

# Bullying & Harassment Policy: Elected Officials of the Council

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## Introduction

All Elected Officials of the Council should be able to work in an environment free from harassment and bullying and be treated with dignity and respect regardless of gender, sexual orientation, transgender status, marital or family status, colour, race, nationality, ethnic or national origins, creed, culture, religion or belief, age, or disability.

This policy and procedure provide guidance on what to do if any person is concerned about bullying or harassment and what to expect if they raise concerns. It applies to all Elected Officials of the Council.

## Policy

The Council does not tolerate bullying or harassment in the workplace. This is the case for work-related events that take place within or outside of normal working hours, on Council property or elsewhere, whether the conduct is a one-off act or repeated course of conduct, and whether done purposefully or not.

The Council does not tolerate retaliation against, or victimisation of, any person involved in bringing a complaint of harassment or bullying. Retaliation or victimisation will also constitute a disciplinary offence, which may in appropriate circumstances lead to dismissal. All persons should also be aware that if a court or tribunal finds that they have bullied or harassed someone, in some circumstances the treatment may amount to a crime punishable by a fine or imprisonment.

The Council will take appropriate action if any of the Elected Officials are bullied or harassed by staff, Elected Officials, members of the public, or suppliers.

**All Elected Officials will be expected to operate to the standards set in the 'Bullying and Harassment Policy', a failure to do so would be considered a breach of the 'Code of Conduct'.**

## What type of treatment amounts to bullying or harassment?

Bullying is offensive, intimidating, threatening, malicious or insulting behaviour, and/or an abuse or misuse of power that undermines, humiliates, denigrates, or injures the person who is subject to the bullying.

Harassment is a malicious action towards an individual, which may include reference to their 'protected characteristics' (as per the Equality Act such characteristics include: sex, gender reassignment, race, disability, pregnancy and maternity, sexual orientation, religion

or belief, marriage and civil partnership, and age). This may have the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual. Harassment amounts to unlawful discrimination if it relates to a 'protected characteristic'.

Examples of bullying and harassment include:

- Deliberate or unintentional
- Between two individuals or a group
- Verbal abuse or offensive comments, jokes or pranks related to age, disability, gender re-assignment, marriage, civil partnership, pregnancy, maternity, race, religion, belief, sex, or sexual orientation
- Lewd or suggestive comments
- Obvious or insidious
- Persistent or an isolated incident
- Deliberate exclusion from conversations or work activities
- Withholding information, a person needs to do their job
- Practical jokes, initiation ceremonies or inappropriate birthday rituals
- Physical abuse such as hitting, pushing, or jostling
- Searching through personal property of an employee without their permission or the presence of an independent person on behalf of the employee
- Hiding or damaging personal property of an employee
- Subjecting a person to humiliation or ridicule, belittling their efforts, often in front of others
- Face to face, in writing, by email, telephone or social media
- Overbearing supervision and abusing a position of power
- Deliberately undermining a competent worker by overloading and constant criticism
- Preventing individuals from progressing by intentionally blocking promotion or training opportunities

**THIS IS NOT AN EXHAUSTIVE LIST**

It is important to recognise that conduct which one person may find acceptable another may find totally unacceptable. All Elected Officials must, therefore, treat their colleagues with respect and appropriate sensitivity.

Bullying does not include appropriate criticism of an Elected Official's behaviour or proper performance management.

Incidents of harassment may also constitute a criminal offence and may therefore need to be reported to the Police.

## **Responsibilities**

### Employee Responsibilities

- To behave in accordance with the Code of Conduct<sup>1</sup> and treat colleagues with dignity and respect.

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<sup>1</sup> **All employees will be expected to operate to the standards set in the 'Bullying and Harassment Policy', a failure to do so would be considered a breach of the 'Code of Conduct'.**

- Discourage bullying and harassment by making it clear that such behaviour is unacceptable and supporting colleagues who suffer such treatment.
- Challenge inappropriate behaviour early and report as appropriate.

