

Dispute Resolution in parish and town councils

A guide for Oxfordshire councils

prepared by Oxfordshire Association of Local Councils
(OALC) and endorsed by Oxfordshire Monitoring Officers

revised September 2018

1. Introduction

- 1.1 This guide has been produced to help councils handle internal grievances and difficult relationship issues between Members and Officers which can become time-consuming and costly problems for small organisations.
- 1.2 Tensions and strained relationships can arise in local councils due to different motivations or agendas, political differences, complexities of the Law, personality clashes or contentious local issues. Occasionally these issues become disputes between individuals and if the individuals include paid officers of the council they can quickly develop into employment disputes adversely affecting morale, productivity and leading to legal disputes which are costly, damaging to reputations and can impact on future retention and recruitment of staff.
- 1.3 It is recommended that by adopting good practice people management and dispute resolution processes the effectiveness of town and parish councils in the county can be enhanced. The dispute resolution process will enable the County Association (Oxfordshire Association of Local Councils) and the Monitoring Officers in the Oxfordshire principal authorities to provide clear, consistent and coordinated advice and guidance to councils which are encountering difficulties between Members and Officers and provide a means by which potential disputes can be resolved at an earlier opportunity, or even avoided all together.
- 1.4 Following the Ledbury case OALC have reviewed and altered this guidance to reflect the judgement <https://www.11kbw.com/wp-content/uploads/Harvey-Ledbury-final-TC-21052018.pdf>

2. Managing a dispute

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2.1 It is likely that concerns about an issue between Members and Officers will be raised informally at first with a fellow Member or Officer. At this stage there is an opportunity to resolve the difficulties informally without escalating the issue to any kind of formal process. There is the expectation that the informal route will be attempted first.

3. The Informal route

3.1 Sometimes just talking through an issue with the people involved can allow parties to see the problem from the other person's point of view, or become aware of new facts or just apologise for something that was said or done if it has caused offence.

3.2 An approach which involves a third party to work through a dispute can be effective. Alternative Dispute Resolution includes mediation, conciliation or arbitration and allows the parties with a difficulty to come together to talk about their differences and work towards a mutually agreed solution.

3.3 Advantages – no winner or loser, no blame, focus on building future relationships, more likely to retain experience within the organisation, fewer resources than hearing panels, can be quicker and easier to manage, can be applied at any stage of the dispute, OALC has an accredited resource

3.4 Disadvantages – an impartial third party ideally trained/accredited mediator needed, cost implications, requires parties to be committed to a resolution.

4. The Formal route

4.1 A concern or complaint raised by an employee related to that employee's employer is called a Grievance and the council must have a Grievance procedure to deal with such matters (Employment Rights Act 1996, s1) and Employment Act 2008 from which the ACAS Code of Practice is derived. An employee must put their grievance into writing to trigger the Grievance Procedure.

4.2 Upon receipt of a written employment Grievance the council must undertake:

STEP 1 – INVESTIGATION – independent, in writing

STEP 2 – HEARING – convene impartial panel, grant right to be accompanied, make a note of the hearing

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STEP 3 – **APPEAL** – if the outcome is appealed against: impartial panel, right to be accompanied, make a note of the meeting

4.3 *Note:* concerns raised by members of the public, contractors, suppliers should be directed through the council's Complaints Procedure, which is separate from the internal employment Grievance procedure. Concerns raised by Members about employees' performance or conduct should be directed to the council's Staffing Committee for further investigation and resolution through the council's performance management or disciplinary policies. Concerns raised by Members about other Members could benefit from mediation or may lead to a Code of Conduct complaint depending on the advice of the Monitoring Officer.

5. Remedies available to a parish & town councils following an internal grievance process

5.1 A Grievance hearing panel of the council will conclude with a decision about whether to uphold the employment grievance and may recommend any of the following:

- Training or development opportunities for the aggrieved or others
- A review of terms and conditions
- A review of internal procedures or policies
- Mediation between the parties in dispute
- Disciplinary action against another employee (nb. a separate disciplinary process must follow, including the investigation stage)
- Reasonable measures to protect the aggrieved under the council's duty of care as an employer
- Onward referral under the Members Code of Conduct

6. The Code of Conduct

6.1 The Localism Act 2011 places a general obligation on councils (including town and parish) to "promote and maintain high standards of conduct by members and co-opted members of the authority" and to "adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity". There are seven principles of public office (sometimes referred to as the Nolan Principles from a Government enquiry in 1995) these are:

- Selflessness

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- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

6.2 The first part of the code sets out the behaviours and characteristics required of councillors. It is important to appreciate that the code applies when a councillor or co-opted member is acting in that role, and that it is their responsibility to comply with its provisions. The second part relates to registering and declaring interests.

