



LANGPORT TOWN COUNCIL

Employee Handbook

Approved by Council 28 April 2015 Minute #6251

Contents

1. Introduction
2. Procedures
 - 2.1. Sick Pay
 - 2.2. Disciplinary Procedure
 - 2.3. Grievance Procedure
 - 2.4. Annual Leave
 - 2.5. Equal Opportunities Policy
 - 2.6. Harassment and Dignity at Work Policy
 - 2.7. Data Protection Policy

1. Introduction

Welcome to Langport Town Council Employee Handbook

Our aim in producing this document is to create a one-stop information point where you will be able to access all the information you are likely to need in relation to your employment with us. The Handbook and corresponding policy documents form part of your contract of employment with Langport Town Council.

This Handbook gives an overview of the terms and conditions of your employment, and outlines what you can expect from us as your employer. In return we ask you for a high degree of commitment, dedication and loyalty to help us achieve the aims and objectives of the Council.

Over the coming months we will further improve this Handbook.

We hope you find this a useful guide during your employment with us. However if you are unable to find the answer to your question here, please feel free to contact your line manager who will certainly be able to find an answer for you.

As an employee of Langport Town Council you will have received a Contract of Employment setting out specific terms and conditions of service as they relate to your post (if you have not received this, you will do so within 8 weeks of your commencement date). This includes details of:

- the names of the employer and the employee;
- the date when the employment (and the period of continuous employment) began;
- remuneration and the intervals at which it is to be paid;
- hours of work;
- holiday entitlement;
- entitlement to sick leave, including any entitlement to sick pay;
- pensions and pension schemes;
- the entitlement of employer and employee to notice of termination;
- job title (or a brief job description);
- where it is not permanent, the period for which the employment is expected to continue or, if it is for a fixed term, the date when it is to end;
- either the place of work or, if required to work in more than one location, an indication of this and of the employer's address; and
- details of the existence of any relevant collective agreements which directly affect the terms and conditions of your employment.

Further detailed policies and procedures which may not be mentioned as part of this document, but which (for example, by virtue of statute) still form part of your conditions of employment with us, can be accessed through your line manager. This handbook also summarises the main terms of your employment.

Langport Town Council reserves the right to change its terms & conditions and employment policies from time to time. You will be notified at the earliest opportunity of these changes by way of general notice to all employees affected by the change. Where a contractual change in your terms and conditions of employment results in a change to your written statement of particulars of employment, we will give you a written statement of the change at the earliest opportunity.

2. Procedures

2.1 Sick Pay

All employees (subject to certain excluded categories) are entitled to receive statutory sick pay (SSP) from their employer provided they meet certain criteria:

- They must be an employee; i.e. doesn't apply to the Council's contractors
- They must be too ill to undertake their work on any day for which they claim SSP;
- They must be absent from work for at least 4 consecutive days (including Sundays and Bank Holidays). This period of 4 consecutive days is known as a period of incapacity for work (PIW).

They must supply evidence of their incapacity. For the first 7 days of absence this can be in the form of a self-certificate. For periods of incapacity of 8 days or more, this evidence must be in the form of a GP Fit Note.

If an employee is off for two periods which are separated by 8 weeks (56 days) or less, then the employee does not need to be absent for 4 consecutive days in the second period of absence in order to receive SSP.

It is not only permanent employees who may be able to receive SSP. Someone who is employed on a short-term fixed-term contract can also receive SSP, even if the contract is for a period of less than 3 months. Someone who also undertakes work for the Council via an agency is entitled to be paid SSP by the Council. For the purposes of SSP, agency workers are classed as employees. The limit of entitlement to SSP is 28 weeks.

The current rate of SSP is £85.85. The maximum payable over 28 weeks is therefore £2,403.80. SSP will initially be paid directly to the employee through payroll, but the Council may be able to recover some of the SSP if the amount paid is more than 13% of the total Class 1 NICs the Council has paid in an income tax month. In this case, the Council will be able to recover the excess from HMRC.

Fit Notes

From 6 April 2010, employees must evidence sickness of 7 days or more with a 'Fit Note'. In addition to declaring that someone is unfit for work, a GP is now able to declare that a patient is:

1. Fit for some work, or
2. Fit for work taking account of changes that can be made to an employee's role or workplace to facilitate a return to work.

If an employee is given a Fit Note which advises changes or adjustments to an employee's role or workplace, these may include;

- a phased return to work;
- altered hours;
- amended duties; or
- workplace adaptations.

