
Bullying and Harrassment Policy

SHARED SERVICES



Council of the
ISLES OF SCILLY

June 2015

Law relating to this document:

Equality Act 2010

Health and Safety at Work etc Act 197

Protection from Harassment Act 1997

Management of Health and Safety at Work Regulations 1999 (SI 1999/3242)

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POLICY STATEMENT

- 1.1 The Council of the Isles of Scilly is committed to creating a work environment free of harassment and bullying, where everyone is treated with dignity and respect.
- 1.2 Harassment and bullying can have very serious consequences for individuals and the Council. Harassment or bullying may make people unhappy, may cause them stress and affect their health and family and social relationships, may affect their work performance and could cause them to leave their job. Severe cases of harassment and bullying can even lead to mental illness and suicide. Effects on the Council can include loss of morale, poor work performance, increased turnover of staff, legal claims and damage to the Council's reputation. Employees found guilty of harassment or bullying may face disciplinary penalties, up to and including dismissal, could be personally liable to pay compensation in legal claims, and may find their own family and social relationships are adversely affected. Serious harassment may be a criminal offence.
- 1.3 The Council will not tolerate bullying and harassment of any kind. All allegations of bullying and harassment will be investigated and, if appropriate, disciplinary action will be taken. The Council will also not tolerate victimisation of a person for making allegations of bullying or harassment in good faith or supporting someone to make such a complaint. Victimisation is a disciplinary offence.

THE SCOPE OF THIS POLICY

- 2.1 This policy covers bullying and harassment of and by managers, employees, Members, contractors, agency staff and anyone else engaged to work at the Council, whether by direct contract with the Council or otherwise. If the complainant or alleged harasser is not employed by the Council, e.g. if the worker's contract is with an agency, this policy will apply with any necessary modifications such as that the Council could not dismiss the worker but would instead require the agency to remove the worker, if appropriate, after investigation and disciplinary proceedings.
- 2.2 The policy covers bullying and harassment in the workplace and in any work-related setting outside the workplace, e.g. business trips and work-related social events.

WHAT IS BULLYING AND HARASSMENT?

- 3.1 **Bullying** is offensive, intimidating, malicious or insulting behaviour, and/or an abuse or misuse of power that is meant to undermine, humiliate or injure the person on the receiving end.
- 3.2 **Harassment** is unwanted conduct related to relevant protected characteristics, which are sex, gender reassignment, race (which includes colour, nationality and ethnic or national origins), disability, sexual orientation, religion or belief and age, that:

- has the purpose of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person; or
- is reasonably considered by that person to have the effect of violating their dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for their, even if this effect was not intended by the person responsible for the conduct.

3.3 Conduct may be harassment whether or not the person behaving in that way intends to offend. Something intended as a "joke" may offend another person. Different people find different things acceptable. Everyone has the right to decide what behaviour is acceptable to their and to have their feelings respected by others. Behaviour which any reasonable person would realise would be likely to offend will be harassment without the recipient having to make it clear in advance that behaviour of that type is not acceptable to their, eg sexual touching. It may not be so clear in advance that some other forms of behaviour would be unwelcome to, or could offend, a particular person, eg certain "banter", flirting or asking someone for a private drink after work. In these cases, first-time conduct which unintentionally causes offence will not be harassment but it will become harassment if the conduct continues after the recipient has made it clear, by words or conduct, that such behaviour is unacceptable to their.

3.4 Harassment may also occur where a person engages in unwanted conduct towards another because they perceive that the recipient has a protected characteristic (for example, a perception that they are gay or disabled), when the recipient does not, in fact, have that protected characteristic. For example, it would be harassment for an individual to tease repeatedly an individual because of an incorrect belief that the recipient is deaf. Similarly, harassment could take place where an individual is bullied or harassed because of another person with whom the individual is connected or associated, for example if their child is disabled, wife is pregnant or friend is a devout Christian.

3.5 There may also be circumstances in which an individual is subjected to unwanted conduct from a third party, such as a client or customer. For example, it might be that a client makes a series of racist remarks to a black employee. If an employee feels that they have been bullied or harassed by customers, suppliers, vendors or visitors, they should report any such behaviour to their manager who will take appropriate action. Bullying or harassment of customers, suppliers, vendors or visitors or others will be dealt with through the disciplinary procedure.

3.6 A single incident can be harassment if it is sufficiently serious.

3.7 All bullying and harassment is misconduct and is a disciplinary offence which will be dealt with under the Council's disciplinary policy. Bullying or harassment will often be gross misconduct, which can lead to dismissal without notice.

