

NEC4

Term Maintenance Contract

Annex 06 – Dignity at Work Code of Practice

DN581359

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Standards Of Behaviour

- 1.1 The Council's Standards of Conduct and Equality Policy expect all employees and elected members to treat each other with respect and dignity at all times.
- 1.2 The Council will not tolerate inappropriate behaviour of any kind, which is based on personal characteristics, whether or not those characteristics are protected under the law.
- 1.3 The Council has adopted the International Definition of Antisemitism and operates a zero tolerance approach to antisemitism in the workplace, to view the definition see <https://antisemitism.uk/definition/>.
- 1.4 This Code applies to all Council employees and elected members and covers their working relationships with each other, service users, members of the public, and representatives of agencies, contractors and partner organisations.
- 1.5 This Code applies to all working arrangements, including use of emails and social networking sites, and places where legitimate Council activity is carried out, and extends to work-related social functions e.g. office parties.
- 1.6 Employees have a right to complain if they feel they have suffered a detriment as a result of bullying, harassment, discrimination or victimisation, without fear of ridicule or reprisal. For definitions of what constitutes bullying, harassment, discrimination and victimisation, please refer to Definitions in Appendix 1 at the bottom of this document.
- 1.7 The Grievance Procedure provides a means to deal with employee complaints seriously, promptly and confidentially with the objective of achieving a resolution in a non-adversarial way whilst providing appropriate support to both parties.
- 1.8 The Council will take appropriate action, which may include dismissal, where a complaint is proven.
- 1.9 A complaint found to have been malicious or frivolous could itself provide grounds for disciplinary action against the complainant.

Responsibilities

2.1 Employees

All employees have a responsibility to help create and maintain a work environment free of any form of bullying, harassment, victimisation and discrimination by:

- Being aware of how their own behaviour may affect others and changing it, if necessary;
- Treating colleagues with dignity and respect and being aware that individuals can still cause offence even if they are "only joking";
- Taking a stand if they think inappropriate jokes or comments are being made;
- Making it clear to others when they find behaviour of others unacceptable, unless it should be obvious in advance that this would be the case;
- Intervening, if possible, to stop bullying, harassment, victimisation and discrimination and giving support to recipients;
- Making it clear that they find harassment and bullying unacceptable;
- Reporting harassment or bullying to their manager or HR and supporting the organisation in the investigation of complaints; and

If a complaint of bullying, harassment, victimisation and discrimination is made, not prejudging or victimising the complainant(s) or subject(s) of the complaint

2.2 Management

Managers have a specific responsibility to take steps to prevent any form of bullying, harassment, victimisation and discrimination from occurring by:

- Setting a good example by their own behaviour.
- Creating a supportive working environment, where any jokes, remarks or banter that might cause offence to another employee on any grounds is not permitted.
- Properly briefing all their employees as to the types of conduct and speech that might cause offence to others and make it clear that such behaviour is unacceptable, and
- Encouraging employees to report incidents.

Managers must intervene to stop bullying, harassment, victimisation and discrimination and deal with any complaint about bullying, harassment, victimisation or discrimination, seriously, objectively, expeditiously and confidentially and provide appropriate support to both parties.

Managers must seek advice on the procedure to be followed, maintain appropriate confidentiality insofar as is legitimately possible and ensure that, after a complaint has been resolved, there are no further problems of bullying, harassment, victimisation or discrimination. Managers must record all decisions and advice given.

2.3 Elected Members

The Council is committed to dealing with incidents of bullying, harassment, victimisation and discrimination where the alleged perpetrator is an elected member of the Council. Members are governed by the Members Code of Practice. Incidents involving members should be reported to both the County Solicitor in the role of Monitoring Officer, and the Director of HR and Organisational Development. In addition to action taken under the Members Code of Practice, the Member may be reported to their political group for it to take any action it considers necessary.

2.4 Recording

Managers must record any complaint which is about bullying, harassment, victimisation or discrimination and send the record to the HR&OD Service.

The Equalities Employment Board will monitor complaints which are about bullying, harassment, victimisation and discrimination.

All records will be held by the HR&OD Service and kept confidential and secure with authorised access only. Data Protection in terms of collecting, handling, storage and disclosure will apply.

The Health and Safety Executive "Violence at Work Guidelines" recognise that "violence includes any incident in which a person is abused, threatened or assaulted in circumstances that relate to their work".

Any violent incident involving an employee and a service user or a member of the public should be dealt with in accordance with Health and Safety guidelines. For recording and reporting incidents go to the EEC live site via the following link: [Reporting Incidents](#)

Service Areas have specific guidelines and further advice can also be sought from the Corporate Health and Safety Unit.

All incidents involving Council employees and employees from Partnerships, Service Level Agreements, and the Voluntary Sector should be reported to the line manager or senior manager who should follow the Grievance Procedure.