For example, a GP may recommend a phased return to work where the employee has been absent from work for a long period of time and needs to become used to the working environment over a staggered period.

Again, the Council may have had an employee who has been absent for reasons of stress or anxiety which may be exacerbated by travelling through rush hour traffic. Therefore, the GP may suggest that the employee returns to work but works hours which avoid peak time traffic.

Sickness absence due to a physical condition may prompt a GP to recommend amended duties. For example, a cleaner may be unable to wash windows for a period following a shoulder operation but can still a vacuum cleaner..

An example of a workplace adaptation may be moving the employee's workstation to the ground floor following back problems and difficulty in climbing stairs.

The Council is not obliged to carry out the recommendations outlined by a GP on a Fit Note, however, if the Fit Note states that the employee is only fit to work provided the adjustments are in place, unless these adjustments are made, the employee will be deemed unfit to work and will therefore remain off sick and therefore remain entitled to receive sick pay. Should an employee return on a phased basis, it should also be borne in mind whether to pay the employee for the hours worked or to pay full contractual pay to encourage a quicker return to work.

Any medical capability dismissal which the Council undertakes without having first attempted to make adjustments and facilitate an employee's return to work may be deemed unfair and the employee may also have a claim for disability discrimination so recommended adjustments should always be taken into consideration.

National Agreement on Pay and Conditions of Service ('Green Book' Provisions)

Langport Town Council abides by the Green Book provisions, therefore an employee will be entitled to sick pay above statutory sick pay provisions.

The intention of Green Book provisions is to maintain normal pay during defined periods of absence due to sickness, disease, accident or assault.

Under Green Book provisions, absence caused by normal sickness is separate from absence through industrial disease, accident or assault arising out of or in the course of employment with a local authority, so absence relating to normal sickness is not aggregated with periods of absence through industrial disease, accident or assault.

Under Green Book provisions, periods of absence in respect of normal sickness, such as flu, as opposed to periods of absence caused by industrial disease, accident or assault arising out of or in the course of employment, should not be offset against the other for the purposes of calculating entitlements under the scheme.

Under the Green Book sickness scheme, employees are entitled to receive sick pay for the following periods:

Service Period	Full Pay	50% Pay
During 1st Year	1month	2 months (after 4 months service)
During 2nd Year	2months	2 months
During 3rd Year	4 months	4 months
During Years 4 and 5	5 months	5 months
After 5 Years	6 months	6 months

A local authority has the discretion to extend the period of sick pay in exceptional circumstances. Any entitlement to sick pay under this scheme will be on a rolling twelve month period.

If an employee is entitled to full pay, then this will be inclusive of SSP. However, if an employee is entitled to a period of half pay, then this half pay will be in addition to SSP provided the total payable to the employee does not exceed normal pay.

If an employee is absent due to contact with an infectious disease, assault or injury arising out of or in the course of employment he or she is entitled to receive normal pay and any absence due to this should not be taken into account under the scheme.

2.2 Disciplinary Procedure

PURPOSE AND SCOPE

This procedure is designed to help and encourage all Council employees to achieve and maintain high standards of conduct whilst at work or representing the Council. The aim is to ensure consistent and fair treatment for all. This procedure is prepared in accordance with the dismissal and dispute resolution procedures as set out in the Employment Act 2008 and the ACAS Code of Practice APR 2009

i. PRINCIPLES

- a) No disciplinary action will be taken against an employee until the case has been fully investigated.
- b) At every stage in the procedure the employee will be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case before any decision is made.
- c) At all formal stages the employee will have the right to be accompanied by a trade union representative or work colleague during the disciplinary interview.
- d) No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty of dismissal without notice or payment in lieu of notice may be applied.
- e) An employee will have the right to appeal against any disciplinary penalty imposed.
- f) The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.

ii. THE PROCEDURE FOR MISCONDUCT and GROSS MISCONDUCT

The following list provides examples of **misconduct** which will normally give rise to formal disciplinary action:

- Unauthorised absence from work
- Persistent short-term and/or frequent absences from work without a medical reason
- Lateness for work or poor time keeping
- Inappropriate standard of dress
- Minor breaches of Council rules or procedures
- Failure to perform your job to the standard expected or in line with your job description/objectives
- Time wasting
- Disruptive behaviour
- Misuse of the Council's facilities (e.g. using Council telephones, computers, email or the internet for private purposes)
- Refusal to carry out reasonable requests or instructions
- Smoking in unauthorised areas
- Failure to follow an agreed Council policies and procedures

This list is not exhaustive and offences of a similar nature will result in disciplinary action being instigated. N.B. persistent or frequent absence on medical grounds and long term sickness absence will be dealt with using a procedure for Incapacity, which is described in the Absence Policy.