6.3 Every elected or co-opted Member is subject to the provisions of the Code of Conduct.

6.4 Each Principal Authority in the county has in place arrangements for the handling of complaints which allege that a Member of the council, or of a parish council in the district, has failed to comply with their authority's code of conduct.

6.5 Each Principal authority will have adopted arrangements which:

- consider general matters relevant to member standards
- conduct any Committee hearings which take place where an alleged breach of the code has been the subject of an investigation which concludes that there was a failure to comply.

6.6 Complaints about Members must be submitted to the Monitoring Officer at the relevant Principal Authority. The Monitoring Officer can only consider complaints about the behaviour of a member and may appoint an investigating officer to consider the evidence and report back to the Monitoring Officer.

6.7 Members of the Council, and parish clerks will, as appropriate, be advised of matters considered by the relevant Principal Authority's adopted arrangements, and, where a Committee process is triggered, the papers for the meeting may be made available subject to the "exempt information" provisions of the Local Government Act 1972.

6.8 Only the relevant Committee of the Principal Authority or the monitoring officer acting under delegated authority has the power to censure or

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reprimand a Member, to recommend removal from a committee or other additional responsibilities including outside appointments, to recommend training, to recommend withdrawal of equipment or facilities, to exclude Members from premises (other than meeting rooms) but have no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

7. Managing internal Grievance and Code of Conduct complaints raised at the same time

7.1 The internal employment grievance will take precedence. This is because the council has a statutory and contractual duty to deal with the grievance and the council's grievance procedure has timelines which need to be observed. An internal grievance and a Code of Conduct complaint, although often based on the same evidence, will be considered against different criteria and against different thresholds, which is why it is good practice to keep them separate.

7.2 When a Monitoring Officer receives a Code of Conduct complaint raised by an officer about a Member's behaviour or from another Member or member of the public about alleged conduct against an officer, the Monitoring Officer is likely to place the complaint in abeyance until the grievance process (including appeal stage if required) is fully exhausted or may take the view that there is no public interest in pursuing the complaint. Thereafter the Monitoring Officer will examine the complaint alongside the Grievance outcome and will decide whether it is in the public interest to continue with an investigation in the former case.

8. Preventative Measures

Actions a parish or town council can take to improve dispute resolution locally

- Adopt a Grievance process (OALC has provided the NALC version which is ACAS Code compliant as an appendix to this guide)
- Establish a Staffing or Personnel Committee with responsibility for handling employee relations (see model Terms of Reference in the appendices to this guide)

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- Establish a Hearing Panel and Appeals Panel annually so that these are available should a dispute arise
- Train Members who sit on these committees/panels
- Hold annual performance reviews and encourage two-way dialogue with staff about their work
- Make available mediation for work relationship issues
- Adopt a Member: Officer protocol within which expectations of conduct is laid down for all parties (see model in the appendices)
- Adopt a policy on bullying and harassment in the workplace e.g. a Dignity at Work policy to which all parties sign up (see a model policy in the appendices)
- Train staff and Members on bullying so that they can identify the difference between robust people-management and bullying behaviour
- Train staff and Members on the Code of Conduct

9. Actions your County Association will take to improve dispute resolution locally

- Provide templates for written policies and processes including Grievance Procedure, Member: Officer Protocol, Dignity at Work policy, Staffing Committee Terms of Reference which are appendices to this guide.
- Ensure guidance is kept up-to-date
- Provide training on dispute resolution
- Provide advice to Members on handling an internal dispute
- Develop a team of trained Panel Members for Appeals (if a council is unable to provide an appeal panel due to Members having prior involvement in a dispute or being themselves implicated). OALC will ask the smaller councils (5 councillors+) to develop a reciprocal arrangement with a neighbouring parish council to form a joint Independent Panel in place if the need arises. OALC may ask the Monitoring Officers to volunteer one person from each of their authorities to sit on the Independent Appeal Panel. Note: *this service may attract a fee for the Panel Members' time.*
- Provide an accredited mediator for councils to use for alternative dispute resolution. Note: *this service may attract a fee for the Mediator's time.*

10. Actions the Monitoring Officers will take to improve dispute resolution locally

- Agree to place in abeyance any Code of Conduct complaints which are also the subject of internal employment grievances until after the internal process has been exhausted (hearing and appeal) or they may take the view on preliminary assessment that there is no public interest in taking any further action with regard to the complaint.

