

HEXHAM TOWN COUNCIL

I HEREBY GIVE NOTICE THAT a meeting of the Finance and General Purposes Committee will be held in the Council Office, St Andrew's Cemetery, Hexham on 26 February 2020 at 6.00pm, when the following items will be discussed:

A G E N D A

1. Apologies for absence.
2. To receive minutes of the Finance and General Purposes Committee meeting held on 28 January 2020, enclosed.
3. Matters arising, if any.
4. Declarations of interest (see enclosed).
5. To receive bank reconciliation and budget income and expenditure report to 31 January 2020 (attached).
6. To consider S106 projects/Hexham High Streets Heritage Action Zone.
7. To agree exclusion of the public during consideration of agenda items 8 and 9.
8. To consider a staff salary increase (see enclosed).
9. To consider funding a Hexham food and drink festival.
10. To review and adopt an Anti-Bullying and Harassment Policy, and Whistleblowing Policy, together with a new Data Protection Policy (see enclosed).
11. To agree a date for the next meeting of the Committee.
12. Any urgent matters at the Chairman of the meeting's discretion. (*Matters to be raised under this item should be written out (if possible) and handed to the Chairman of the meeting or the Clerk before the meeting begins.*)



Jane Kevan
Town Clerk
20 February 2020

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H agenda 0220 FandGPCommittee

HEXHAM TOWN COUNCIL

MINUTES OF THE TOWN COUNCIL FINANCE AND GENERAL PURPOSES COMMITTEE MEETING HELD ON 28 JANUARY 2020

637.	PRESENT: Councillors R Hull, S Ball, T Cessford, and T Pearson.
638.	APOLOGIES FOR ABSENCE were received from Councillors T G E Gillanders and T Dodds.
639.	MINUTES of the meeting held on 14 November 2019, having been circulated, were AGREED.
640.	MATTERS ARISING: <ul style="list-style-type: none">a) PUBLIC SECTOR DEPOSIT FUND (minute 628a and action log refers). It was noted that the transfer was completed on 15 January.b) ANPR CAMERA (minute 628b and action log refers). It was noted that Councillor Kennedy had subsequently paid the whole cost of this from his County Councillor's allowance. It was AGREED to contact the Police and ask if there would be interest in receiving funding for another camera.c) 2020/21 BUDGET (minute 632 and action log refers). It was noted that this had been agreed by the Full Council.d) FUNDING APPLICATION (minute 633 and action log refers). It was noted that the agreed funding had been paid.e) FINANCIAL RISK ASSESSMENT (minute 635 and action log refers). It was noted that this had been adopted by the Full Council.
641.	DECLARATIONS OF INTEREST: Councillors Ball and Pearson each declared a non-pecuniary interest in one of the organisations requesting funding.
642.	FINANCIAL REPORT: The bank statement and account reconciliation together with the 2019/20 budget report to 31 December 2019 were received and accepted. Copies are attached to the minutes. The current and anticipated year end balance of each budget code was also considered. It was AGREED to confirm the protected balance limit for the business account with HSBC, confirm the current credit regarding water rates, and refer the unspent budget relating to street signs to the Planning & Infrastructure Committee.
643.	INTERNAL AUDITOR: It was AGREED to appoint Stokoe Rodger LLP as the internal auditor for 2019/20.
644.	BUS SERVICE 74: Making a financial subsidy in conjunction with Ponteland Town Council and adjoining Councils towards this bus service was considered. It was AGREED to pay a donation of £150.00 from the donations (one time only) budget but to advise that this will be the last year a contribution is made to this bus service.

645.	S106 PROJECTS/HEXHAM HIGH STREETS HERITAGE ACTION ZONE: It was AGREED to defer consideration of this matter to the next meeting.
646.	EXCLUSION of THE PUBLIC: It was resolved and AGREED in accordance with Section 1(2) of the Public Bodies (Admission to Meetings) Act 1960 that as publicity would be prejudicial to the public interest by reason of the confidential nature of the business about to be transacted, namely consideration of funding requests, it is advisable in the public interest that the public and press be temporarily excluded from the meeting and they were requested to withdraw.
647.	FUNDING APPLICATIONS: These were considered and actions as listed in confidential note 647 were AGREED.
648.	The meeting was reopened to the public.
649.	HEALTH AND SAFETY POLICY: It was AGREED to recommend this to Full Council for re-adoption.
650.	NEXT MEETING: It was AGREED that the next Committee meeting will be held on Wednesday 26 February 2020 at 6.00pm in the Council Office, St Andrew's Cemetery, Hexham.