### Elected Officials Responsibilities

Elected Officials must take all reasonable steps to ensure the working environment is free from bullying and harassment by:

- Acting as a positive role model
- Being aware of work situations where there is a potential for bullying and harassment and to guard against it
- Ensuring all employees are aware of the standards of behaviour and conduct expected of them.
- Treating all complaints seriously, with sensitivity to the feelings and perceptions of all those involved.
- Dealing with any issues raised fairly and confidentially
- Taking steps to ensure that employees who bring complaints, or support others to do so, are not treated less favourably
- Taking immediate action if bullying and/or harassment is suspected or identified
- Being familiar with policy and provide advice on procedure
- Any adverse comments made via the media and social media or outside of the Council in any form regarding staff or fellow Elected Officials will be dealt with robustly.
- To behave in accordance with the Code of Conduct<sup>2</sup> and treat colleagues with dignity and respect.

It is not only the Elected Official's perception of what behaviour is acceptable which defines harassment. The recipient's view of the behaviour is important and if the recipient feels that they have been harassed the complaint must be taken seriously and actioned.

### **Reporting concerns**

#### What should be done if an incident is witnessed and believed to be harassment or bullying

If any person witnesses such behaviour they should report the incident in confidence to the Clerk or one of the Nominated Elected Officials. If one of the 'Nominated Elected Officials' is the accused party then the matter will be passed to the Chair of the Council. Such reports will be treated seriously and be dealt with in line with the relevant legislation.

#### What should be done if a person feels they are being Bullied or Harassed by a member of the public or supplier (as opposed to a colleague)

If any person feels they are being bullied or harassed by someone with whom they come into contact at their place of work, this should be raised with the Clerk or one of the Nominated Elected Officials in the first instance. They will then decide how best to deal with the situation, in consultation with the complainant.

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<sup>2</sup> **All Elected Officials will be expected to operate to the standards set in the 'Bullying and Harassment Policy', a failure to do so would be considered a breach of the 'Code of Conduct'.**

### What should be done if a person feels they are being Bullied or Harassed by an Elected Official

If any person is being bullied or harassed by an Elected Official, raise this with the Clerk or the Chair of the Council in the first instance. They will then decide how best to deal with the situation, in consultation with the complainant. There are two possible avenues for the aggrieved individual, informal or formal. The Informal Resolution is described below. Formal concerns regarding potential breaches of Code of Conduct<sup>3</sup> breaches will be investigated by the Monitoring Officer of Broadland District Council.

If the Nominated Elected Official, the Chair or the Monitoring Officer are compromised in any way, the complaint should then be dealt with by a Monitoring Officer from another District/Borough Council.

#### **Informal resolution**

If any person feels they are being bullied or harassed they may be able to resolve the situation themselves by explaining clearly to the perpetrator(s) that their perceived behaviour is unacceptable, contrary to Council policy. Alternatively, they may wish to ask the Clerk, a colleague, or another Elected Official to put this on their behalf, or to be with them when talking to the alleged perpetrator(s).

If the above approach does not work or if they do not want to try to resolve the situation in this way, or if they feel they are being bullied by their peers, they should raise the issue with the Chair of the Council. The Chair (or another appropriate individual) will discuss with them the option of trying to resolve the situation informally by:

- Telling the alleged perpetrator(s), without prejudging the matter, that there has been a complaint that their behaviour is having an adverse effect on the complainant.
- That such behaviour is contrary to Council policy.
- That for employees, the continuation of such behaviour could amount to a serious disciplinary offence.

It may be possible to have the conversation with the alleged perpetrator without revealing the complainant's name, if this is what they want. It will also be stressed that the conversation is confidential.

However, by its nature, bullying and harassment may make the Elected Official feel embarrassed, worried about damaging their reputation or the working environment, and fearful of not being taken seriously and subsequent reprisals. In these situations the Chair of the Council, a colleague, or a suitable representative can make an initial approach.

If the complaint is resolved informally, the matter may be considered closed. However, in exceptional circumstances (such as a serious allegation of harassment or in cases where a problem has happened before) the Council may decide to investigate further and take more formal action notwithstanding that the matter was raised informally.