The following list provides examples of offences which are normally regarded as **gross misconduct**:

- Theft, fraud, deliberate falsification of records, or other acts of dishonesty
- Fighting, assault on another person
- Deliberate damage to property of the Council, its workers or Councillors
- Gross incompetence in the conduct of work
- Gross negligence which results in the Council or employees being put at risk.
- Being under the influence of illegal drugs or excessive alcohol
- Acts of incitement towards or actual acts of discrimination, harassment or victimisation including on the grounds of sex, race, colour, ethnic origin, disability, sexual orientation, age, religion or belief
- Serious acts of insubordination
- Serious breach of duty to keep information of the Council, its service providers and its clients confidential
- Unauthorised entry to computer records
- Serious breach of the Council's agreed policies
- Any action, whether committed on or off the premises, that is likely to or does bring the Council into disrepute
- Serious negligence which causes or might cause significant loss, damage or injury
- Accepting bribes or incentive payments from suppliers
- Unauthorised use of Council or Town Trust funds or credit
- Working with an external agency to provide information which would be detrimental to and cause commercial risk to the Council.

This list is not exhaustive and other offences of a similar gravity will result in disciplinary action being instigated at Gross Misconduct level which carries a potential penalty of dismissal. Gross Misconduct is generally any conduct which places extreme pressure on the mutual trust which exists in an employment relationship.

iii. INFORMAL ACTION

Minor misconduct will be dealt with informally usually in a confidential one-to-one meeting between the employee and line manager. In the case of the Clerk being the individual against whom there is a complaint or allegation the matter should be handled discreetly by members of the Employment and Finance Committee and involve an informal meeting initially. However, where the matter is more serious or informal action has not brought about the necessary improvement the following procedure will be used:

iv. FORMAL ACTION

The level of warning you may receive for misconduct/gross misconduct will depend on how serious the Council considers the alleged actions to be and your previous conduct in all the circumstances. In the event of alleged gross misconduct the formal process may commence at Stage 4 –see 3.4 below.

v. Disciplinary Letters

If there is a concern about an employee's conduct or behaviour then a letter will be given to the employee advising him/her of the allegation(s) and reasons why this is unacceptable. The letter should invite the employee to attend a meeting at which the alleged misconduct will be discussed and will inform the employee of their right to be accompanied to the meeting. The letter will specify

at which stage the disciplinary procedure is being invoked (see 4 stages below) and if invoked at Stage 4 for Gross Misconduct, the letter will warn that a potential outcome could be dismissal. The time, date and venue of the meeting will also be advised. Any documents to be produced at the meeting will also be provided.

vi. Disciplinary Meetings

The time and location of a disciplinary meeting should be agreed with the employee and it should be held in a private location with no interruptions. This will normally be without undue delay but allowing the employee to prepare their case e.g. within 5 days of the letter being sent, where practically possible. At the meeting the manager (or in the case of the Clerk being disciplined, the Chairman of the hearing panel) will state the complaint against the employee and go through the evidence which has been gathered. The employee will also be allowed to ask questions, present evidence and call witnesses if advance notice has been given that they will do so.

If the employee is unable to attend the meeting due to unforeseeable reasons out of their control (e.g. illness, Trade Union Representative being unable to attend) then the Council will reasonably rearrange the meeting. However, if the employee fails to attend the meeting without good reason the meeting can be held in the employee's absence.

vii. OUTCOMES AND PENALTIES

Stage 1 - Oral Warning

In the instance of a first complaint that conduct does not meet acceptable standards, the employee will normally be given a formal ORAL WARNING. He or she will be advised of;

- the reason for the warning,
- that it is the first stage of the disciplinary procedure,
- the improvement that is required and the timescales for achieving this improvement,
- together with a review date and any support available (where applicable) and
- his or her right of appeal.

A brief note of the oral warning will be kept but it will be spent after 6 months, subject to satisfactory conduct.