Action Log

Contact the Police re possible funding of another ANPR camera (minute 640b)	Clerk
Confirm the HSBC account protected balance and the water rates credit, and refer street signs to the P&I Committee (minute 642)	Clerk
Make the payment but advise Ponteland Town Council as agreed re Bus Service 74 (minutes 644)	Clerk
List S106 projects/HSHAZ on the next agenda (minute 645)	Clerk
Make the payments/contact the relevant organisations as agreed in the confidential note (minute 647)	Clerk
Refer the recommended health and safety policy to Full Council (minute 649)	Clerk

Chairman

HEXHAM TOWN COUNCIL - DECLARATIONS OF INTEREST
FINANCE AND GENERAL PURPOSES COMMITTEE

Under the Code of Conduct adopted by the Council on 3 September 2012 Councillors must declare if they have a disclosable interest in any matters under consideration.

To do so Councillors must use one of the following statements:

1. "I have a disclosable pecuniary interest
in..... (for example) Agenda item 3,
Planning application number 13/1234".
(NOTE: Code of Conduct paragraphs 11&15 apply).

2. "I have a disclosable personal interest
in..... (for example) Agenda item 4,
Grant aid application by Hexham Youth Initiative
(NOTE: Code of Conduct paragraph 13 applies).

Councillors should familiarise themselves with the Code of Conduct regarding the definitions of (A) pecuniary interest and (B) other personal interest and their obligations when declaring any interest.

To ensure Councillors interests are correctly minuted please use one of the above statements when declaring an interest.

NB. Should a Councillor wish to take part in the consideration and voting on a matter or matters in which he/she has a disclosable interest then they may request a dispensation be granted to enable them to take part in the discussion and voting on it but at least 10 days' notice must be given for any dispensation request.

HEXHAM TOWN COUNCIL
FINANCE AND GENERAL PURPOSES COMMITTEE
ANTI-BULLYING AND HARASSMENT POLICY
WHISTLEBLOWING POLICY
DATA PROTECTION POLICY

The Council adopted the following protocol (in italics) on bullying, harassment and whistle blowing in 2013.

Following the General Data Protection Regulation 2018, last year the National Association of Local Councils noted that employees have individual rights under GDPR and should be protected in Councils' whistleblowing and data protection policies.

In February 2020 NALC produced new templates for Town and Parish Councils on various policies and policies to replace the current protocol, together with a new policy relating to data protection, are below.

The Committee is requested to consider and recommend the following Anti-bullying and Harassment Policy, Whistleblowing Policy and related Data Protection Policy to Full Council.

Jane Kevan
Town Clerk
February 2020

HEXHAM TOWN COUNCIL
PROTOCOL ON BULLYING, HARASSMENT AND WHISTLE BLOWING

Introduction

Bullying is prohibited by the Code of Conduct. Councillors must not bully any person, including other Councillors, Officers or members of the public.

This protocol is to ensure that Members and Officers operate in an environment of mutual trust and respect. It should assist in the development of a culture of clear and honest communication between Officers and Members.

- 1.1 *The relationship between Councillors and Officers is an essential ingredient that should contribute to the successful working of the organisation. This relationship within the authority should be characterised by mutual respect, informality and trust. Councillors and Officers must feel free to speak to one another openly and honestly. Nothing in this Protocol is intended to change this relationship. Objective criticism is usually acceptable but can be unacceptable if the criticism becomes personal. This protocol gives guidance on what to do on the rare occasions when things go wrong.*
- 1.2 *Everyone should be treated with dignity and respect at work. Bullying and harassment of any kind are in no-one's interest and should not be tolerated in the workplace.*

2. What is bullying and harassment?

- 2.1 *Examples and definitions of what may be considered bullying and harassment are provided below for guidance. For practical purposes, those making a complaint usually define what they mean by bullying or harassment – something has happened to them that is unwelcome, unwarranted and causes a detrimental effect. If employees complain they are being bullied or harassed, then they have a grievance which must be dealt with regardless of whether or not their complaint accords with a standard definition.*

3. How can bullying and harassment be recognised?

- 3.1 *There are many definitions of bullying and harassment. Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means to undermine, humiliate, denigrate or injure the recipient.*
- 3.2 *Harassment, in general terms, is unwanted conduct affecting the dignity of men and women in the workplace. It may be related to age, sex, race, disability, religion, nationality or any personal characteristic of the individual, and may be persistent or an isolated incident. The key is that the actions or comments are viewed as demeaning and unacceptable to the recipient.*

3.3 *Behaviour that is considered bullying by one person may be considered firm management by another. Most people will agree on extreme cases of bullying and harassment but it is sometimes the “grey” areas that cause most problems. Examples of what is unacceptable behaviour include:*

- *“inappropriate behaviour”*
- *intimidation/humiliation*
- *excessive criticism*
- *autocratic/dictatorial behaviour*
- *shouting*
- *browbeating*
- *haranguing*
- *swearing*
- *ridiculing*
- *expressions of intolerance*
- *general discourtesy*

3.4 *Bullying and harassment are not necessarily face to face; they may be by written communications, e-mail (so called “flame mail”) and telephone.*