3.8 Bullying or harassment will constitute unlawful discrimination where it relates to one of the protected characteristics, which are sex, gender reassignment, race (which includes colour, nationality and ethnic or national origins), disability, sexual

orientation, religion or belief and age. Serious bullying or harassment may amount to other civil or criminal offences, e.g. a civil offence under the Protection from Harassment Act 1997 and criminal offences of assault.

EXAMPLES OF BULLYING AND HARASSMENT

4.1 Bullying and harassment may be misconduct that is physical, verbal or non-verbal, eg by letter or email (so-called "flame-mail") or trolling.

4.2 Examples of unacceptable behaviour that are covered by this policy include (but are not limited to):

- physical conduct ranging from unwelcome touching to serious assault;
- unwelcome sexual advances;
- the offer of rewards for going along with sexual advances, e.g. promotion, access to training;
- threats for rejecting sexual advances, e.g. suggestions that refusing advances will adversely affect the employee's employment, evaluation, pay, advancement, assigned work, or any other condition of employment or career development;
- demeaning comments about a person's appearance;
- unwelcome 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 related to a person's age, race or disability;
- the use of obscene gestures;
- excluding an individual because they are associated or connected with someone with a protected characteristic, e.g. their child is gay, spouse is black or parent is disabled;
- ignoring an individual because they are perceived to have a protected characteristic when they do not, in fact, have the protected characteristic), e.g. an employee is thought to be Jewish, or is perceived to be a transsexual;
- the open display of pictures or objects with sexual or racial overtones, even if not directed at any particular person, e.g. magazines, calendars or pin-ups;
- spreading malicious rumours or insulting someone;
- picking on someone or setting their 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.

WHAT IS VICTIMISATION?

5.1 **Victimisation** is subjecting a person to a detriment because they have, in good faith, complained (whether formally or otherwise) that someone has been bullying or harassing their or someone else, or supported someone to make a complaint or given evidence in relation to a complaint. This would include isolating someone

because they have made a complaint or giving their a heavier or more difficult workload.

- 5.2 Provided that you act in good faith, ie you genuinely believe that what you are saying is true, you have a right not to be victimised for making a complaint or doing anything in relation to a complaint of bullying or harassment and the Council will take appropriate action to deal with any alleged victimisation, which may include disciplinary action against anyone found to have victimised you.
- 5.3 Making a complaint that you know to be untrue, or giving evidence that you know to be untrue, may lead to disciplinary action being taken against you.

WHAT SHOULD I DO IF I AM BEING BULLIED OR HARASSED?

- 6.1 You may be able to sort out matters informally. The person may not know that his/her behaviour is unwelcome or upsetting. An informal discussion may help them to understand the effects of their behaviour and agree to change it. You may feel able to approach the person yourself, or with the help of someone in human resources, a manager, trade union representative or another employee. Alternatively, an initial approach could be made on your behalf by one of these people. You should tell the person what behaviour you find offensive and unwelcome, and say that you would like it to stop immediately. You may want to add that, if the behaviour continues, you intend to make a formal complaint to your manager or human resources. You should keep a note of the date and what was said and done. This will be useful evidence if the unacceptable behaviour continues and you wish to make a formal complaint.
- 6.2 If an informal approach does not resolve matters, or you think the situation is too serious to be dealt with informally, you can make a formal complaint by using the Council's grievance procedure. In the case of grievances about bullying or harassment, the normal grievance procedure is modified so that you can choose whether to raise your grievance with your manager or directly with Human Resources. The Council will ensure that you can bring your complaint in the first instance to someone of your own sex, if you so choose.
- 6.3 In very serious cases, a criminal offence may have been committed and you may wish to report matters to the police. The human resources department can arrange for someone to accompany you to make a complaint to the police.
- 6.4 When bringing a complaint of harassment/bullying, you should be prepared to state:
 - the name of the person whose behaviour they believe amounts to harassment or bullying;
 - the type of behaviour that is causing offence, together with specific examples if possible;
 - dates and times when incidents of harassment or bullying occurred, and where they occurred;