Where any Code of Conduct complaint has been held in abeyance:

- Agree to consider any investigation report produced during the internal employment process as background information
- Recommend Alternative Dispute Resolution measures, if appropriate to the case being handled.
- Consider a request to provide a volunteer from their authority who is able and available to sit as a member of an Independent Appeal Panel to hear grievance appeals upon request from a parish or town council.

11. Summary

Upon the receipt of an employment grievance for which there is a parallel Code of Conduct complaint

12. Council

- 1) Investigate
- 2) Hear (including an appeal if raised)
- 3) Conclude with a decision and recommendations to council for implementation

Nb. At every stage – consider Alternative Dispute Resolution

Thereafter:

13. Monitoring Officer

- 4) Investigate (if the complaint has been held in abeyance and not already been the subject of a determination to take no further action)

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- 5) Hear
- 6) Determine
- 7) If appropriate – Sanctions
- 8) If appropriate – other interventions

Nb. At every stage – consider Alternative Dispute Resolution

Background reading:

ACAS Code of Practice on Dispute Handling March (2015)

<http://www.acas.org.uk/media/pdf/f/m/Acas-Code-of-Practice-1-on-disciplinary-and-grievance-procedures.pdf>

Local Councils Explained, Meera Tharmarajah, National Association of Local Council (2013)

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GRIEVANCE POLICY & PROCEDURE

for [] PARISH/TOWN COUNCIL

1. Purpose and scope

1.1 This policy is based on the NALC Legal Topic Note 22 2013 and complies with the 2009 ACAS Code of Practice.

1.2 It aims to encourage and maintain good relationships between the Council and its employees by treating grievances seriously and resolving them as quickly as possible. It sets out the arrangements for employees to raise their concerns, problems or complaints about their employment with the Council. The policy will be applied fairly, consistently and in accordance with the Equality Act 2010.

1.3 Many problems can be raised and settled during the course of everyday working relationships. Employees should aim to settle most grievances informally with their line manager.

1.4 This policy confirms:

- employees have the right to be accompanied or represented at a grievance meeting or appeal by a trade union representative or work colleague. The companion will be permitted to address the grievance/appeal meetings, to present the employee's case for his /her grievance/appeal and to confer with the employee. The companion cannot answer questions put to the employee, address the meeting against the employee's wishes or prevent the employee from explaining his/her case
- the Council will give employees reasonable notice of the date of the grievance/appeal meetings. Employees and their companions must make all reasonable efforts to attend. If the employee's companion is not available for the proposed date of the meeting, the employee can request a postponement and can propose an alternative date that is within five working days of the original meeting date.
- any changes to specified time limits must be agreed by the employee and the Council
- an employee has the right to appeal against the decision about his/her grievance. The appeal decision is final
- information about an employee's grievance will be restricted to those involved in the grievance process. A record of the reason for the grievance, its outcome and action taken is confidential to the employee. The

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employee's grievance records will be held by the Council in accordance with the Data Protection Act 1998

- recordings of the proceedings at any stage of the grievance procedure are prohibited, unless agreed as a reasonable adjustment that takes account of an employee's medical condition
- if an employee who is already subject to a disciplinary process raises a grievance, the grievance will normally be heard after completion of the disciplinary procedure
- if a grievance is not upheld, no disciplinary action will be taken against an employee if he/she raised the grievance in good faith
- the Council may consider mediation at any stage of the grievance procedure where appropriate, (for example where there have been communication breakdowns or allegations of bullying or harassment). Mediation is a dispute resolution process which requires the Council's and the employee's consent.
- timescales indicated are best practice and if timings are under pressure the council should ensure that all parties are aware of delays and consent to amended timeframes.

2. INFORMAL GRIEVANCE PROCEDURE

2.1 The Council and its employees benefit if grievances are resolved informally and as quickly as possible. As soon as a problem arises, the employee should raise it with his/her manager to see if an informal solution is possible. Both should try to resolve the matter at this stage. If the employee does not want to discuss the grievance with his/her manager (for example, because it concerns the manager), the employee should contact the chairman of the staffing committee or, if appropriate, another member of the staffing committee.