4. Why does the Council need to take action on bullying and harassment?

4.1 *There is an implied term of mutual trust and confidence in every contract of employment. Where the Town Council is aware of a situation of bullying or harassment of an employee by one of its Councillors, but fails to act to stop it, it will be in breach of that implied term of employment contract and may be held liable for the constructive dismissal of that employee.*

4.2 *It is in every employer’s interest to promote a safe, healthy and fair environment in which people can work.*

4.3 *A Town Council’s duty of care to an employee relates to all forms of personal injury, which will include mental as well as physical health. If a risk to health was foreseeable but no action was taken then the Town Council could be at fault and compensation could be sought.*

5. The Members’ Code of Conduct

5.1 *Bullying is expressly forbidden under the Council’s Code of Conduct. There are, in addition, complementary obligations to;*

- *not do anything which may cause the Council to breach any equality laws;*

- *treat others with respect;*
- *not intimidate any person who is or is likely to be a complainant, a witness or involved in an investigation relating to a breach of the Code; and;*
- *not compromise or attempt to compromise the impartiality of those who work for, or on behalf of, the Council.*

5.2

A proven allegation of bullying or harassment will always be a breach of the Code of Conduct and the Councillor involved is liable to be reported to the Local Standards Committee. Councillors are entitled to challenge Officers as to why they hold their views. However, if criticism amounts to a personal attack or is of an offensive nature, the Councillor is likely to have crossed the line of what is acceptable behaviour.

5.3 *If there are instances of bullying or harassment by Councillors towards officers or other Councillors, then those Councillors who are aware of the incident should consider reporting it to the Standards Committee of the relevant principal authority. It is also open to Officers who are either the subject of bullying or harassment or who witness such an incident to similarly report it to the Standards Committee (which is likely to have established an Assessment Sub-Committee to decide whether to investigate such complaints).*

5.4 *If Members or Officers are unsure what to do or how to report the matter, they should seek the advice of the Monitoring Officer.*

6. **Grievance and disciplinary procedures**

6.1 *Obviously it is best to try to avoid things getting to a state where an employee considers themselves dismissed or issues a personal injury claim against the Council. This can be done through having an accessible and useable grievance procedure.*

6.2 *Since October 2004 all employers have been required by law to have disciplinary and grievance procedures. These cover disciplinary rules and procedures for handling discipline, grievance and appeals. Details must be included in the employee's written statement of employment particulars or reference made to a separate document which is readily accessible to the employee.*

6.3 *A grievance procedure enables individual employees to raise concerns, problems or complaints with management about their employment. It should allow for both an informal and formal approach.*

A grievance procedure provides an open and fair way for employees to make known their concerns, problems or complaints. It enables such grievances to be resolved quickly before they fester and become major

problems. An employee who fails to raise a grievance with their employer using the statutory procedure may be prevented from taking a claim relating to that grievance to employment tribunal.

Grievance procedure should allow grievances to be dealt with fairly, consistently, speedily and should include:

- *how and with whom to raise the issue*
- *whom next to appeal to if not satisfied*
- *time limits for each stage*
- *the right to be accompanied by a fellow worker or trade union representative*
- *the statutory grievance procedure*

7. Whistle-blowing

Protection for employees, contractors or staff is relevant to allow any bullying or harassment to be reported without fear of victimisation or further harassment.

Guidance Notes on Whistle-Blowing

Whistle-blowing, sometimes referred to as confidential reporting or public interest disclosure, provides a link between employment concerns, such as bullying, and the more general complaints procedures discussed below.

The principles of whistle-blowing should apply to Members, contractors and partners in any ongoing project, as well as employees. It is to employees, however, that the law in this area is aimed.

The Public Interest Disclosure Act 1998 (PIDA) encourages people to raise concerns about malpractice in the workplace and will help ensure that organisations respond by

- *addressing the message rather than the messenger; and*
- *resisting the temptation to cover up serious malpractice.*

Through protecting whistleblowers from dismissal and victimisation in the following circumstances, the Act promotes the public interest.

Malpractice

The Act applies to people at work raising genuine concerns about crime, civil offences (including negligence, breach of contract, breach of administrative law), miscarriage of justice, danger to health and safety or the environment and the cover up of any of these. It applies whether or not the information is confidential.

Individuals covered

In addition to the Clerk and other employees, it covers trainees, agency staff, contractors, home workers, etc. The usual employment law references to minimum length of service or age do not apply. The Act does not presently cover the genuinely self-employed, volunteers, the intelligence services, or the armed forces.

Legal Advice

The Act confirms that workers may safely seek legal advice on any concerns they have about malpractice. This includes seeking advice from Public Concern at Work, a charity established to help people with these issues and which is designated a legal advice centre by the Bar Council.

Internal disclosures

A disclosure in good faith to a manager or the employer will be protected if the whistleblower has a reasonable suspicion that the malpractice has occurred, is occurring or is likely to occur. Where a third party is responsible for the matter this same test applies to disclosures made to it.

