

Promoting Appropriate Working Relationships and Behaviour

Code of Practice



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CODE OF PRACTICE

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WEST LoTHIAN COUNCIL

PROMOTING APPROPRIATE WORKING RELATIONSHIPS AND BEHAVIOUR

CODE OF PRACTICE

1. PURPOSE

- 1.1 This Code of Practice sets out the standards of behaviour expected of employees by the council in order to foster and maintain a working environment that is supportive, equitable and free from discrimination. The Code also re-affirms the council's responsibility as an employer, to provide safe systems and a safe place of work and to maintain mutual trust and confidence in its relationships with employees.
- 1.2 The Code supports the application of the council's [Policy and Procedure on Dealing with Complaints of Bullying and Harassment at Work](#) and should be read in conjunction with that document and all other relevant employment policies and procedures.

2. AIMS

- 2.1 The Code is therefore designed with the following key aims in mind;
- To reinforce the obligations that all employees have to their fellow employees in promoting a working environment that is supportive, equitable and free from discrimination
 - To re-affirm the council's responsibility as an employer to provide safe systems and a safe place of work and to maintain mutual trust and confidence in its relationships with employees
 - To provide employees with examples that show the difference between the types of behaviour in the workplace that the council views as acceptable and unacceptable
 - To set out the options employees should consider before deciding on the most appropriate means of dealing with workplace issues that are causing them offence or distress.

3. RESPONSIBILITIES OF EMPLOYEES

General

- 3.1 Employees are under an obligation to act lawfully and to act in a responsible manner that reflects and promotes the principles of mutual trust and confidence in the workplace. This is a basic requirement placed on both parties to the employment contract.
- 3.2 The [Policy and Procedure on Dealing with Complaints of Bullying and Harassment at Work](#) places a responsibility on individual employees to ensure their actions do not detrimentally affect the council or another employee. This responsibility extends beyond the immediate workplace and out with normal working hours where it can be

established that an employee's actions have been carried out *"in the course of his/her employment."*

- 3.3 The courts have interpreted this phrase broadly and consequently, it can extend to acts of bullying or harassment occurring for example, during attendance at a residential training course or work-based social event such as an office party (whether or not on council premises). Incidents that fall within this definition are therefore potentially within the scope of the council's [Policy and Procedure on Dealing with Complaints of Bullying and Harassment at Work](#) if it is reasonable to conclude that the alleged behaviour would not otherwise have occurred had it not been for the fact that the individuals concerned were council employees.

Raising Complaints

- 3.4 Employees raising a complaint must:
- do so in good faith having fully considered the guidance within this Code with particular reference to those examples of unacceptable behaviour that may fall within the scope of the council's [Policy and Procedure on Dealing with Complaints of Bullying and Harassment at Work](#)
 - be prepared to provide full and specific details of their complaint and why they consider it to fall within the definition of unacceptable behaviour. A formal investigation may not be sanctioned if there are insufficient grounds for doing so or if it is considered that the matter can be more appropriately dealt with through an alternative intervention/informal resolution.
 - be prepared to cooperate in any mediation or other informal resolution process where it is agreed that this may offer a realistic option for resolving the matter.
 - maintain confidentiality at all times in relation to the matter.

Responding to Complaints

- 3.5 Employees who are the subject of a complaint must:
- cooperate in any formal investigation that may be necessary in dealing with the complaint subject to the council ensuring that there is even handed treatment of the parties involved with no pre-judgement of the matter whilst this stage of the process is being undertaken.
 - be prepared to review their own behaviour and actions with a view to understanding the impact it may be having on others
 - be prepared to cooperate in any mediation or other informal resolution process where it is agreed that this may offer a realistic option for resolving the matter
 - maintain confidentiality at all times in relation to the matter.

Malicious Complaints

- 3.6 All complaints will be taken seriously. However, if after investigation any complaint is found to have been made maliciously, this will be viewed as a very serious matter and may result in disciplinary action being taken against the complainant.