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<sup>3</sup> **All Elected Officials/Employees will be expected to operate to the standards set in the 'Bullying and Harassment Policy', a failure to do so would be considered a breach of the 'Code of Conduct'.**

Where appropriate, mediation may be offered. The aim of mediation would be, with the agreement of all parties, to bring people together in an informal, neutral setting to enhance communication and understanding to bring about effective resolution at the earliest stage possible.

### **Raising a formal complaint...**

If an informal resolution is unsuccessful or inappropriate, a formal complaint may be made about the alleged harassment or bullying to the Clerk or the Chair of the Council.

The Clerk or the Chair of the Council will appoint a panel of 3 Elected Officials, Clerk and/or Deputy Clerk to investigate the complaint. The aggrieved party will need to co-operate with the investigation and provide the following details (if not already provided):

- The name of the alleged perpetrator(s),
- The nature of the alleged harassment or bullying,
- The dates and times the alleged harassment or bullying occurred
- The names of any witnesses, and
- Any action taken to resolve the matter informally

#### ... against a Elected Official

The Clerk or the Chair of the Council will appoint 3 Elected Officials, Clerk and/or Deputy Clerk to investigate the complaint. Formal concerns regarding potential breaches of Code of Conduct<sup>4</sup> will be investigated by the Monitoring Officer of Broadland District Council who will have the power to act.

#### ... against a colleague or contractor

The alleged perpetrator(s) would need to be told the name of the complainant and the details of the complaint for the issue to be investigated properly. However, the Council will carry out the investigation as confidentially and sensitively as possible. Where the complainant and the alleged perpetrator(s) work in proximity to each other, the Council will consider whether it is appropriate to separate them whilst the matter is being investigated.

#### ... against a member of the public or supplier

The Council will investigate the complaint as far as possible by contacting the member of public or the supplier's employer and asking for a response to the allegations.

### **During the investigation**

Investigations will be carried out promptly, sensitively and, as far as possible, confidentially. If, after an investigation, it is decided that an employee has harassed or bullied another employee/Elected Official, then the employee may be subject to disciplinary action, up to and including dismissal. If, after an investigation, it is decided that an Elected Official has harassed or bullied another employee/Elected Official, then the Elected Official shall be reported to the Monitoring Officer of Broadland District Council.

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<sup>4</sup> **All Elected Officials/Employees will be expected to operate to the standards set in the 'Bullying and Harassment Policy', a failure to do so would be considered a breach of the 'Code of Conduct'.**

## **Outcome**

After the investigation, the panel will inform the perpetrator/alleged perpetrator of the findings of the investigation and advise them they have a right of appeal against the decision. Any application for an appeal should be made in writing explaining the reasons for dissatisfaction with the decision.

After the investigation, the panel will inform the complainant of the decision and to notify them of the right to appeal if they are dissatisfied with the outcome. An application for an appeal should be made in writing explaining the reasons for dissatisfaction with the decision.

## **Victimisation**

Employees and others who make allegations of bullying or harassment in good faith will not be treated less favourably as a result.

## **Disclosure and confidentiality**

All personal data collected during this process will be treated in accordance with the data protection policy. Information about how data is used and the basis for processing data is provided in the privacy notice.

This procedure represents the standards of behaviour that are expected of Elected Officials as per the Code of Conduct.

Policy effective from: 22<sup>nd</sup> November 2021

Date for next review: November 2024

— policy ends here —

## Notes

### 1. Protected characteristics

A 'protected characteristic' is defined in the Equality Act 2010 as age, disability, sex, gender reassignment, pregnancy and maternity, race, sexual orientation, religion or belief, and marriage and civil partnership. It is unlawful to discriminate against an individual because of any of the protected characteristics.

Discrimination includes treating people differently because of a protected characteristic. Harassment is unwanted conduct related to a 'protected characteristic'. Employees can complain of harassment even if the behaviour in question is not directed at them. This is because the complainant does not actually need to possess the relevant protected characteristic. An employee can complain of unlawful harassment if they are related to someone with a protected characteristic, or because a colleague believes they have a protected characteristic.

### 2. Legal risks

An employee does not need to be employed to make a discrimination claim at a tribunal.