Appendix 1:

Equality Definitions

1. Definition of Bullying

Bullying implies a relationship where

- The bully has some influence or advantage that is used improperly over an individual; and
- The recipient is at a disadvantage; and
- The behaviour is unwarranted and unwelcome to the recipient.

This influence or advantage normally arises from:

- Status (from someone in a position of authority or power to make decisions, such as a manager or supervisor) or
- Social power (from peer pressure).

It may therefore be:

- By one individual against another individual or group of individuals, through one behavioural act or a series of acts over a period of time.
- By one group of individuals against one individual or another group of individuals.

Individual acts may not separately amount to bullying but a series of individual acts perpetrated by different people may together amount to collective bullying.

Bullying may be face-to-face, in written communications, by email, social networking sites or telephone.

It will normally be characterised as:

- Offensive, intimidating, malicious, insulting or humiliating behaviour.

and it will normally be accompanied by:

- An intention to undermine, humiliate, denigrate or injure the recipient.

and this will normally have a detrimental effect on:

- Their competence and capability and may have an adverse effect on their health.

Differences between firm management and bullying behaviour when tackling poorly performing teams (Source: CIPD)

Addressing poor performance in teams	Examples of firm management	Examples of bullying
Identifying the performance issue	Involves looking at all the potential reasons for poor performance e.g. people, systems, training and equipment	No attempt to identify the nature or source of the poor performance
Seeking the views of the team or individual to identify the cause of the unacceptable level of performance	The team takes part in looking for the source of the problems in performance and helps the manager to identify solutions for the whole team	No discussion of the cause of the performance deficit, or opportunities for the team members to discuss their difficulties
Agreeing new standards of performance with all team members	Involves setting and agreeing standards of performance and behaviours for each team member and the manager	Imposing new standards without team discussion on appropriate standards of performance or behaviour
Agreeing the method and timing of monitoring/auditing team performance	Wherever possible the team or team member takes part in the monitoring process. The outcome of the monitoring is openly discussed	Without agreeing standards, the monitoring can occur at any time and can involve areas that are unexpected by team members
Failure to achieve the standards of performance is dealt with as a performance-improvement issue	Opportunities are taken to identify individuals who are struggling, and support is provided. Where individuals are unwilling to comply with the agreed performance-improvement process, disciplinary actions may be taken	Individuals who fail to achieve the standards of performance are put under pressure to conform. This may include ridicule, criticism, shouting, withholding of benefits, demotion, teasing or sarcasm
Recognising positive contributions	Recognises and rewards improvements in	With no monitoring, it is impossible to

	performance, attitudes and behaviours	recognise where there have been positive contributions. Rewards and recognition are therefore arbitrary and open to acts of favouritism
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2. Legal Definitions of Prohibited Conduct

2.1 Harassment

Harassment is defined as unwanted conduct related to one or more of the relevant protected characteristics which has the purpose or effect of violating the dignity of another person or creating for that person an intimidating, hostile, degrading, humiliating or offensive environment.

Unwanted conduct means conduct that is unwelcome or uninvited.

Unwanted conduct can include any kind of behaviour, including spoken or written words in emails or on social networking sites, abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person's surroundings or other physical behaviour.

Conduct will be related to a protected characteristic if the person experiencing harassment has the protected characteristic or if there is any connection with the characteristic.

Harassment occurs even if the person harassed does not have the characteristic: a person might be perceived wrongly to have the characteristic or be harassed because of their association with someone who has the characteristic.

The unwanted conduct does **not** have to be **directed** at a person: it is enough that the conduct creates an intimidating, hostile, degrading, humiliating or offensive environment for that person.

Irrespective of the effect on a person, unwanted conduct amounts to harassment if the person is committing the unwanted conduct with the purpose of violating the dignity of the other person or creating for them an intimidating, hostile, degrading humiliating or offensive environment.

Alternatively, conduct which has the purpose of being friendly could amount to harassment if the effect on the person experiencing the conduct is one of violating the dignity of that person or creating for that person an intimidating, hostile, degrading humiliating or offensive environment.

In deciding whether conduct had that effect, each of the following must be taken into account:

- The perception of the complainant
- The other circumstances of the case

(e.g. circumstances of the person experiencing the conduct, their health including mental health, mental capacity, cultural norms, previous experience of harassment, differences in age, status, impact of the conduct, whether the perpetrator of the alleged harassment was exercising their rights under the Human Rights Act 1998.)

- Whether it is reasonable for the conduct to have that effect

Sexual Harassment

Sexual Harassment occurs when a person engages in any unwanted verbal, non-verbal or physical conduct of a sexual nature which has the purpose or effect of:

- Violating a person's dignity or
- Creating an intimidating hostile, degrading, humiliating or offensive environment for that person

Conduct of a sexual nature can include unwelcome sexual advances, touching, forms of sexual assault, sexual jokes, displaying pornographic photographs or drawings or sending emails with material of a sexual nature or using social networking sites.

Less favourable treatment for rejecting or submitting to unwanted conduct

Harassment also occurs when a person is treated less favourably because they have submitted to (or rejected):

- (a) Unwanted conduct related to sex or gender re-assignment, or

(b) Conduct of a sexual nature.