Regulatory disclosures

The Act also protects disclosures made in good faith to prescribed bodies where the whistleblower reasonably believes that the information and any allegation in it are substantially true. In respect of Town Councils the prescribed bodies would include the Health and Safety Executive, HM Revenue and Customs, the Audit Commission (or the appointed external auditors) and the Standards Board for England.

Wider disclosures

Wider disclosures (e.g. to the police, the media, MPs, and non-prescribed regulators) are protected if, in addition to the tests for regulatory disclosures, they are reasonable in all the circumstances and they meet one of the three preconditions. Provided they are not made for personal gain, these preconditions are that the whistleblower:

- reasonably believed he would be victimised if he raised the matter internally or with a prescribed regulator;*
- reasonably believed a cover-up was likely and there was no prescribed regulator; or*
- had already raised the matter internally or with a prescribed regulator.*

In deciding the reasonableness of the disclosure the employment tribunal will consider the identity of the person to whom it was made, the seriousness of the concern, whether the risk or danger remains, and whether it breached a duty of confidence the employer owed a third party. Where the concern had been raised with the employer or a prescribed regulator, the reasonableness of its response will be particularly relevant. Finally, if the concern has first been raised with the employer, it is relevant whether any whistle-blowing policy in the organisation was or should have been used.

Exceptionally serious matters

Where the concern is exceptionally serious, a disclosure will be protected if it meets the test for regulatory disclosures and is not made for personal gain. The disclosure must also be reasonable having particular regard to the identity of the person to whom it was made.

Full protection

Where the whistleblower is victimised in breach of the Act he can bring a claim to an employment tribunal for compensation. Awards will be uncapped and based on the losses suffered. Additionally where an employee is sacked, he may apply for an interim order to keep his job.

Gagging clauses

Gagging clauses in employment contracts and severance agreements are void insofar as they conflict with the Act's protection.

1 May 2013

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HEXHAM TOWN COUNCIL ANTI-BULLYING AND HARASSMENT POLICY

Introduction

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

This policy and procedure provide guidance on what to do if you are concerned about bullying or harassment and what to expect if you raise concerns. It applies to all staff (whether permanent, fixed term, or casual), contractors and agency staff.

Policy

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

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

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

What type of treatment amounts to bullying or harassment?

Bullying is offensive, intimidating, threatening, malicious or insulting behaviour, and/or an abuse or misuse of power that undermines, humiliates or injures the person on the receiving end.

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. Harassment amounts to unlawful discrimination if it relates to a 'protected characteristic'.

Examples of bullying and harassment include:

- Verbal abuse or offensive comments, jokes or pranks related to age, disability, gender re-assignment, marriage, civil partnership, pregnancy, maternity, race, religion, belief, sex or sexual orientation
- Lewd or suggestive comments
- Deliberate exclusion from conversations or work activities
- Withholding information, a person needs in order to do their job

- Practical jokes, initiation ceremonies or inappropriate birthday rituals
- Physical abuse such as hitting, pushing or jostling
- Rifling through, hiding or damaging personal property
- Subjecting a person to humiliation or ridicule, belittling their efforts, often in front of others
- Abusing a position of power

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

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

Reporting concerns

What you should do if you witness an incident you believe to be harassment or bullying

If you witness such behaviour you should report the incident in confidence to the Clerk or a councillor. Such reports will be taken seriously and will be treated in strict confidence as far as it is possible to do so.

What you should do if you feel you are being Bullied or Harassed by a member of the public or supplier (as opposed to a colleague)

If you are being bullied or harassed by someone with whom you come into contact at work, please raise this with the Clerk or a councillor in the first instance. They will then decide how best to deal with the situation, in consultation with you.

What you should do if you feel you are being Bullied or Harassed by a councillor

If you are being bullied or harassed by a councillor, please raise this with the Clerk or the Chair of the Council in the first instance. They will then decide how best to deal with the situation, in consultation with you. There are two possible avenues for you, informal or formal. The Informal Resolution is described below. Formal concerns regarding potential breaches of Code of Conduct will be investigated by the Monitoring Officer.

What you should do if you are being Bullied or Harassed by another member of staff

If you are being bullied or harassed by a colleague or contractor, there are two possible avenues for you, informal or formal. These are described below.

Informal resolution

If you are being bullied or harassed you may be able to resolve the situation yourself by explaining clearly to the perpetrator(s) that their behaviour is unacceptable, contrary to our policy and must stop. Alternatively, you may wish to ask the Clerk, a colleague or another councillor to put this on your behalf or to be with you when confronting the perpetrator(s).

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

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

It may be possible to have the conversation with the alleged perpetrator without revealing your name, if this is what you want. They will also stress that the conversation is confidential.

In certain circumstances we may be able to involve a neutral third party to facilitate a resolution of the problem. The Chair will discuss this with you if it is appropriate.