Stage 2 - Written Warning

If the offence is a serious one, or if further to previous formal disciplinary action, a WRITTEN WARNING will be given to the employee by the Line Manager, (or in the case of the Clerk, the Chairman of the hearing panel). This will give details of the complaint, the improvement required and the timescale. It will warn that action under Stage 3 will be considered if there is no satisfactory improvement and will advise of the right of appeal. A copy of this written warning will be kept on file but it will be disregarded for disciplinary purposes after 12 months subject to satisfactory conduct.

Stage 3 – Final Written Warning

If there is still a failure to improve and conduct or performance is still unsatisfactory, or the misconduct is sufficiently serious, a FINAL WRITTEN WARNING will normally be given to the employee. This will give details of the complaint, will warn that dismissal will result if there is no satisfactory improvement and will advise of the right of appeal. A copy of this final written warning will be kept by the Line Manager (or in the case of the Clerk being disciplined by the Chairman of the Hearing Panel) but it will be spent after 12 months (in exceptional cases the period may be longer) subject to satisfactory conduct.

Stage 4 – Dismissal or other sanctions

If conduct is still unsatisfactory and the employee still fails to reach the prescribed standards, or where the Council reasonably believes Gross Misconduct has occurred, DISMISSAL may result. Only the appropriately convened hearing panel can take the decision to dismiss an employee. The employee will be given a written statement of allegations against him/her, invited to a meeting and then be notified in writing of the reasons for the decision taken at the hearing. Penalties at this stage may include dismissal with notice or summary dismissal (i.e. without any notice), Final Written Warning with/without demotion, loss of pay or loss of seniority. If dismissal is the outcome, the employee will be advised of the date on which employment will terminate. In all cases the employee has a right of appeal.

Very exceptionally, if an offence of Gross Misconduct is extremely serious an employee can be dismissed immediately without a meeting. In this situation a letter setting out reasons for dismissal would be sent to the employee offering the opportunity for an appeal hearing.

viii. SUSPENSION

If you are accused of an act of gross misconduct, you may be suspended from work on full pay while the Council investigates the alleged offence. Only the appropriately convened committee has the power to suspend. This enables a swift and thorough investigation to occur. Whilst suspended pending disciplinary investigation regular contact with a nominated person at the Council will be maintained although access to premises, equipment or systems may be denied. The Investigator who compiles evidence for the disciplinary hearing must play no part in the subsequent decision-making to ensure impartiality. Councils need to consider the implications of such arrangements on its hearing and appeal panel plans early on in the disciplinary process.

ix. APPEALS

The Appeals stage of the disciplinary process is part of the Code of Practice to which an employee has a right. It can be exercised after any of the stages of disciplinary action for Misconduct/Poor Performance or Gross Misconduct.

An employee who wishes to appeal against a disciplinary decision should inform the Chairman of the Council (or Chairman of the relevant Committee) within five working days, in writing and giving reasons for the appeal. An Appeal may be raised if:

- The employee thinks the finding or penalty is unfair
- New evidence has come to light
- The employee thinks that the procedure was not applied properly

Where possible the Appeal will be heard by a separate panel of elected members who have not been involved in the original disciplinary hearing, who will view the evidence with impartiality. The employee will have the right to be accompanied by a colleague or accredited Trade Union official or lay member at the appeal hearing. The outcome of the appeal and reasons for it will be advised to the employee as soon as possible after the meeting and be confirmed in writing. At the Appeal hearing any disciplinary penalty imposed will be reviewed but it cannot be increased. The decision taken at the Appeal hearing will be final.

x. THE RIGHT TO BE ACCOMPANIED

At each formal stage of disciplinary interview or grievance procedure an employee has the right to be accompanied and can make a reasonable request for such a person to accompany them. An employee can ask any other employee or a trade union representative or an appropriately accredited official employed by a trade union to accompany them, to give support and help them prepare for the disciplinary interview. This right is enshrined in the 1999 Employment Relations Act. As this is an internal process there is no provision to have any external person accompany or represent an employee e.g. partner, parent, solicitor, Councillor etc. the companion can address the hearing, put and sum up the employee's case, respond on behalf of the worker to any views expressed at the meeting, confer with the employee. The companion cannot however answer questions on the employee's behalf or address the hearing if the employee does not wish him/her to or prevent the employee explaining their case.