3. FORMAL GRIEVANCE PROCEDURE

3.1 If it is not possible to resolve the grievance informally, or if informal efforts to resolve a dispute have failed, the employee may submit a formal grievance. It should be submitted in writing to the chairman of the staffing committee.

3.2 The staffing committee will appoint a sub-committee of three members to investigate the grievance. The sub-committee will appoint a Chairman from one of its members. No councillor with direct involvement in the matter shall be appointed to the sub-committee.

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4. Investigation

4.1 The sub-committee will investigate the matter before the grievance meeting which may include interviewing others (e.g. employees, councillors or members of the public). The sub-committee may delegate this responsibility to another officer or external consultant.

5. Notification

- 5.1 Within 10 working days of the Council receiving the employee's grievance, the employee will be asked, in writing, to attend a grievance meeting. The sub-committee's letter will include the following:
- the names of its Chairman and other members
 - a summary of the employee's grievance based on his/her written submission
 - the date, time and place for the meeting. The employee will be given reasonable notice of the meeting which will be within 25 working days of when the council received the grievance
 - the employee's right to be accompanied by a trade union representative or work colleague
 - a copy of the Council's grievance policy
 - confirmation that, if necessary, witnesses may attend on the employee's behalf and that the employee should provide the names of his/her witnesses at least five working days before the meeting
 - confirmation that the employee will provide the Council with any supporting evidence at least five working days before the meeting.

6. The grievance meeting

- 6.1 At the grievance meeting:
- the Chairman will introduce the members of the sub-committee to the employee
 - the employee (or companion) will set out the grievance and present the evidence.
 - the Chairman will ask the employee what action does he/she wants the council to take any member of the sub-committee and the employee (or the companion) may question any witness
 - the employee (or companion) will have the opportunity to sum up the case

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- the Chairman will provide the employee with the sub-committee's decision, in writing, within five working days of the meeting. The letter will notify the employee of the action, if any, that the council will take and of the employee's right to appeal
- a grievance meeting may be adjourned to allow matters that were raised during the meeting to be investigated by the sub-committee.

7. The appeal

7.1 If an employee decides that his/her grievance has not been satisfactorily resolved by the sub-committee, he/she may submit a written appeal to the staffing committee. An appeal must be received by the Council within five working days of the employee receiving the sub-committee's decision and must specify the grounds of appeal.

7.2 Appeals may be raised on a number of grounds, e.g.:

- a failure by the Council to follow its grievance policy
- the decision was not supported by the evidence
- the action proposed by the sub-committee was inadequate/inappropriate
- new evidence has come to light since the grievance meeting.

7.3 The Appeal will be heard by a panel of three members of the staffing committee who have not previously been involved in the case. There may be insufficient members of the staffing committee who have not previously been involved. If so, the appeal panel will be a committee of three council members who may include members of the staff committee or may include individuals nominated by the County Association. The appeal panel will appoint a Chairman from one of its members.

7.4 The employee will be notified, in writing, within 10 working days of receipt of the appeal of the time, date and place of the appeal meeting. The meeting will take place within 25 working days of the council's receipt of the appeal. The employee will be advised that he/she may be accompanied by a trade union representative or work colleague.

7.5 At the appeal meeting, the Chairman will:

- introduce the panel members to the employee
- explain the purpose of the meeting, which is to hear the employee's reasons for appealing against the decision of the staffing sub-committee

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- explain the action that the appeal panel may take.

7.6 The employee (or his/her companion) will be asked to explain the grounds of his/her appeal.

7.7 The Chairman will inform the employee that he/she will receive the decision and the panel's reasons, in writing, within five working days of the appeal meeting.

7.8 The appeal panel may decide to uphold the decision of the staffing committee or substitute its own decision.

7.9 The decision of the appeal panel is final.

7.10 **Confidentiality:** So far as is reasonably practicable, the Council will keep any grievance confidential between the panel investigating the grievance, the aggrieved and the person about whom the grievance or complaint is made. If it is necessary to investigate the matter with any other employee or person, parties will be so advised.

7.11 **Record Keeping:** In all cases, written records of the nature of the grievance raised, the Council's response, action taken (with reasons), details of any appeal and subsequent developments will be retained and kept in accordance with the Data Protection Act 1998.

DIGNITY AT WORK POLICY

BULLYING AND HARASSMENT in the WORKPLACE

1. Purpose and Scope

1.1 Statement: In support of our value to respect others the council will not tolerate bullying or harassment by, or of, any of its employees, officials, members, contractors, visitors to the council or members of the public from the community which we serve. The council is committed to the elimination of any form of intimidation in the workplace.