The less favourable treatment under this type of harassment may be perpetrated by the same person who committed the original unwanted conduct, or by another person.

2.2 Direct Discrimination

The law protects against discrimination on the following grounds:

- Age*
- Disability***
- Gender reassignment
- Marriage and civil partnership**
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

These are described as '**protected characteristics**'.

Direct discrimination occurs when one person treats, or would treat, another less favourably than others and the treatment is 'because of' a protected characteristic.

A person is treated less favourably when they are put at a disadvantage compared to others. It is enough that the person can reasonably say they would have preferred not to be treated differently from the way another person was, or would have been, treated. This could involve being denied a choice or excluded from an opportunity.

It does not matter that the less favourable treatment is unintentional.

*Less favourable treatment of a person because of their **age** is not direct discrimination provided that it can be shown that the less favourable treatment is a proportionate means of achieving a legitimate aim.

Where the protected characteristic in question is **marriage or civil partnership in employment, direct discrimination is limited to less favourable treatment because a person is married or a civil partner. Single people and people in relationships outside of marriage or civil partnership (whether or not they are cohabiting) are not protected.

***Direct discrimination arising from **disability** is different. Treatment of a disabled person amounts to direct discrimination if:

- An employer treats the disabled person unfavourably
- This treatment is because of something arising in consequence of the disabled person's disability and
- The employer cannot show that this treatment is a proportionate means of achieving a legitimate aim.

The consequences of a disability include anything which is the result, effect or outcome of a person's disability. Such consequences may include: inability to walk unaided; need for regular rest breaks; restricted diet; slow typing speeds; difficulties in using public transport; regular hospital appointments; need for specialist equipment; need for quiet working environment.

Discrimination by association

The law states that direct discrimination occurs if one person (A) treats another (B) less favourably because of B's association with a third person who has a protected characteristic, whether or not B possesses that protected characteristic.

The association could occur where B has a relationship, temporary or permanent, of parent, child, partner, friend or carer of a person with a protected characteristic.

Discrimination by perception

It is direct discrimination where the person treated less favourably is thought to have a protected characteristic, even though the perception is mistaken and in fact they do not.

Breastfeeding

Discrimination against a woman because she is breastfeeding is deemed to be a case of sex discrimination.

2.3 Indirect discrimination

Indirect discrimination occurs when a provision, criterion or practice that applies in the same way for everybody has an effect which particularly disadvantages people who share a protected characteristic. This kind of discrimination is unlawful unless the employer can show that it is justified i.e. a proportionate means of achieving a legitimate aim.

Indirect discrimination is unlawful whether it is intentional or not and whatever the motivation.

This applies to all protected characteristics apart from pregnancy and maternity. In these cases, indirect sex discrimination may apply.

In terms of employment, provisions, criteria and practices will include policies, rules, arrangements qualifications, proposals and one-off or discretionary decisions.

A disadvantage has to be something a reasonable person would complain about so an unjustified sense of grievance would not qualify. It must include some damage or loss, although this does not have to be quantifiable. A disadvantage could include, for example, denial of an opportunity, denial of choice, rejection or exclusion.

The disadvantage may be linked to a protected characteristic but there is no need to demonstrate a causal link between the two. However, it is not enough that the provision, criterion or practice puts or would put a group of people with a protected characteristic at a particular disadvantage. It must also have, or be capable of having, that effect on the individual concerned.

When the protected characteristic is **disability**, indirect discrimination occurs when a disabled person is disadvantaged by a provision, criterion or practice which:

- Is (or would be) also applied to everyone and
- Puts (or would put) people who have the disabled person's disability at a disadvantage when compared to non-disabled people.

The only question is whether the unfavourable treatment the particular disabled person experiences is because of something arising in consequence of their disability.

The consequences of a disability include anything which is the result, effect or outcome of a person's disability. Such consequences may include: inability to walk unaided; need for regular rest breaks; restricted diet; slow typing speeds; difficulties in using public transport; regular hospital appointments; need for specialist equipment; need for quiet working environment.

2.4 **Victimisation** occurs when an individual employee (A) subjects another employee (B) to detrimental treatment because B has committed a protected act or may commit a protected act in the future.

A protected act is any of the following:

- Bringing proceedings under the Equality Act.
- Giving evidence or information in connection with proceedings under the Act.
- Doing anything related to the provisions of the Act.
- Making an allegation that another person has breached the Act.
- Having a discussion with a colleague or former colleague which concerns a connection between pay and possession of a protected characteristic.

Detrimental treatment is victimisation if committing a protected act is an effective cause of the treatment, though it need not be the only reason for the treatment.

Generally, a detriment is anything which the individual concerned might reasonably consider to have changed their position for the worse or put them at a disadvantage. There is no need to demonstrate physical or economic consequences. However, an unjustified sense of grievance alone would not be enough to establish detriment.