If your complaint is resolved informally, the alleged perpetrator(s) will not usually be subject to disciplinary sanctions. However, in exceptional circumstances (such as a serious allegation of harassment or in cases where a problem has happened before) the council may decide to investigate further and take more formal action notwithstanding that you raised the matter informally. We will consult with you before taking this step.

Raising a formal complaint...

If informal resolution is unsuccessful or inappropriate, you can make a formal complaint about the harassment or bullying to the Clerk or the Chair of the Council. A formal complaint may ultimately lead to disciplinary action against the perpetrator(s) where they are employed.

The Clerk or the Chair of the Council will appoint someone to investigate your complaint. You will need to co-operate with the investigation and provide the following details (if not already provided):

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

... against a colleague or contractor

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

... against a member of the public or supplier

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

... against a councillor

Formal concerns regarding potential breaches of Code of Conduct breaches will be investigated by the Monitoring Officer.

During the investigation

Investigations will be carried out promptly, sensitively and, as far as possible, confidentially. If, after an investigation, we decide that an employee has harassed or bullied another employee, then the employee may be subject to disciplinary action, up to and including dismissal.

The Council will consider how to protect your health and wellbeing whilst the investigation is taking place and discuss this with you. Depending on the nature of the allegations, the Investigator may want to meet with you to better understand your complaint. Whilst there is no Statutory right to be accompanied at investigation meetings, the Investigator will consider your request if you want to have a work colleague or union representative with you at that meeting.

Hearing

After the investigation, a panel will meet with you in a Grievance Hearing (following the Grievance Procedure) to consider the complaint and the findings of the investigation. At the meeting you may be accompanied by a fellow worker or a trade union official.

After the meeting the panel will write to you to inform you of the decision and to notify you of your right to appeal if you are dissatisfied with the outcome. You should put your appeal in writing explaining the reasons why you are dissatisfied with the decision. Your appeal will be heard under the appeal process that is described in the Grievance Procedure.

Victimisation

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

False allegations

False accusations of harassment or bullying can have a serious effect on innocent individuals. Staff and others have a responsibility not to make false allegations. False allegations made in bad faith will be dealt with under our disciplinary procedure.

Disclosure and confidentiality

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

Use of the disciplinary procedure

Harassment and bullying constitute serious misconduct. If, at any stage from the point at which a complaint is raised, we believe there is a case to answer and a disciplinary offence might have been committed, we will instigate our disciplinary procedure. Any employee found to have harassed or bullied a colleague will be liable to disciplinary action up to and including summary dismissal.

This is a non-contractual procedure which will be reviewed from time to time.

Date of policy: February 2020

Approving committee: Finance & General Purposes

Date of committee meeting: 26/2/2020

Policy version reference: V1

Supersedes: Protocol on Bullying, Harassment and Whistle Blowing

Policy effective from: March 2020

Date for next review: March 2025

End of Policy.

Notes

1. Protected characteristics

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

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

2. Legal risks

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

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

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

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

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

3. Culture and behaviour

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

Different people find different things acceptable. It may not be obvious that some behaviour would be unwelcome or could offend a person. Those in positions of 'power' over an employee may not always understand how words or actions are

received. An employee may not always find it easy to communicate how they really feel. 'Banter' that on the face of it is reciprocated may nonetheless be unwelcomed and damaging. Others who overhear comments, or learn of them third hand, will form judgements about the culture.

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

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

4. During the investigation

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

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

Ensure that you regularly communicate with both parties.

1. Victimisation

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

2. False allegations

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

3. Complaints against councillors

Following the Ledbury case, the law is clear that any formal complaint regarding a breach of the Code of Conduct must be referred to the Monitoring Officer for investigation. During the investigation, it is critical to ensure that where an employee of the council has made the complaint, that the council agrees with the employee reasonable measures to protect their health and safety. Such measures may include a temporary change in duties, change of work location, not attending meetings with the person to whom the complaint has been made etc.

HEXHAM TOWN COUNCIL WHISTLEBLOWING POLICY

It is important that any fraud, misconduct or wrongdoing by staff or others working on behalf of the Council is reported and properly dealt with. We therefore require all individuals to raise any concerns that they may have about the conduct of others in the Council. This policy sets out the way in which individuals may raise any concerns that they have and how these concerns will be dealt with.

Background

The Public Interest Disclosure Act 1998 amended the Employment Rights Act 1996 to provide protection for workers who raise legitimate concerns about specified matters in the public interest. These are called "qualifying disclosures". A qualifying disclosure is one made by an employee who has a reasonable belief that:

- a criminal offence;
- a miscarriage of justice;
- an act creating risk to health and safety;
- an act causing damage to the environment;
- a breach of any other legal obligation; or
- concealment of any of the above;

is being, has been, or is likely to be, committed. It is not necessary for you to have proof that such an act is being, has been, or is likely to be, committed - a reasonable belief is sufficient. You have no responsibility for investigating the matter - it is the council's responsibility to ensure that an investigation takes place.