- the names of any employees who witnessed any incidents, or who themselves may have been the victims of harassment or bullying by the same person; and
 - any action that you have already taken to try to deal with the harassment.
- 6.4 All complaints will be investigated promptly and, if appropriate, disciplinary proceedings will be brought against the alleged harasser (see Appendix 1 for details of the investigation). You will have the right to be accompanied by a work colleague or trade union representative of your choice (who is not a family member) at any meeting dealing with your grievance. You will be kept informed of the general progress of the process of investigation and the outcome of any disciplinary proceedings. The Council will decide on a balance of probabilities, after considering all available evidence, whether or not harassment or bullying has occurred.
- 6.5 The Council will treat complaints of bullying and harassment sensitively and maintain confidentiality to the maximum extent possible. Investigation of allegations will normally require limited disclosure on a "need to know" basis. For example, your identity and the nature of the allegations must be revealed to the person you are complaining about, so they are able to respond to the allegations. Some details may also have to be given to potential witnesses but the importance of confidentiality will be emphasised to them. If the complaint is upheld, and a person who has been found to have harassed you is kept in the Council's employment, managers may need to be given some information where this is necessary for them to manage the risk of further harassment by that person against you or others.
- 6.6 Wherever possible, the Council will try to ensure that you and the alleged harasser are not required to work together while the complaint is under investigation. This could involve giving you the option of remaining at home on special leave, if you wish. In a serious case, the alleged harasser may be suspended while investigation and any disciplinary proceedings are underway.
- 6.7 If your complaint is upheld, and the person found to have bullied or harassed you remains in the Council's employment, every effort will be made to ensure that, if possible, you do not have to continue to work alongside the harasser, if you do not wish to do so. We will discuss the options with you. These may include the transfer of the harasser or, if you wish, you may be able to transfer to another post.
- 6.8 If your complaint is not upheld, Human Resources will support you, the alleged harasser and your manager(s) in making arrangements for you both to continue or resume working and to help repair working relationships. The Council will consider making arrangements to avoid you and the alleged harasser having to continue to work alongside each other, if either of you do not wish to do this.
- 6.9 You have a right not to be victimised for making a complaint in good faith, even if the complaint is not upheld. However, making a complaint that you know to be untrue may lead to disciplinary action being taken against you.

- 6.10 Some types of bullying or harassment may constitute unlawful discrimination and may give rise to the possibility of other civil claims or criminal proceedings. Claims to an employment tribunal about unlawful discrimination must be presented to the tribunal within three months beginning with the act complained of.

WHAT CAN I DO TO HELP STOP BULLYING AND HARASSMENT?

7.1 We all have a responsibility to help create and maintain a work environment free of bullying and harassment. You can help to do this by:

- being aware of how your own behaviour may affect others and changing it, if necessary - you can still cause offence even if you are "only joking";
- treating your colleagues with dignity and respect;
- taking a stand if you think inappropriate jokes or comments are being made;
- making it clear to others when you find their behaviour unacceptable, unless it should be obvious in advance that this would be the case;
- intervening, if possible, to stop harassment or bullying and giving support to recipients;
- making it clear that you find harassment and bullying unacceptable;
- reporting harassment or bullying to your manager or human resources and supporting the Council in the investigation of complaints; and
- if a complaint of harassment or bullying is made, not prejudging or victimising the complainant or alleged harasser.

7.2 Managers have a particular responsibility to:

- set a good example by their own behaviour;
- ensure that there is a supportive working environment;
- make sure that staff know what standards of behaviour are expected of them;
- intervene to stop bullying or harassment; and
- report promptly to human resources any complaint of bullying or harassment, or any incident of bullying or harassment witnessed by them.

WHAT HAPPENS IF I AM ACCUSED OF BULLYING AND HARASSMENT?

8.1 If someone approaches you informally about your behaviour, do not dismiss the complaint out of hand because you were only joking or think the complainant is being too sensitive. Remember that different people find different things acceptable and everyone has the right to decide what behaviour is acceptable to their and to have his/her feelings respected by others. You may have offended someone without intending to. If that is the case, the person concerned may be content with an explanation and an apology from you and an assurance that you will be careful in future not to behave in a way that you now know may cause offence. Provided that you do not repeat the behaviour that has caused offence that may well be the end of the matter.

8.2 If a formal complaint is made about your behaviour, this will be fully investigated and the Council may bring disciplinary proceedings, if appropriate. The Council will

follow its disciplinary procedure and you will have the rights set out in that procedure. You will have the right to be informed of the allegations against you and to put your side of the story and to be accompanied to meetings by a trade union representative or work colleague of your choice. The procedure will be implemented at the appropriate stage for the seriousness of the allegation. Complaints of bullying and harassment will often be allegations of gross misconduct that, if proved, could lead to dismissal without notice.