4. RESPONSIBILITIES OF THE COUNCIL

- 4.1 The council is legally responsible for the actions of its employees carried out in the course of their employment.

- 4.2 Managers have a responsibility to uphold and promote the standards set out in this Code of Practice by ensuring that they treat their staff fairly and with dignity and respect. In particular they should ensure that:

- an atmosphere of tolerance and respect in the workplace is encouraged
- they lead by example through a fair and open management style
- all employees for whom they have responsibility, are aware of and understand the expected standards behaviour set out within this Code and know how to raise a complaint under the [Policy and Procedure on Dealing with Complaints of Bullying and Harassment at Work](#) where appropriate to do so
- they monitor the working relationships of team members and take early action to address any behaviour which may cause offence or distress.
- all parties involved in a complaint of unacceptable behaviour are treated in an even handed manner and no prejudgment or presumption of guilt is made pending the conclusion of a formal or informal resolution process.

5. DEFINING UNACCEPTABLE BEHAVIOUR

- 5.1 Although there is comprehensive legislation covering discrimination on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation there are many other aspects of behaviour at work which are equally unacceptable and potentially damaging to the morale, dignity, health and, ultimately, to the work performance of employees.

- 5.2 Harassment is 'unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the individual'. Harassment can consist of many types of behaviour that generally fall into three areas: verbal, non-verbal and physical.

- 5.3 'Verbal' would typically consist of unwelcome, offensive or embarrassing remarks, comments or innuendoes. The role language plays in harassment is vital. The insensitive use of words and the way that they are said can constitute harassment. Similarly, the inappropriate use of humour can lead to incidents of harassment. It is important to be aware of the effects of language on individuals and on groups of people and to use words carefully and sensitively.

- 5.4 'Non-verbal' includes the display and distribution of offensive materials typically through pictures and written materials. This also includes the use of email, social media, mobile phones and other electronic devices in accordance with the council's [Internet, Social Media and Email Policy](#).
- 5.5 'Physical' involves physically abusing or intimidating others. Unnecessary touching, pinching or brushing against bodies can easily escalate into violence and assault (physical and sexual).
- 5.6 If there is any doubt about whether certain behaviour is acceptable, the following questions may provide some useful points of reference:
- Would you say or do this in front of your partner/child/parents?
 - Would you alter your behaviour if you knew you were being observed?
 - Would you like to see the behaviour you have displayed in the local paper?
 - Would you like a member of your family to be on the receiving end of the same behaviour you had displayed to someone else?
 - Does it need to be said or done?
- 5.7 Protection against discrimination and harassment on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation is provided in legislation. Consequently if a person is harassed for a reason which relates to any of those characteristics resulting in less favourable treatment or suffers a detriment, then this would constitute unlawful discrimination.
- 5.8 It is essential to remember that harassment is measured by the effect the unwelcome behaviour has on the individual at the receiving end of the behaviour rather than the intent of the person displaying the behaviour. It is for each individual to determine the acceptability or otherwise of behaviour directed at them.
- 5.9 Although unlike harassment, bullying is not specifically defined in law, ACAS provide the following working definition:
- 'Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient.'*
- 5.10 To assist employees in determining whether behaviour directed at them falls within the definition of 'unacceptable' as set out in this Code of Practice, and if so, the possible courses of action open to them, an Employee Checklist is provided in Appendix 1.

6. EXAMPLES OF UNACCEPTABLE BEHAVIOUR

Sexual Harassment

6.1 Sexual harassment is defined as;

“Unwanted conduct of a sexual nature or other conduct based on sex affecting the dignity of women and men at work” (European Community Code of Practice).

6.2 Sexual harassment may include any or all of the following types of unwelcome or uninvited behaviour:-

- unnecessary and unwanted physical contact;
- unwanted sexual attention or advances;
- suggestions that sexual favours may result in career advancement or some other employment benefit;
- suggestion that refusal of any advances may result in some form of detriment;
- suggestive remark, innuendoes, jokes or language;
- insults or ridicule of a sexual nature including derogatory reference to a person's sexuality;
- display or circulation of sexually offensive material;
- derogatory or offensive remarks concerning an employee's dress or appearance;
- the display or circulation of sexually offensive material including inappropriate use of e-mail, social media and the Internet;
- unwanted sexual attention or advances including continued suggestions for social activity outside the workplace after it has been made clear that such suggestions are unwelcome.

