
REPORT TO:	FINANCE & MANAGEMENT COMMITTEE	AGENDA ITEM: 9
DATE OF MEETING:	1 ST SEPTEMBER 2005	CATEGORY: DELEGATED
REPORT FROM:	DIRECTOR OF CORPORATE SERVICES	OPEN
MEMBERS' CONTACT POINT:	BARRY NICHOLLS (PERSONNEL OFFICER – EXTN 5789)	DOC:
SUBJECT:	HARASSMENT POLICY	REF:
WARD(S) AFFECTED:	ALL	TERMS OF REFERENCE:FM05

1.0 Recommendations

- 1.1 That the Council formally adopts the proposed Harassment Policy, which is Annexe A of this report.
- 1.2 That training on the policy is made available to all employees

2.0 Purpose of Report

- 2.1 To obtain Committee approval for this new policy which includes a procedure for handling allegations of harassment, bullying and victimisation.

3.0 Detail

The current position

- 3.1 Harassment is not only unacceptable but may, if unchecked or badly handled create serious problems for an organisation (e.g. poor morale, poor employee relations, sickness absence, turnover, Employment Tribunal and other court cases). The Council has no specific policy for dealing with allegations of harassment. The most applicable procedure it can use at the moment is the Grievance Procedure. However, this is not completely satisfactory as it lacks some of the features that ACAS recommend should be included in a harassment policy and procedure.
- 3.2 The 1991 European Commission code "Protection of Dignity of Men and Women at Work" highlights the need for employers to develop and implement policies to prevent harassment. This is reinforced by ACAS.

Employment legislation

- 3.3 Employment legislation places responsibilities on employers to protect employees at work. The position concerning harassment is briefly discussed below.

Discrimination and harassment

- 3.4 Employees might be able to bring complaints under certain laws, which cover discrimination and harassment. These include the Acts or Regulations covering discrimination on the grounds of sex, race disability, sexual orientation and religion or belief.
- 3.5 The Employment Equality (Sex Discrimination) Regulations 2005, which come into force on 1st October 2005, will introduce a new definition of harassment and will expressly prohibit harassment and sexual harassment in employment and vocational training. Additionally, there are plans to introduce regulations to provide protection from discrimination and harassment in respect of age by December 2006.

Unfair dismissal

- 3.6 Employers have a "duty of care" for all their employees. If mutual trust and confidence between employer and employee is broken, for example through harassment at work, then an employee can resign and claim "constructive dismissal" on the grounds of breach of contract.
- 3.7 Employers are usually responsible for the acts of their workers. An employer will be liable for harassment by its employees in the course of their employment even if it was unaware of it at the time, unless it has taken reasonable steps to prevent its employees from harassing others. As a minimum, to have a reasonable defence, the employer is likely to have to show that it has a harassment policy in place and that it has taken effective measures to ensure that employees are aware of and understand the policy.

Health & safety

- 3.8 Breach of contract may also include the failure to protect an employee's health and safety at work. Under the Health and Safety at Work Act 1974 employers are responsible for the health, safety and welfare at work for all employees.

Health and Safety Executive (HSE) – stress at work

- 3.9 The HSE is currently focusing on the issue of stress at work and has developed Management Standards, which cover the primary sources of stress at work. One of these has been identified as "Relationships". The HSE expect employers to promote "positive working to avoid conflict and dealing with unacceptable behaviour".
- 3.10 The Council has recently been accepted on a pilot programme to implement these management standards and this will enable further attention to be given to this matter.

Proposed policy

- 3.11 It is intended that the proposed policy will support the Council's current Equal Opportunity and Diversity Policy. It features ACAS guidance ACAS by:
- Explaining the Council's commitment to eliminate harassment from the workforce.
 - Defining and giving examples of harassment. The definition included in the policy has been adapted from the EU definition. The current definition of

harassment in the UK as applied to sexual orientation, religion or belief and race and ethnic and national origin is very similar to this. It is:

“Unwanted conduct that violates people’s dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment.”

The Government intends to introduce a standard definition of harassment (with a modified version of sexual harassment). The Council’s policy may have to be amended in future to take this into account.

- Setting out responsibilities.
- Clarifying that harassment is unacceptable behaviour and providing a link into the Council’s Disciplinary Procedure. It is also made clear that a malicious allegation will be dealt with under the Disciplinary Procedure.
- Identifying the support (including independent counselling) available to an employee alleging harassment.
- Emphasising confidentiality and sensitivity.
- Providing an informal and/or formal approach to dealing with allegations of harassment. A remedy is provided if an employee feels that their allegation has not been dealt with in the proper manner (e.g. where the procedure has not been followed). The alleged harasser has the opportunity to put their case during the formal investigation and any subsequent disciplinary hearing.

- 3.12 The proposed policy also recognises that employees can potentially be victims of harassment in the workplace from individuals other than colleagues.

Consultation

- 3.13 The Joint Negotiating Group has considered the proposed policy and procedure. It has agreed that it be recommended to this Committee for adoption by the Council. If adopted the procedure may then be reviewed at any time in consultation with the appropriate trades unions.

4.0 Financial Implications

- 4.1 None arising from this report.

5.0 Corporate Implications

- 5.1 The proposed policy and procedure reinforces the Council’s commitment to Equality and Diversity by defining harassment (including bullying and victimisation), clarifying that this type of behaviour in the workplace is unacceptable and stating that harassment will be treated as a disciplinary offence. The procedure will help ensure that the corporate approach to allegations of harassment will be consistent, fair and timely. The sensitivity and confidentiality of any complaint is also emphasised.

- 5.2 The implementation of this policy and procedure will also support the corporate project on the Management Standards (please refer to paragraph 3.10) that is being undertaken in partnership with ACAS and the HSE. It should also help to prevent the Council being in a potentially vulnerable position under law.

6.0 Conclusion

- 6.1 The adoption of the proposed Harassment Policy will help to consolidate the Council’s position and maintain progress in relation to the Equality Standard for

Local Government. It will also further demonstrate the Council's commitment to the principles of Equal Opportunity and Diversity, as its purpose is to eliminate a recognised form of discrimination.