- 8.3 The Council will treat complaints of bullying and harassment sensitively and maintain confidentiality to the maximum extent possible. Investigation of allegations and future management of risk, if complaints are upheld, will normally require limited disclosure on a "need to know" basis. For example, some details may have to be given to potential witnesses but the importance of confidentiality will be emphasised to them.
- 8.4 Wherever possible, the Council will try to ensure that you and the complainant are not required to work together while the complaint is under investigation. If the allegation is of gross misconduct, you may be suspended on full pay during the investigation and, if a disciplinary hearing is to be called, until disciplinary proceedings have been concluded.
- 8.5 If the complaint against you is upheld, on a balance of probabilities, a disciplinary penalty may be imposed up to and including dismissal, having regard to the seriousness of the offence and all relevant circumstances. If the complaint is upheld, but you are not dismissed, the Council could decide to transfer you to another post.
- 8.6 If a complaint is made against you that is not upheld and the Council has good grounds for believing that the complaint was not made in good faith, the Council will take disciplinary action against the person making the false complaint.
- 8.7 You must not victimise a person who has made a complaint in good faith against you or anyone who has supported them in making the complaint or given evidence in relation to such a complaint. Disciplinary action will be taken against you if the Council has good reason to think that you may have victimised the complainant or someone else.
- 8.8 If the complaint against you is not upheld, Human Resources will support you, the complainant and your manager(s) in making arrangements for you both to continue or resume working and to help repair working relationships. The Council will consider making arrangements to avoid you and the complainant having to continue to work alongside each other, if either of you do not wish to do this.
- 8.9 Some types of bullying or harassment may constitute unlawful discrimination and allegations may give rise to the possibility of other civil claims or criminal proceedings against you, which would proceed independently of the Council's disciplinary proceedings. You could be personally liable to pay compensation to the complainant if a successful claim in the employment tribunal or other courts was

brought against you. Criminal proceedings could lead to conviction and criminal penalties.

MAKING THIS POLICY WORK

- 9.1 The Council will provide training to all existing and new employees and others engaged to work at the Council to help them understand their rights and responsibilities under this policy and what they can do to help create a working environment free of bullying and harassment. We will provide additional training to managers to enable them to deal more effectively with complaints of bullying and harassment.
- 9.2 The Council will review the outcomes of cases where complaints of bullying and harassment have been made to check that the proper procedures have been followed and to identify any points that can be learned from those cases and implement any necessary changes.
- 9.3 The Council will also periodically monitor how successful it is being in creating a workplace free of bullying and harassment by other means which may include confidential staff surveys.

The Council is committed to providing a working environment for all its staff that is comfortable and free from all forms of bullying and harassment. The Council adopts a zero-tolerance approach towards bullying and harassment and any employee who is found to have harassed or bullied a colleague will be subject to disciplinary action, up to and including summary dismissal.

If the Council has grounds to believe that an employee may have been bullying or harassing another employee, whether or not there has been a formal complaint, the Council will instigate an investigation into the alleged bullying or harassment.

Any employee who believes that another employee's conduct amounts to bullying or harassment has the absolute right to complain to either their line manager or Human Resources. Furthermore, employees have the right to complain if they believe that they have been bullied or harassed by a third party, for example a customer, client or supplier.

Employees are encouraged to report any incidents of bullying or harassment that they experience or witness so that the Council can investigate and resolve the matter. The Council will take all such complaints seriously and an employee who makes a genuine complaint of bullying or harassment will be protected and will not be penalised or victimised in any way.

As part of its investigations, the Council will:

- check whether the employee suspected of bullying or harassment has received previous warnings for similar misconduct (or other types of misconduct) and, if so, whether any earlier warnings are active;
- talk in confidence to any employees who may have evidence relating to the employee's alleged behaviour;
- endeavour to persuade any employees who may have been witness to the employee's alleged bullying or harassment, or who may have knowledge of it, to give a written statement to that effect;
- set up an interview with the employee alleged to have bullied or harassed a colleague, allowing them the right to be accompanied at the interview;
- allow the employee a full and fair opportunity to answer any allegations against them and/or explain his/her conduct;
- assess objectively whether the employee's conduct appears to have amounted to bullying or harassment;
- adopt an objective and balanced approach to the information gained as a result of the investigation;
- avoid allowing personal views about the employee to influence the overall assessment of the conduct under review; and
- keep confidential records of the investigation and ensure that these are handled in accordance with the Data Protection Act 1998.

The Council reserves the right to suspend or temporarily redeploy either the employee suspected of bullying or harassment or the employee raising a complaint of bullying or

harassment during the investigations, if it is considered in the interests of the individual(s) or the Council to do so. Suspension in these circumstances does not constitute disciplinary action and will be on full pay.

As soon as possible following the conclusion of the investigation, the Council will inform the employee suspected of bullying or harassment as to the outcome. The Council will decide at that point whether or not it is appropriate to instigate disciplinary action against the employee. Any disciplinary proceedings will, where possible, be conducted by a different manager from the person who conducted the investigation.