- Job applicants who believe they have not been appointed because of a 'protected characteristic' can make a claim.
- New or established employees who are dismissed because of a health condition can make a discrimination claim at a tribunal.
- An employee in their probationary period may claim discrimination if their employment has been ended for no credible reason.
- An employee subjected to harassment can make a discrimination claim at a tribunal.
- An employee asked to retire can make a discrimination claim at a tribunal.

Successful unfair dismissal claims are limited to a compensation cap, whereas those for unlawful discrimination have no cap.

A positive employment culture, and swift action if conduct falls beneath acceptable standards will help mitigate the risks. An unhealthy culture will make it difficult to defend claims.

The time to defend and the cost of defending tribunal claims can be significant, irrespective of the outcome.

### 3. Culture and behaviour

Modern day workforces are eclectic, and a positive culture throughout the council enables staff with different backgrounds and beliefs to share ideas and shape how the council achieves what Elected Officials decide for the community.

Different people find different things acceptable. It may not be obvious that some behaviour would be unwelcome or could offend a person. Those in positions of 'power' over an employee may not always understand how words or actions are received. An employee may not always find it easy to communicate how they really feel. 'Banter' that on the face of it is reciprocated may nonetheless be unwelcomed and damaging. Others who overhear comments, or learn of them third hand, will form judgements about the culture.

Whilst both staff and Elected Officials jointly determine what the working culture is like, Elected Officials are key in demonstrating what is and isn't acceptable behaviour. This is apparent from how Elected Officials behave with each other in council meetings and also in how standards of behaviour are applied through the use of informal discussion and formal policies. Examples of unacceptable behaviour at work include (but are not limited to):

- physical conduct ranging from touching to sexual advances and serious assault;
- the offer of rewards for going along with sexual advances, e.g. promotion, access to training;

- suggestions that refusing sexual advances will adversely affect aspects relating to employment (such as pay, promotion, training, work opportunities, or any other condition of employment or development;
- comments about a person's appearance;
- jokes or comments of a sexual or racial nature or about an individual's age, disability, sexual orientation or religion;
- questions about a person's sex life;
- unwanted nicknames, especially related to a person's age, race or disability;
- the use of obscene gestures;
- excluding an individual for a non-work reason
- treating an employee differently because they have, or are perceived to have, a 'protected characteristic' or are associated with someone who does;
- the open display of pictures or objects with sexual or racial overtones, even if not directed at any particular person;
- spreading malicious rumours or insulting someone;
- picking on someone or setting them up to fail;
- making threats or comments about someone's job security without good reason;
- ridiculing someone;
- isolation or non-cooperation at work; and
- excluding someone from social activities.

#### 4. During the investigation

Employers have duty of care to provide a safe place of work. If a complaint is made, discuss how to manage working relationships whilst the allegation is being investigated and until the outcome is disclosed. This is as much for the protection of the alleged perpetrator as for the aggrieved.

Consider whether a neutral person should be offered as a 'listening ear' for both parties in the investigation. Offer other support that may be appropriate to the situation such as signposting to support groups, time off for counselling etc. If you have suspended a staff member, your duty of care continues and it's important to consider their wellbeing and mental health.

Ensure that you regularly communicate with both parties.

#### 5. Victimisation

All employees have the right to raise genuine concerns without the fear of reprisals. If the aggrieved (or a witness) is treated differently / less favourably because they have raised a complaint, then this is victimisation. This would include isolating someone because they have made a complaint, cancelled a planned training event, or giving them a heavier or more difficult workload. Victimisation can lead to a claim to an employment tribunal.

#### 6. False allegations

If an employee makes an allegation that they know to be untrue, or gives evidence that they know to be untrue, the council should consider the matter under the disciplinary procedure. Such an allegation would be potentially Gross Misconduct.

#### 7. Complaints against Elected Officials

Following the Ledbury case, the law is clear that any formal complaint regarding a breach of the Code of Conduct<sup>5</sup> must be referred to the Monitoring Officer for investigation.

During the investigation, it is critical to ensure that where an employee of the council

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has made the complaint, that the council agrees with the employee reasonable measures to protect their health and safety. Such measures may include a temporary change in duties, change of work location, not attending meetings with the person to whom the complaint has been made etc.