1.2 This policy reflects the spirit in which the council intends to undertake all of its business and outlines the specific procedures available to all employees in order to protect them from bullying and harassment. It should be read in conjunction with the council's policies on Grievance and Disciplinary handling and the Elected Members Code of Conduct, the Member: Officer Protocol and the Staffing Committee Terms of Reference.

1.3 The council will issue this policy to all employees as part of their induction and to all Members as part of their Welcome Pack. The council may also wish to share this policy with contractors, visitors and members of the public.

2. Definitions

2.1 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."

2.2 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.

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2.3 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.

2.4 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.

2.5 **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 elected Members are bullying or harassing employees the internal Grievance procedure should be used by the employee affected. This may be followed by a complaint under the Member's Code of Conduct.

2.6 If elected Members are bullying or harassing employees, contractors, fellow councillors, others the behaviour could be reported as a contravention of the Member's Code of Conduct.

2.7 If an employee is experiencing bullying or harassment from a third party the council will act reasonably in upholding its duty of care towards its own employees. In extreme cases harassment can constitute a criminal offence and the council should take appropriate legal advice, often available from the council's insurer, if such a matter arises.

2.8 **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

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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.

2.9 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.

2.10 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.

3. Process for dealing with complaints of Bullying and Harassment

3.1 Informal approach – Any employee, contractor, member or visitor, who feels he or she is being bullied or harassed should try to resolve the problem informally, in the first instance. It may be sufficient to explain to the person(s) involved in the unwanted behaviour, or 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. Alternative dispute resolution e.g. mediation can be helpful in this situation as it enables the perpetrator and the person who feels bullied to resolve issues within a facilitated environment.

3.2 Formal approach

3.2.1 Employees: Where the employee feels unable to resolve the matter informally any complaint about harassment or bullying can be raised confidentially and informally, initially with the Chair of the Staffing/Personnel committee 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.

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3.2.2 Others Any other party to the council, other than an employee, who feels he or she is being bullied or harassed should raise their complaint with the council, where possible, if an informal notification to the alleged perpetrator has been unsuccessful at eliminating the problem. The complaint should 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 Members or officers of a 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.

3.3 Grievance – Employees only – this section should be read in conjunction with the council's Grievance Procedure.

3.4 A meeting to discuss the complaint with the aggrieved party will normally be arranged within a reasonable time period 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 an impartial member 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 OALC, 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 will commit not to victimize the aggrieved for raising the complaint once the appropriate dispute resolution process has been concluded.

3.5 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 action being taken against the perpetrator of the alleged action/behaviour.

3.6 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, if deemed serious and/or involved discrimination, could be treated as Gross Misconduct.

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3.7 For **Members** who the council reasonably believe have been bullying or harassing another person(s) whilst undertaking council activities the range of measures available to the council, is 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 appropriate. In addition, the council must ensure that it is able to operate its duty of care towards the employee and provide a safe working environment. A referral under the Code of Conduct to the Monitoring Officer may be an appropriate step and there may be sanctions available as a result of the reviewing of the evidence under the Code in place at the time. Parish/Town Councils do not have the power to increase penalties imposed following a determination arising from a complaint under the Code.

3.8 A complaint to the Police under the Protection from Harassment Act 1997 may also be warranted in the most extreme cases.

3.9 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 for staff or a referral to the Monitoring Officer for Members.

4. Responsibilities

4.1 All parties to 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 by a committee specifically designated and often trained to manage and appraise staff, with dialogue occurring on a face to face basis in confidential surroundings. Bullying is more likely to be complained about when individual Members criticise staff, often without objective evidence, without the mandate from the corporate body of the council and in environments which are open to the public or other employees or by way of blogs, social media comments, or in the pub or local playground.

4.2 The council undertakes to share its policy with all members and workers and request that each party signs to demonstrate acceptance of its terms. All new members and employees will be provided with a copy of this policy.

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4.3 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.

The Council will undertake to ensure that its members and workers are trained in the processes required by this policy as deemed appropriate.

Useful contacts

- ACAS www.acas.org.uk tel: 0300 123 1100
- Equalities and Human Rights Commission www.equalityhumanrights.com

MEMBER: OFFICER PROTOCOL
FOR [] PARISH/TOWN COUNCIL

1. SCOPE AND PURPOSE

1.1 The relationship between Councillors and officers is an essential ingredient that goes into the successful working of the organisation. This relationship within the authority is characterised by mutual respect, informality and trust. Councillors and officers feel free to speak to one another openly and honestly. Nothing in this Protocol is intended to change this relationship.

