

## Thurnham Parish Council

### Bullying and Harassment Policy

#### 1. Purpose and Scope

**1.1 Statement:** Thurnham Parish Council will not tolerate bullying or harassment by, or of, any of its staff, Members, contractors, visitors to the council or members of the public while on council business. The council is committed to the elimination of any form of intimidation of its staff or Members and to respecting the dignity of persons in general. This policy reflects the spirit in which the council intends to undertake all of its business. Copies of this policy shall be issued to all staff as part of their induction and to all Members. It may also share it with contractors, visitors, and members of the public. It should be read in conjunction with the council's procedure on Grievance and Disciplinary handling and the Code of Conduct for Members.

#### 1.2 Definitions

##### **Bullying**

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

##### **Harassment**

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

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

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

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

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

**1.4 Penalties:** Bullying and harassment by any employed persons can be considered examples of gross misconduct which will be dealt with through the Disciplinary Procedure at Gross

Misconduct level and may result in summary dismissal from the council. If Members are bullying or harassing staff, contractors, fellow councillors, or others then a referral through the Code of Conduct Complaints process could be an appropriate measure. If an employee or Member is experiencing bullying or harassment from a third party while engaged on council business, the council will act reasonably in upholding its duty of care. In extreme cases harassment, can constitute a criminal offence and the council should consider taking appropriate legal advice, if such a matter arises. The legal position is set out in Annex A.

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

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

### **2.2 Formal approach**

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

#### **2.2.2 Others**

If an informal approach to the alleged perpetrator has been unsuccessful at eliminating the problem, anyone other than an employee who feels he or she is being bullied or harassed should raise their complaint with the Clerk to the council, or the Chairman of the council if preferred. The complaint will then be investigated, and a meeting held to discuss the facts and recommend the way forward. A member of the public who feels s/he has been bullied or harassed by any Member, officer or employee of the council should use the council's official Complaints Procedure. It is important that the Officer(s) or Member(s) being complained about do not prevent the council operating impartially in its investigation and decision-making in this regard.

**2.3 Grievance – Employees only** - A meeting to discuss the complaint with the aggrieved party will normally be arranged within five working days of a written complaint being received and will be held under the provisions of the council's Grievance Procedure. This meeting will be to discuss the issues raised and a way forward for the member(s) of staff involved. Employees have a right to be accompanied by a work colleague or a trade union representative at this meeting. A full investigation of the complaint will be held by an officer, or other duly appointed person as appointed by the committee of the council which is handling the process. It may be appropriate for an external investigator to be involved in order to maintain objectivity and impartiality. The Hearing Panel will publish its recommendations following deliberation of the facts. An action plan should be made available to the aggrieved employee to demonstrate how the problem is to be resolved. It may be decided that mediation or some other intervention is required, and the council should contact NALC, an employer's body or ACAS to this effect, or the council may offer counselling. The employee will have a right of appeal. At all times the confidentiality of the grievance will be of paramount importance in

order to maintain trust in the process; hence details of the full grievance will not be shared with the full council without prior approval by the aggrieved party. The council is committed not to victimise the aggrieved for raising the complaint at any time before or after the appropriate dispute resolution process has been concluded.

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

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

2.4.2 For a **Member** whom the council reasonably believes to have been bullying or harassing another person(s) whilst undertaking council activities the range of sanctions available to the council, are limited and must be reasonable, proportionate, and not intended to be punitive. In some cases, counselling or training in appropriate skill areas e.g. inter-personal communication, assertiveness, chairmanship etc. may be more appropriate than a penalty. Sanctions may include; admonishment, issuing an apology or giving an undertaking not to repeat the behaviour, removal of opportunities to further harass/bully such as removal from a committee(s) where direct contact with the employee or decision-making about that employee will take place, or removing the right to representation on any outside bodies where there will be contact with the employee who has raised the complaint. A referral under the Code of Conduct to the relevant reviewing body is usually an appropriate step and there may be further disciplinary sanctions available as a result of the Monitoring Officer reviewing the evidence under the Code in place at the time. A referral to the Police under the Protection from Harassment Act 1997 may also be appropriate in the more extreme cases. This list is not exhaustive.

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

### **3. Responsibilities**

3.1 All staff and Members of the council have a responsibility to ensure that their conduct towards others does not harass or bully or in any way demean the dignity of others. If unacceptable behaviour is observed, then each individual can challenge the perpetrator and ask them to stop. There needs to be agreement about how "robust people management" and "bullying" differ; Effective management of performance will usually include feedback based on objective evidence, delivered on a face to face basis in confidential surroundings. Bullying can occur when individual Members criticise staff without objective evidence or mandate from the council and in environments which are open to the public or other employees or by way of social media comments.

3.3 The council undertakes to ensure that its Members and staff are trained in the processes required by this policy as deemed appropriate.

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

## **Annex A**

### **The Legal Position**

Councils have a duty of care towards all their workers and liability under common law arising out of the Employment Rights Act 1996 and the Health and Safety at Work Act 1974.

If an employer fails to act reasonably with regard to this duty of care by allowing bullying or harassment to continue unchallenged an employee may decide to resign and claim 'constructive dismissal' at an Employment Tribunal.

Under the Equality Act 2010 bullying or harassment related to one of the protected characteristics covered by the Act (age, gender, marital status, sexual orientation, race, religion, belief, colour, disability) can be considered unlawful discrimination which could lead to an Employment Tribunal claim for discrimination against the corporate employer, the council, and the perpetrator(s) as individual named Respondents.

In addition, the Criminal Justice and Public Order Act 1994 and Protection from Harassment Act 1997 created a criminal offence of harassment with a fine and/or prison sentence as a penalty and a right to damages for the victim. A harasser may be personally liable to pay damages if a victim complains to an Employment Tribunal on the grounds of discrimination.

The 1997 Act was originally designed to assist in stalking situations but case law has demonstrated that it can be relevant to employment disputes, for instance; employers can be vicariously liable for harassment received in the workplace, that the conduct is viewed as 'serious', or 'oppressive and unacceptable', that a 'course of conduct' needs to be established but that this can link incidents which are separated by long time periods and that damages for personal injury and distress can be awarded under the Act.