If you make a protected disclosure you have the right not to be dismissed, subjected to any other detriment, or victimised, because you have made a disclosure. We encourage you to raise your concerns under this procedure in the first instance.

Principles

- Everyone should be aware of the importance of preventing and eliminating wrongdoing at work. Staff and others working on behalf of the council should be watchful for illegal or unethical conduct and report anything of that nature that they become aware of.
- Any matter raised under this procedure will be investigated thoroughly, promptly and confidentially, and the outcome of the investigation reported back to the person who raised the issue.
- No employee or other person working on behalf of the council will be victimised for raising a matter under this procedure. This means that the continued employment and opportunities for future promotion or training of the worker will not be prejudiced because they have raised a legitimate concern.
- Victimisation of an individual for raising a qualified disclosure will be a disciplinary offence.
- If misconduct is discovered as a result of any investigation under this procedure our disciplinary procedure will be used, in addition to any appropriate external measures.

- Maliciously making a false allegation is a disciplinary offence.
- An instruction to cover up wrongdoing is itself a disciplinary offence. If told not to raise or pursue any concern, even by a person in authority such as a manager, you should not agree to remain silent. You should report the matter to the Clerk or the Chair of the Council.

Procedure

If you believe a Councillor has breached the councillor Code of Conduct, then raise it with the Chair of the Council. Concerns relating to an alleged breach of the councillor Code of Conduct will be referred to the Monitoring Officer for investigation.

This procedure is for disclosures about matters other than a breach of your own contract of employment, which should be raised via the Grievance Procedure.

Stage 1

In the first instance, any concerns should be raised with the Clerk, who will arrange an investigation of the matter. The investigation may involve you and other individuals involved giving a written statement. Any investigation will be carried out in accordance with the principles set out above. Your statement will be taken into account, and you will be asked to comment on any additional evidence obtained.

The Clerk (or delegated officer) will take any necessary action, including reporting the matter to the Council, or any appropriate government department or regulatory agency. The Clerk (or delegated officer) will also invoke any disciplinary action if required. On conclusion of any investigation, insofar as confidentiality allows, you will be told the outcome and what the council has done, or proposes to do, about it. If no action is to be taken, the reason for this will be explained.

Stage 2

If you are concerned that the Clerk is involved in the wrongdoing, has failed to make a proper investigation or has failed to report the outcome of the investigations to the relevant person, you should escalate the matter to the Chair of the Council. The Chair will arrange for a review of the investigation to be carried out, make any necessary enquiries.

Stage 3

If on conclusion of stages 1 and 2 you reasonably believe that the appropriate action has not been taken, you should report the matter to the relevant body. This includes:

- HM Revenue & Customs
- The Health and Safety Executive
- The Environment Agency
- The Serious Fraud Office
- The Charity Commission
- The Pensions Regulator
- The Information Commissioner

- The Financial Conduct Authority

You can find the full list in The Public Interest Disclosure (Prescribed Persons) Order 2014:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/496899/BIS-16-79-blowing-the-whistle-to-a-prescribed-person.pdf

Data protection

When an individual makes a disclosure, we will process any personal data collected in accordance with the data protection policy. Data collected from the point at which the individual makes the report is held securely and accessed by, and disclosed to, individuals only for the purposes of dealing with the disclosure.

This is a non-contractual procedure which will be reviewed from time to time.

Date of policy: February 2020

Approving committee: Finance & General Purposes

Date of committee meeting: 26/2/2020

Policy version reference: V1

Supersedes: Protocol on Bullying, Harassment and Whistle Blowing

Policy effective from: March 2020

Date for next review: March 2025

End of Policy.

Notes

The wording of this policy is based on an employee's statutory right to make a disclosure in the public interest. Adopting and applying this policy as it stands will support the council to comply with this right.

1. Legal considerations

An employee making a genuine disclosure under this policy is protected from victimisation and any unfavourable treatment. If a member of staff believes they have been treated differently because they have made a disclosure, they may be able to make a claim to an Employment Tribunal irrespective of whether they are a casual, fixed term worker, or an established member of staff.

HEXHAM TOWN COUNCIL DATA PROTECTION POLICY

The Council is committed to being transparent about how it collects and uses the personal data of staff, and to meeting our data protection obligations. This policy sets out the Council's commitment to data protection, and your rights and obligations in relation to personal data in line with the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA).

This policy applies to the personal data of current and former job applicants, employees, workers, contractors, and former employees, referred to as HR-related personal data. This policy does not apply to the personal data relating to members of the public or other personal data processed for Council business.

The Council has appointed Jane Kevan, the Town Clerk as the person with responsibility for data protection compliance within the Council. Questions about this policy, or requests for further information, should be directed to them.

Definitions

"Personal data" is any information that relates to a living person who can be identified from that data (a 'data subject') on its own, or when taken together with other information. It includes both automated personal data and manual filing systems where personal data are accessible according to specific criteria. It does not include anonymised data.