1.2 The purpose of this Protocol is rather to help Councillors and officers to perform effectively by giving guidance on their respective roles and expectations and on their relationship with each other. The Protocol also gives guidance on what to do on the rare occasions when things go wrong. Responsibility for the operation of this Protocol lies with the Town Clerk.

1.3 The Protocol must be read and operated in the context of any relevant legislation and national and local Codes of Conduct and any procedures for confidential reporting.

2. ROLES OF COUNCILLORS AND OFFICERS

2.1 The respective roles of Councillors and officers can be summarised as follows:

2.2 **Councillors** have three main areas of responsibility a) determining the policy of the authority (and giving it political leadership), b) representing the authority externally, and c) acting as advocates on behalf of their constituents. It is not the role of Councillors to involve themselves in the day to day management of the Council's services.

2.3 **Chairmen and Vice Chairmen** of Committees have additional responsibilities. Because of those responsibilities, their relationships with employees may be different from, and more complex than those of Councillors without those responsibilities, and this is recognised in the expectations they are entitled to have. However, such Councillors must still respect the impartiality of officers, must not ask them to undertake work of a party political nature, or to do anything which would put them in difficulty in the event of a change in the political composition of the authority.

2.4 **Opposition Councillors** As individual Councillors, all Councillors have the same rights and obligations in their relationship with officers and should be treated equally.

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This principle is particularly important in the context of scrutiny and overview. However, where a political group forms an administration, either alone or in partnership with another group or groups, its Councillors and officers are servants of the public and they are indispensable to one another. 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 authority, and to carry out the authority's work under the direction and control of the Council and relevant committees etc. Mutual respect between Councillors and officers is essential to good local government. It is recognised that the relationship between offices, particularly those at a senior level in the organisation, and the administration will differ from that with opposition groups.

2.5 Officers The role of officers is to give advice and information to Councillors and to implement the policies determined by the authority. 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. Whilst an officer may report the views of individual Councillors on an issue, if the Councillor wishes to express a contrary view he/she should not seek to pressure the officer to make a recommendation contrary to the officer's professional view. Certain officers e.g. Town Clerk, RFO have responsibilities in law over and above their obligations to the Council and to individual Councillors, and Councillors must respect these obligations, must not obstruct officers in the discharge of these responsibilities.

3. EXPECTATIONS

3.1 Councillors can expect from officers:

- a. A commitment to the authority as a whole, and not to any political group.
- b. A working partnership
- c. An understanding of and support for respective roles, workloads and pressures
- d. Timely response to enquiries and complaints
- e. Professional advice, not influenced by political views or preference, which does not compromise the political neutrality of officers.
- f. Regular, up to date information on matters that can reasonably be considered appropriate and relevant to their needs, having regard to any individual responsibilities that they have and positions that they hold.
- g. Awareness of and sensitivity to the political environment
- h. Respect, dignity and courtesy
- i. Training and development in order to carry out their role effectively
- j. Integrity, mutual support and appropriate confidentiality
- k. Not to have personal issues raised with them by officers outside the agreed procedures.

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- l. That employees will not use their relationship with Councillors to advance their personal interests or to influence decisions improperly
- m. That officers will at all times comply with the Employee policies and procedures.
- n. Support for the roles of Councillors as the local representatives of the authority, within any scheme of support for Councillors which may be approved by the authority.

3.2 Officers can expect from Councillors:

- a. A working partnership
- b. An understanding of and support for respective roles, workloads and pressures
- c. Political leadership of and support for respective roles, workloads and pressures.
- d. Respect, dignity and courtesy
- e. Integrity, mutual support and appropriate confidentiality
- f. Not to be subject to bullying or to be put under undue pressure. Councillors should have regard to the seniority of officers in determining what are reasonable requests, having regard to the power relationship between Councillors and officers, and the potential vulnerability of officers, particularly at junior levels. Junior staff should not be asked to deal with matters outside their level of authority.
- g. 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.
- h. That Councillors will at all times comply with the Council's Code of Conduct.