xi. HEARING PANELS

The SLCC advise that Councils establish hearing panels to hear disciplinary and grievance hearings on an annual basis so that if a dispute does arise in the workplace the elected members involved are already trained and briefed on their duties as a hearing or appeal panel member. In situations where individual members are implicated in the dispute or have undertaken an investigatory role then they will need to be substituted as panel members.

xii. NOTE-TAKING

It is highly recommended that a note-taker be provided to every meeting/hearing which arises as a result of a disciplinary process as Employment Tribunals are particularly keen to view contemporaneous notes of events which have led to an employment dispute. Councils will need to give this requirement careful consideration in order to respect employee confidentiality.

xiii. GRIEVANCES RAISED DURING DISCIPLINARIES

In some circumstances when a disciplinary process has commenced an employee chooses to exercise his/her right to raise an internal grievance about the employment relationship with the Council or individual Members. The SLCC recommends, in line with ACAS advice, that disciplinary matters are placed on hold until grievances have been aired and actions towards a resolution have been progressed. In exceptional circumstances it is pragmatic to deal with the two disputes concurrently but SLCC would advise caution and specialist advice should be sought if this arises.

xiv. CRIMINAL CHARGES OR CONVICTIONS

If an employee is charged with or convicted of a criminal offence this does not automatically give rise to a disciplinary situation. Consideration needs to be given to how a charge or conviction may affect an employee's ability to undertake his or her job duties and their relationships with the Councillors, colleagues, subordinates or the public.

GETTING IT WRONG

Failure to follow the ACAS Code of Practice (available at www.acas.org.uk) can lead to an Employment Tribunal awarding an uplift of an award against the Council of up to 25%. Tribunals dealing with unfair dismissal claims are particularly interested in whether the employer followed a procedure and whether the employer acted fairly and reasonably. One way in which to avoid such a penalty is to have an agreed procedure, communicate that procedure to staff and Members, revisit and review the procedure regularly and have some training for those who are expected to operate the procedure.

2.3 Grievance Procedure

PURPOSE AND SCOPE

It is the policy of the Council to give employees the opportunity to air and seek redress for any individual employment grievance which they may have. Grievances may be any concerns, problems or complaints employees wish to raise with the Council. This document describes the procedure which aims to facilitate a speedy, fair and consistent solution to an individual employee's employment grievance. This procedure is produced in line with the ACAS Code of Practice 2009 as set out in the Employment Act 2008.

i. PRINCIPLES

- a. At every stage in the procedure the employee will be given the opportunity to state his or her case before any decision is made.
- b. Grievances will be dealt with promptly and consistently.
- c. At all formal stages the employee will have the right to be accompanied by a work colleague or trade union representative during the Grievance Hearing.
- d. An employee will have the right to appeal against any outcome of a Grievance Hearing.
- e. At no time will an employee be penalised or victimised for having raised a Grievance against the Council

ii. PROCEDURE

Wherever possible, any grievance should be raised informally with the employee's line manager, or if this is inappropriate with the next level of management. In the case of the Clerk to the Council raising a grievance this should be directed to the Chairman of the Council unless the complaint is about the Chairman, in which case the Chairman of the Employment and Finance Committee should be identified to handle the Clerk's concerns. The recipient of the grievance from the Clerk should share the grievance with the relevant committee established to handle employment matters and the issues should be treated with discretion and confidentiality at all times.

- a. **Written Statement:** If the employee does not consider it appropriate to raise the grievance informally, or if requested by the person the employee spoke to informally, then the employee should submit a formal grievance in writing to their line manager, or if this is inappropriate, to the next level of management.
- b. **Meeting or Hearing:** Generally, within a reasonable period of time e.g. five working days of receipt of a written complaint, the line manager or Chairman of Employment and Finance Committee (referred to hereafter as the 'Hearing Manager') will arrange a meeting with the employee. The Hearing Manager will endeavour to make the meeting arrangements mutually convenient and will arrange a confidential location, free from interruptions. The manager will investigate the substance of the complaint and hear submissions from the employee concerned together with such other submissions or evidence as s/he shall consider appropriate and take such steps as s/he shall consider necessary to resolve the issue raised. It may be necessary to adjourn the meeting in order for an investigation to take place. Careful consideration of the evidence and the necessary steps required to resolve the problems will be given to the grievance. The employee may call witnesses by prior arrangement with the panel. There is no right for a Councillor or employee implicated in an employee's grievance to cross examine the aggrieved during a grievance hearing but the panel may wish to make its own investigations through interviewing these individuals and/or

other witnesses separately. The Panel may ask the employee what he or she would like to happen as a result of raising the grievance and bear this in mind when preparing the response.