"Processing" is any use that is made of data, including collecting, recording, organising, consulting, storing, amending, disclosing or destroying it.

"Special categories of personal data" means information about an individual's racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, health, sex life or sexual orientation and genetic or biometric data as well as criminal convictions and offences.

"Criminal records data" means information about an individual's criminal convictions and offences, and information relating to criminal allegations and proceedings.

Data protection principles

The Council processes HR-related personal data in accordance with the following data protection principles. The Council:

- processes personal data lawfully, fairly and in a transparent manner
- collects personal data only for specified, explicit and legitimate purposes
- processes personal data only where it is adequate, relevant and limited to what is necessary for the purposes of processing
- keeps accurate personal data and takes all reasonable steps to ensure that inaccurate personal data is rectified or deleted without delay
- keeps personal data only for the period necessary for processing

- adopts appropriate measures to make sure that personal data is secure, and protected against unauthorised or unlawful processing, and accidental loss, destruction or damage

The Council will tell you of the personal data it processes, the reasons for processing your personal data, how we use such data, how long we retain the data, and the legal basis for processing in our privacy notices.

The Council will not use your personal data for an unrelated purpose without telling you about it and the legal basis that we intend to rely on for processing it. The Council will not process your personal data if it does not have a legal basis for processing.

The Council keeps a record of our processing activities in respect of HR-related personal data in accordance with the requirements of the General Data Protection Regulation (GDPR).

Processing

Personal data

The Council will process your personal data (that is not classed as special categories of personal data) for one or more of the following reasons:

- it is necessary for the performance of a contract, e.g., your contract of employment (or services); and/or
- it is necessary to comply with any legal obligation; and/or
- it is necessary for the council's legitimate interests (or for the legitimate interests of a third party), unless there is a good reason to protect your personal data which overrides those legitimate interests; and/or
- it is necessary to protect the vital interests of a data subject or another person; and/or
- it is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.

If the Council processes your personal data (excluding special categories of personal data) in line with one of the above bases, it does not require your consent. Otherwise, the Council is required to gain your consent to process your personal data. If the Council asks for your consent to process personal data, then we will explain the reason for the request. You do not need to consent or can withdraw consent later.

The Council will not use your personal data for an unrelated purpose without telling you about it and the legal basis that we intend to rely on for processing it.

Personal data gathered during the employment is held in your personnel file in hard copy and electronic format on HR and IT systems and servers. The periods for which the Council holds your HR-related personal data are contained in our privacy notices to individuals.

Sometimes the Council will share your personal data with contractors and agents to carry out our obligations under a contract with the individual or for our legitimate interests. We require those individuals or companies to keep your personal data confidential and secure and to protect it in accordance with Data Protection law and our policies. They are only permitted to process that data for the lawful purpose for which it has been shared and in accordance with our instructions.

The Council will update HR-related personal data promptly if you advise that your information has changed or is inaccurate. You may be required to provide documentary evidence in some circumstances.

The Council keeps a record of our processing activities in respect of HR-related personal data in accordance with the requirements of the General Data Protection Regulation (GDPR).

Special categories of data

The Council will only process special categories of your personal data (see above) on the following basis in accordance with legislation:

- where it is necessary for carrying out rights and obligations under employment law or a collective agreement;
- where it is necessary to protect your vital interests or those of another person where you are physically or legally incapable of giving consent;
- where you have made the data public;
- where it is necessary for the establishment, exercise or defence of legal claims;
- where it is necessary for the purposes of occupational medicine or for the assessment of your working capacity;
- where it is carried out by a not-for-profit body with a political, philosophical, religious or trade union aim provided the processing relates to only members or former members provided there is no disclosure to a third party without consent;
- where it is necessary for reasons for substantial public interest on the basis of law which is proportionate to the aim pursued and which contains appropriate safeguards;
- where it is necessary for reasons of public interest in the area of public health; and
- where it is necessary for archiving purposes in the public interest or scientific and historical research purposes.

If the Council processes special categories of your personal data in line with one of the above bases, it does not require your consent. In other cases, the Council is required to gain your consent to process your special categories of personal data. If the Council asks for your consent to process a special category of personal data, then we will explain the reason for the request. You do not have to consent or can withdraw consent later.

Individual rights

As a data subject, you have a number of rights in relation to your personal data.

Subject access requests

You have the right to make a subject access request. If you make a subject access request, the Council will tell you:

- whether or not your data is processed and if so why, the categories of personal data concerned and the source of the data if it is not collected from yourself;
- to whom your data is or may be disclosed, including to recipients located outside the European Economic Area (EEA) and the safeguards that apply to such transfers;
- for how long your personal data is stored (or how that period is decided);
- your rights to rectification or erasure of data, or to restrict or object to processing;
- your right to complain to the Information Commissioner if you think the council has failed to comply with your data protection rights; and
- whether or not the council carries out automated decision-making and the logic involved in any such decision-making.