3.3 Limitations upon Behaviour - The distinct roles of Councillors and officers necessarily impose limitations upon behaviour. By way of illustration, and not as an exclusive list:

- a. Close personal relationships between Councillors and officers can confuse these separate roles and get in the way of the proper discharge of the authority's functions, not least in creating the perception in others that a particular Councillor or officer may secure advantageous treatment.
- b. The need to maintain the separate roles means that there are limits to the matters on which they may seek the advice of officers, both in relation to personal matters and party political issues.
- c. Relationships with a particular individuals or party groups should not be such as to create public suspicion that an employee favours that Councillor or group above others. The issue of officer attendance and advice to political groups, where they exist, is specifically covered below.

4. POLITICAL GROUPS

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4.1 The operation of political groups is now an integral feature of local government, and such political groups have an important part to play in the development of policy and the political management of the authority. It is in the interests of the authority to support the effective operation of political groups, but their operation can pose particular dangers in terms of the impartiality of officers.

4.2 Reports:

- a. Political groups may request the Town Clerk to prepare written reports on matters relating to the authority for consideration by the group.
- b. Officer reports to political groups will be limited to a statement of material facts and identification of options and the merits and demerits of such options for the authority. Reports will not deal with any political implications of the matter or any option, and officers will not make any recommendation to a political group
- c. Where a report is prepared for a political group, the Town Clerk will advise all other groups that the report has been prepared and will provide a copy of that report to any group upon request.

4.3 Officer Attendance

- a. Any political group may request the Town Clerk to attend a meeting of the group to advise on any particular matter relating to the authority.
- b. The Town Clerk may arrange for the attendance of a representative in his/her stead, or may decline to attend or to provide a representative where he/she is of the opinion that the particular nature that it would be inappropriate to attend.
- c. Officers' advice to political groups will be limited to a statement of material facts and identification of options and the merits and demerits of such options for the authority. Advice will not deal with any political implications of the matter or any option, and officers will not make any recommendation to a political group.
- d. Where an officer attends a political group, the Town Clerk will advise all other groups that the officer has attended and the subject upon which he/she has advised
- e. Officers will respect the confidentiality of any matter which they hear in the course of attending a political group meeting.

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5. IF THINGS GO WRONG

5.1 Procedure for officers From time to time the relationship between Councillors and officers may break down or become strained. Whilst it will always be preferable to resolve matters informally, through conciliation by an appropriate senior manager or Councillors or through a mediation process with an impartial third party, officers will have recourse to the Grievance Procedure initially and subsequently to the Council's Monitoring Officer, as appropriate to the circumstance. In the event of a grievance or complain being upheld, the matter will be referred to the Town Clerk, who, having advised the Leader of the Council and the appropriate group leader will decide on the course of action to be taken, following consultation with the Council Chairman and Vice Chairman.

5.2 Procedure for Councillor In the event that a Councillor is dissatisfied with the conduct, behaviour or performance of an officer, the matter should be raised with the Town Clerk. Where the employee concerned is the Town Clerk, the matter should be raised with the Chairman of the Staffing Committee. If the matter cannot be resolved informally, it may be necessary to raise the concern as a performance matter or to invoke the Council's Disciplinary Procedure, as appropriate to the circumstance.

Thank you to Banbury Town Council for giving permission for their policy document to be used in this guide.

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[] PARISH/TOWN COUNCIL

TERMS OF REFERENCE for the STAFFING COMMITTEE

Issue History

Issue N°	Date of Adoption	Reference in Minute Book	Details of Change Made
1	--/--/----	--/--	First formal Issue

Definitions

In this document the following terms have the meanings assigned to them below:

Alternate Member	A person elected to serve as an alternate if an elected member cannot serve on the Staffing Committee
Chairman	The Chairman of the Committee
Clerk	The Clerk to the Council
Committee	The Staffing Committee of the Council
Committee Member	Any person participating in the Committee's work under the arrangements set out in the Section headed 'Membership and Quorum'
Council	[] Parish/Town Council
Member	An elected or co-opted member of the [] Parish/Town Council

1. General

1.1 These Terms of Reference define the Council's specific responsibilities delegated to the Staffing Committee and were first approved by [] Parish/Town Council at its Meeting held on <date>. The conduct of all aspects of the Committee's work shall be treated as confidential and be governed by the Council's Standing Orders.

1.2 The Committee has no power to authorise expenditure on behalf of the Council OR power to authorise expenditure to a limit of £_____.