6.3 The essential characteristic of sexual harassment is that it is unwanted by the recipient. Sexual attention becomes sexual harassment if it is persisted in once it has been made clear that it is regarded by the recipient as unwelcome although it is emphasised that a single incident can constitute sexual harassment if sufficiently serious. It is the unwanted nature of the conduct which distinguishes sexual harassment from behaviour between employees which is welcome, mutual and appropriate in a working environment.

6.4 Sexual harassment is offensive and unacceptable behaviour that cannot be condoned or tolerated. Such harassment may constitute less favourable treatment on the grounds of sex under the terms of national or European legislation.

Racial Harassment

6.5 Racial harassment can be defined as;

‘Conduct of a racial nature, or other conduct based on race affecting the dignity of men and women at work’ (EC Code on Race Relations).

6.6 Racial harassment in the workplace involves hostile or offensive behaviour towards individual groups on the grounds of their race that includes colour, nationality, ethnic or national origin. This includes such behaviour as:-

- verbal abuse including mimicking speech;
- the expression of racist views;

- racist jokes, remarks or banter;
- racist graffiti;
- the display or circulation of racially offensive written material or images including inappropriate use of e-mail and the Internet;
- excluding individuals from conversations or social events at work because of their race;
- mocking styles of dress;
- threatening behaviour;
- damage to property;
- physical violence.

6.7 Racial harassment is a humiliating and degrading experience for the victim and is considered to be unacceptable behaviour in any form. It is recognised that racial harassment may constitute unlawful behaviour under the Equality Act and as such all appropriate measures will be taken to prevent such behaviour and to deal with such behaviour if it occurs within the course of employment.

6.8 Managers and supervisors should also be aware that behavioural problems, poor performance or absenteeism may be due to harassment problems that an employee is experiencing.

Disability Harassment

6.9 Harassment associated with disability may be defined as;

“Undignified treatment, ridicule or exclusion of people with disabilities including people with HIV or AIDS or people with a mental disability.”

6.10 Examples of behaviour, which may be deemed to constitute harassment, may include:

- physical or verbal abuse or intimidation
- mimicking speech or speech impairment;
- mimicking physical impairment;
- making derogatory or offensive jokes or remarks relating to the person’s disability;
- excluding an individual from conversations or social events at work due to their disability.
- asking intimate or inappropriate questions about a person’s disability.

Harassment on the Grounds of Age

6.11 Harassment on the grounds of age involves ridiculing or demeaning behaviour focused towards people because of their age, regarding them as too old or too young, or making assumptions about lifestyle based on perceived age.

6.12 Examples of behaviour, which may be deemed to constitute harassment may include:

- physical or verbal abuse or intimidation;
- jokes or ridicule based on a person’s age;
- questioning ability due to a person’s age;

- patronising comments;
- excluding an individual from conversations or social events at work due to their age;
- making assumptions about lifestyle/interests;
- not providing training/development opportunities;
- pressure to retire.

Harassment on the Grounds of Religion or Belief

6.13 Harassment on the grounds of religion or belief includes words, actions or other conduct which ridicules, intimidates or threatens individuals because of their religion or belief and which affects the dignity or wellbeing of the individual.

6.14 Examples of behaviour, which may be deemed to constitute harassment may include:

- derogatory comments or 'nicknames';
- stereotyping a particular religion or belief;
- verbal threats;
- jokes based on religious belief based stereotypes;
- invasive and/or inappropriate questions about religion or belief;
- arranging meetings/events that may exclude people on religious observance grounds;
- arranging team lunches during periods of fasting or religious occasions;
- displaying religions symbols/emblems which may be offensive to others;
- excluding an individual from conversations or social events at work due to their religion or belief;
- inappropriately enforcing a dress code which may not accommodate religious dress;
- judgements about a person's ability or attitude based on their religion or belief;
- making assumptions about lifestyle/interests;
- physical attacks;
- inappropriate touching of religious garments or wear;
- not respecting personal space as it relates to religion or belief.