The Council will also provide you with a copy of your personal data undergoing processing. This will normally be in electronic form if you have made a request electronically, unless you agree otherwise. If you want additional copies, the Council may charge a fee, which will be based on the administrative cost to the Council of providing the additional copies.

To make a subject access request, you should send the request to the Clerk or Chairman of the Council. In some cases, the Council may need to ask for proof of identification before the request can be processed. The Council will inform you if we need to verify your identity and the documents we require.

The Council will normally respond to a request within a period of one month from the date it is received. Where the Council processes large amounts of your data, this may not be possible within one month. The Council will write to you within one month of receiving the original request to tell you if this is the case.

If a subject access request is manifestly unfounded or excessive, the Council is not obliged to comply with it. Alternatively, the Council can agree to respond but will charge a fee, which will be based on the administrative cost of responding to the request. A subject access request is likely to be manifestly unfounded or excessive where it repeats a request to which the Council has already responded. If you submit a request that is unfounded or excessive, the Council will notify you that this is the case and whether or not we will respond to it.

Other rights

You have a number of other rights in relation to your personal data. You can require the Council to:

- rectify inaccurate data;
- stop processing or erase data that is no longer necessary for the purposes of processing;

- stop processing or erase data if your interests override the Council's legitimate grounds for processing data (where the council relies on our legitimate interests as a reason for processing data);
- stop processing or erase data if processing is unlawful; and
- stop processing data for a period if data is inaccurate or if there is a dispute about whether or not your interests override the Council's legitimate grounds for processing data.
- complain to the Information Commissioner. You can do this by contacting the Information Commissioner's Office directly. Full contact details including a helpline number can be found on the Information Commissioner's Office website (www.ico.org.uk).

To ask the Council to take any of these steps, you should send the request to the Clerk or Chairman of the Council.

Data security

The Council takes the security of HR-related personal data seriously. The Council has internal policies and controls in place to protect personal data against loss, accidental destruction, misuse or disclosure, and to ensure that data is not accessed, except by employees in the proper performance of their duties.

Where the Council engages third parties to process personal data on our behalf, such parties do so on the basis of written instructions, are under a duty of confidentiality and are obliged to implement appropriate technical and organisational measures to ensure the security of data.

Data breaches

The Council have robust measures in place to minimise and prevent data breaches from taking place. Should a breach of personal data occur the Council must take notes and keep evidence of that breach.

If you are aware of a data breach you must contact the Clerk or Chairman of the Council immediately and keep any evidence, you have in relation to the breach. If the council discovers that there has been a breach of HR-related personal data that poses a risk to the rights and freedoms of yourself, we will report it to the Information Commissioner within 72 hours of discovery. The Council will record all data breaches regardless of their effect.

If the breach is likely to result in a high risk to the rights and freedoms of individuals, we will tell you that there has been a breach and provide you with information about its likely consequences and the mitigation measures we have taken.

International data transfers

The Council will not transfer HR-related personal data to countries outside the EEA.

Individual responsibilities

You are responsible for helping the Council keep your personal data up to date. You should let the Council know if data provided to the Council changes, for example if you move to a new house or change your bank details.

Everyone who works for, or on behalf of, the Council has some responsibility for ensuring data is collected, stored and handled appropriately, in line with the Council's policies.

You may have access to the personal data of other individuals and of members of the public in the course of your work with the Council. Where this is the case, the Council relies on you to help meet our data protection obligations to staff and members of the public. Individuals who have access to personal data are required:

- to access only data that you have authority to access and only for authorised purposes;
- not to disclose data except to individuals (whether inside or outside the Council) who have appropriate authorisation;
- to keep data secure (for example by complying with rules on access to premises, computer access, including password protection, locking computer screens when away from desk, and secure file storage and destruction including locking drawers and cabinets, not leaving documents on desk whilst unattended);
- not to remove personal data, or devices containing or that can be used to access personal data, from the council's premises without prior authorisation and without adopting appropriate security measures (such as encryption or password protection) to secure the data and the device; and
- not to store personal data on local drives or on personal devices that are used for work purposes.
- to never transfer personal data outside the European Economic Area except in compliance with the law and with express authorisation from the Clerk or Chair of the Council
- to ask for help from the council's data protection lead if unsure about data protection or if you notice a potential breach or any areas of data protection or security that can be improved upon.

Failing to observe these requirements may amount to a disciplinary offence, which will be dealt with under the Council's disciplinary procedure. Significant or deliberate breaches of this policy, such as accessing personal data without authorisation or a legitimate reason to do so or concealing or destroying personal data as part of a subject access request, may constitute gross misconduct and could lead to dismissal without notice.

This is a non-contractual policy and procedure which will be reviewed from time to time.

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Approving committee: Finance & General Purposes

Date of committee meeting: 26/2/2020

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End of Policy.