1.3 Members of the public have no rights to attend meetings of the Committee.

2. Duties & Scope of Responsibilities

2.1 The Committee shall undertake the following duties on behalf of the Council:

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2.2 Performance Management

- To monitor and performance manage the Clerk's work
- At least annually to conduct a staff appraisal/annual review with the Clerk.
- Following the interview to submit a confidential report to the Council. The report should include, where appropriate, any changes in the Clerk's responsibilities and recommendations as to the grading of the post and salary progression (the list of contents is not intended to be exhaustive).

2.3 Dispute Resolution Proceedings

- To hear and adjudicate upon any formal grievance issue raised by staff under this Council's Grievance Procedure for Staff.
- To hear and adjudicate upon appropriate disciplinary cases as set out the Council's Disciplinary Procedure for Staff¹, making recommendation to council if sanctions are to be imposed.
- To convene Appeals Panels where required

3. Appointment of new staff

3.1 To oversee recruitment and selection of new employees on behalf of the council (with the Clerk where appropriate) including job description, person specification, advertising, shortlisting, interviewing, reference checking, making recommendation to full council and defining the induction process.

4. Other Duties and Responsibilities

- To establish a programme of training for Councillors and employees such as will encourage professional advancement and make recommendations for expenditure to support these goals.
- To review staffing structures in the council and pay-scales annually
- To draft, review and monitor employment policies and procedures.
- To recommend the payment of overtime, additional hours and employment related expenses in relation to the employees, as may be deemed necessary.
- To monitor absences and approve holiday and other leave requests for the Clerk.
- To keep under review the working conditions and health and safety of the council's staff
- To oversee the termination arrangements for the council's staff

5. Powers

5.1 Subject to the power, set out in paragraph 2 immediately below, the Committee shall have no powers other than the power to undertake the tasks specified under

¹ NB only the Monitoring Officer can impose sanctions against elected members following a Code of Conduct process

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the heading 'Other Duties and Responsibilities'. In particular it shall have no delegated financial powers. OR state powers and financial powers here.

5.2 The Chairman, subject to the agreement of the Committee's Members, shall have the power to invite an appropriate expert in human relations to attend Dispute Resolution meetings to advise the Committee. Such Invited Participants shall have the freedom to participate in the enquiry but not to vote.

6. Membership and Quorum

6.1 The Committee shall consist of [] Members and an Alternate Member, all of whom shall be elected from Members of the Council at its Annual Meeting. The Council shall appoint one of the elected members to be the Committee's chairman.

6.2 The following persons shall not serve on the Committee:

- the Council's Chairman
- the Council's Vice-Chairman
- the Clerk's mentor
- Members and Alternate Members of the Appeals Committee

6.3 In the event that one or more of the Committee Members is unable to serve² the following arrangements shall be adopted:

- The first Committee Member unable to serve shall be replaced by the Alternate Member.
- If any further Committee Members or the Alternate Member are unable to serve they shall be replaced by qualified councillors appointed by the Council.
- If one of the Committee Members unable to serve is the Chairman, then the revised Committee when fully formed shall at the relevant meeting elect its own Chairman.
- Any person serving as a Committee Member under the arrangements in this clause shall have the same powers (s) he would have possessed had (s)he been elected by the Council.

6.4 The quorum shall consist of [] Committee Members. For the avoidance of misunderstanding the Alternate Member only attends a meeting if an elected Committee Member is unable to participate.

² Committee Members are expected to make every effort to serve but an inability to serve could arise from a conflict of interest, ill health or some other approved reason.

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7. Meetings

- **Ordinary Meetings.** The Committee shall meet at least once a year. The meeting shall be summoned by the Chairman or by such other person appointed for the task. The Committee shall set the dates for further ordinary meetings at its first meeting in the year.
- **Extraordinary Meetings:** when necessary may be held on dates between the Ordinary Meetings. Extraordinary meetings shall be called using the appropriate arrangements
- **Calling Meetings:** The Chairman shall be responsible for calling all meetings. The Chairman may make alternative arrangements to undertake this task or to assist him/her in undertaking the work but must ensure that a conflict of interest is not thereby created.
- **Minutes:** The Chairman shall be responsible for ensuring that proper minutes are kept of all Committee meetings and that where necessary appropriate reports are generated and circulated. The Chairman may make alternative arrangements to undertake this task or to assist him/her in undertaking the work but must ensure that a conflict of interest is not thereby created.

Alterations to these Terms of Reference

The Committee has no powers to alter or temporarily suspend these Terms of Reference.

The Council may change these Terms of Reference using the procedure set out in the Council's Standing Order number: ____.

These Terms of Reference are based on several examples of good practice.