Harassment on the Grounds of Sexual Orientation or Gender Identity

6.15 Harassment on the grounds of sexual orientation or gender identity includes words, actions or other conduct which ridicules, intimidates or threatens individuals because of their perceived or actual sexual orientation, gender identity or that of their family or friends and which affects the dignity or well being of the individual.

6.16 Examples of behaviour, which may be deemed to constitute harassment may include:

- verbal abuse or threats;
- making derogatory or offensive remarks or jokes relating to the person's sexuality or gender identity;
- stereotyping;
- openly expressing the view that gay, transgender or those with another gender identity are objectionable;

- telling someone else about a person's sexuality or gender identity without his or her consent;
- directly insulting someone who is gay, transgender or another gender identity;
- not participating in social activities with someone because they are gay, transgender or another gender identity;
- objecting to people being open about their sexual orientation or gender identity on the grounds that it should be a private matter;
- objecting to people wearing items of jewellery, for example, a rainbow flag badge, that might indicate their sexual orientation or gender identity to others;
- speculating about a person's sexuality because for example 'they look gay';
- physical assault.

Bullying and Intimidation

6.17 Whilst many forms of behaviour consist of conduct that the recipient finds offensive and is based on that person's personal characteristics, a more general form of harassment can take place which is not based on any one aspect of the person concerned. For example, 'bullying' may involve personal characteristics or focus more on the individual's personality or ability to do the job.

6.18 Examples of bullying behaviour in the workplace include:

- shouting at a colleague;
- persistent negative attacks on a colleague's personal or professional performance, ridiculing or demeaning them especially in front of others;
- criticising a colleague in front of others or sharing information about them with others who do not need to know;
- spreading malicious rumours/making malicious allegations particularly on the grounds of sex, race, disability, sexual orientation, gender identity, religion or belief or age;
- persistently setting objectives with impossible deadlines or unachievable tasks;
- removing and replacing areas of responsibility with menial or trivial tasks;
- undervaluing a colleague's contribution;
- placing unreasonable demands on and/or over monitoring a colleague's performance;
- withholding information with the intent of deliberately affecting a colleague's performance;
- excluding colleagues by communicating solely with third parties to isolate another;
- conduct that ridicules or humiliates an individual, especially in front of their colleagues.

Victimisation

6.19 As an employer, the council will not tolerate any form of victimisation. Victimisation occurs when a person is treated less favourably because they have asserted their rights (or are believed to have done so) under the council's [Policy and Procedure on Dealing with Complaints of Bullying and Harassment at Work](#). This includes both those bringing claims under the policy and any others acting as witnesses in any investigation of a complaint. Employees will be protected from victimisation for bringing a complaint, assisting in an investigation or pursuing rights under any other employment policy or procedure or under employment law. Protection from

victimisation does not however override an employee's obligations under paragraph 3.6 of this Code in relation to malicious complaints.

7. EXPECTED STANDARDS OF BEHAVIOUR IN THE WORKPLACE

- 7.1 Employees are expected to be aware of and comply with all council's employment policies in the performance of their duties.
- 7.2 Whilst holding their own personal values, beliefs and views, employees are also expected to demonstrate tolerance and understanding of those of other fellow employees which may be different to theirs. In this regard, employees should be guided in particular by the council's [Policy on Equality in Employment and Service Provision](#) and the provisions of this Code.
- 7.3 In all dealings, employees should treat each other with dignity and respect and take care to avoid actions and words that may be construed as being hurtful or offensive.
- 7.4 There will be circumstances when difficult matters have to be discussed and managers and other employees must ensure that at all times these are dealt with in a business-like and respectful manner.

