discussed below.

The principles of whistle-blowing should apply to Members, contractors and partners in any ongoing project, as well as employees. It is to employees, however, that the law in this area is aimed.

The Public Interest Disclosure Act 1998 (PIDA) encourages people to raise concerns about malpractice in the workplace and will help ensure that organisations respond by

- addressing the message rather than the messenger; and
- resisting the temptation to cover up serious malpractice.

Through protecting whistleblowers from dismissal and victimisation in the following circumstances, the Act promotes the public interest.

Malpractice

The Act applies to people at work raising genuine concerns about crime, civil offences (including negligence, breach of contract, breach of administrative law), miscarriage of justice, danger to health and safety or the environment and the cover up of any of these. It applies whether or not the information is confidential.

Individuals covered

In addition to the Clerk and other employees, it covers trainees, agency staff, contractors, homeworkers, etc. The usual employment law restrictions on minimum length of service and age do not apply. The Act does not presently cover the genuinely self-employed, volunteers, the intelligence services, or the army.

Legal Advice

The Act confirms that workers may safely seek legal advice on any concerns they have about malpractice. This includes seeking advice from Public Concern at Work, a charity established to help people with these issues and which is designated a legal advice centre by the Bar Council.

Internal disclosures

A disclosure in good faith to a manager or the employer will be protected if the whistleblower has a reasonable suspicion that the malpractice has occurred, is occurring or is likely to occur. Where a third party is responsible for the matter this same test applies to disclosures made to it.

Regulatory disclosures

The Act also protects disclosures made in good faith to prescribed bodies where the whistleblower reasonably believes that the information and any allegation in it are substantially true. In respect of Parish Councils the prescribed bodies would include the Health and Safety Executive, HM Revenues and Customs, the Audit Commission (or appointed external auditors) and the Standards Board for England.

Wider disclosures

Wider disclosures (e.g. to the police, the media, MPs, and non-prescribed regulators) are protected if, in addition to the tests for regulatory disclosures, they are reasonable in all the circumstances and they meet one of the three preconditions.

Provided they are not made for personal gain, these preconditions are that the whistleblower:

- reasonably believed he would be victimised if he raised the matter internally or with a prescribed regulator;
- reasonably believed a cover-up was likely and there was no prescribed regulator; or
- had already raised the matter internally or with a prescribed regulator.

In deciding the reasonableness of the disclosure the employment tribunal will consider the identity of the person to whom it was made, the seriousness of the concern, whether the risk or danger remains, and whether it breached a duty of confidence the employer owed a third party. Where the concern had been raised with the employer or a prescribed regulator, the reasonableness of its response will be particularly

relevant. Finally, if the concern has first been raised with the employer, it is relevant whether any whistle-blowing policy in the organisation was or should have been used.

Exceptionally serious matters

Where the concern is exceptionally serious, a disclosure will be protected if it meets the test for regulatory disclosures and is not made for personal gain. The disclosure must also be reasonable having particular regard to the identity of the person to whom it was made.

Full protection

Where the whistleblower is victimised in breach of the Act he can bring a claim to an employment tribunal for compensation. Awards will be uncapped and based on the losses suffered. Additionally where an employee is sacked, he may apply for an interim order to keep his job.

Gagging clauses

Gagging clauses in employment contracts and severance agreements are void insofar as they conflict with the Act's protection.

Further Advice

There is specific information about the Public Interest Disclosure Act from the following Organisations:

Public Concern at Work, a charity that provides free, confidential advice on what is protected by the Act and how best to raise a concern, on 0207 404 6609 or see www.pcaw.co.uk.

The website also includes a section entitled "*Practical hints for small organisations*".

The **Department for Business, Enterprise and Regulatory Reform** also has a guide to the Act. This is available via the website at www.berr.gov.uk.