8. EXCLUSIONS FROM THE CODE

General

- 8.1 Whilst a key aim of this Code and the accompanying [Policy and Procedure on Dealing with Complaints of Bullying and Harassment at Work](#), is to provide protection from unacceptable behaviour in the workplace, employees are also expected to adopt a realistic, tolerant and inclusive approach in their working relationships with fellow employees. It is recognised however, that within a diverse workforce personality clashes and differences inevitably arise that do not necessarily fall within the category of bullying or harassment. In these particular situations the council reserves the right to manage those issues by a more appropriate means (for example through mediation) subject to the circumstances being discussed with the relevant trade union representative or other appropriate person.

Performance Management

- 8.2 Legitimate, justifiable, and appropriately conducted criticism of an employee's workplace behaviour or job performance does not constitute bullying or harassment. Employees must therefore be prepared to accept constructive criticism of their work performance without becoming overly defensive or sensitive to the process.
- 8.3 Managers are responsible for fostering and maintaining good and effective working relationships with their staff and for creating an environment of mutual trust in which performance is managed through open and regular communication. In this regard it is essential that feedback to staff is constructive and provides the opportunity to jointly agree measures to address identified performance problems and/or progress personal development plans and career aspirations.

8.4 Managers should therefore ensure that feedback is:

- specific and based on examples of particular occasions and events;
- provided on an ongoing basis as and when relevant issues arise;
- based on performance and not on the individual as a person;
- as objective as possible;
- not targeted only at areas requiring improvement but also highlighting aspects of good or exemplary performance;
- conveyed in respectful manner.

8.5 Managers should ensure performance management arrangements are applied consistently and equitably within and across employee groups.

Grievances and Other Workplace Complaints

8.6 Where other issues of disagreement or dispute are raised that are not regarded as appropriate for addressing through the [Policy and Procedure on Dealing with Complaints of Bullying and Harassment at Work](#), the council reserves the right to direct employees to the use of the [Procedure for Hearing Employee Grievances \(Non-Teaching Staff\)](#) or [Procedure for Hearing Employee Grievances \(Teachers\)](#) or manage the matter in an alternative manner. Again, where appropriate, the circumstances will be discussed with the relevant trade union representative or other appropriate person.

9. UNACCEPTABLE BEHAVIOUR AND DISCIPLINARY ACTION

9.1 Employees must comply with the standards set out within this Code, the [Code of Conduct for Employees](#), the [Disciplinary Code](#) and all other related council employment policies and procedures.

9.2 Serious unacceptable behaviour including bullying and harassment may constitute gross misconduct and where substantiated will normally result in dismissal.

UNACCEPTABLE BEHAVIOUR - EMPLOYEE CHECKLIST

If you are in any doubt as to whether an incident constitutes unacceptable behaviour, this Checklist may help you to assess the situation and consider and how you might address it.

What is the nature of the behaviour?

- Does the behaviour fall into one of the categories or examples outlined in the [Code of Practice for Promoting Appropriate Working Relationships and Behaviours](#)?
- Is the behaviour persistent?
- Do you feel you have been singled out by the person(s)?
- Is the behaviour a single serious incident?
- Could the behaviour be construed as part and parcel of managing performance?
- Could the behaviour be the result of a misunderstanding or personality difference?
- Do you think the matter could be resolved informally?

What are the consequences of the behaviour?

- Has the behaviour left you feeling harassed, disempowered, lacking in confidence?
- Has the behaviour affected your health?
- What effect do you think this behaviour would have on someone else?
- Would the behaviour set a bad example to others?

Having answered the above questions, you may wish to consider:

- The seriousness of the single incident/multiple incidents.
- Documenting/keeping a record of multiple incidents.
- Documenting/keeping a record of witnesses to incidents.
- Keeping documents/evidence of inappropriate behaviour/conduct
- Raising the incident with the perpetrator
- Seeking advice from your line manager, the manager of the perpetrator, Human Resources or a trade union representative.