- c. **Response:** The Hearing Manager will advise the decision to the employee in writing and, where appropriate, include an action plan to assist in the resolution of the problem. Councils which handle internal disputes effectively generally consider the options and costs in a timely fashion, then agree and publicise the workable solutions, monitor, review and learn from the experience. There may be some value in exploring mediation as a way in which to resolve differences between two parties. The SLCC can advise on approaches and bodies which may be able to assist (nb external organisations may levy a fee for such services).
- d. **Appeal:** If the employee is dissatisfied with the decision of the Hearing Manager on his/her complaint, s/he may appeal against the decision to the Chairman or a Member of the Employment and Finance Committee by written notice within five working days of the decision. An Appeal may be raised if:
 - The employee thinks the finding, or action plan, is unfair
 - New evidence has come to light
 - The employee thinks that the procedure was not applied properly

On receipt of the appeal the Council's Appeals Panel shall arrange to meet and consult with the employee, the line manager or Members concerned and any other persons, as s/he shall consider appropriate without unreasonable delay. The Appeal Hearing Chairman shall consider the issues and shall then take all such steps, as s/he may consider necessary to resolve those issues. Where the Council's Chairman has chaired the initial grievance meeting the Vice Chairman or Chairman of another committee will hear the appeal as a hearing manager the decision of the Appeal Hearing will be final. The Council will need to ensure that the Members involved in the hearings are able to act impartially and reasonably at all times. The outcome of the appeal should be conveyed to the employee in writing in a timely manner.

iii. Bullying or Harassment:

If a grievance concerns alleged bullying or harassment the matter should be reported promptly to the employee's Line Manager, or Chairman of the Employment and Finance Committee if more appropriate, with an indication of the required action. The complaint will then be investigated and any action taken and any resolution achieved will be reported back. If the solution is not satisfactory to the complainant, the matter will be discussed further and, if appropriate, an alternative solution agreed. The decision at this stage will generally conclude the enquiry. If a further appeal or review is available the employee will be notified. As a result of an investigation into a claim of harassment disciplinary action may be instigated against any alleged perpetrators of the action or in the case of alleged perpetrators being Councillors a Code of Conduct complaint lodged by the Council through the Standards process

Refer to the Dignity at Work/Bullying and Harassment Policy for further details

iv. Right to be Accompanied

Please refer to the Disciplinary Procedure (2.2)

v. Hearing Panels

Please refer to the Disciplinary Procedure (2.2)

vi. Confidentiality:

So far as is reasonably practicable, the Council will keep any grievance or complaint of harassment confidential between the manager or Councillor investigating the grievance or complaint, the employee and the person about whom the grievance or complaint is made. If it is necessary to investigate the matter with any other employee or person, the employee will be so advised.

vii. Record Keeping:

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

viii. Grievances raised during Disciplinary

In some circumstances when a disciplinary process has commenced an employee chooses to exercise his/her right to raise an internal grievance about the employment relationship with the Council or individual Members. The SLCC recommends, in line with ACAS advice, that disciplinary matters are placed on hold until grievances have been aired and actions towards a resolution have been progressed. In exceptional circumstances it is pragmatic to deal with the two disputes concurrently but SLCC would advise caution and specialist advice should be sought if this arises.

GETTING IT WRONG

Following the repeal of the 2004 Dispute Resolution regulations employees no longer HAVE to raise a grievance before going to an employment tribunal. However, establishing a mechanism for differences and disputes to be resolved internally can often allow the employment relationship to continue. Failure to follow the ACAS Code of Practice (available at www.acas.org.uk) when dealing with grievances can lead to an Employment Tribunal awarding an uplift of an award against the Council of up to 25%. Tribunals dealing with constructive dismissal and discrimination claims are particularly interested in whether the employer followed a procedure when dealing with an internal dispute and whether the employer acted fairly and reasonably. One way in which to avoid such a penalty is to have an agreed procedure, communicate that procedure to staff and Members, revisit and review the procedure regularly and have some training for those who are expected to operate the procedure.

2.4 Annual Leave

All workers are entitled to receive paid annual leave.

Langport Town Council abides by Green Book provisions, and an employee's paid annual leave entitlement, on top of public holidays, is 21 days, rising to 25 days after 5 years of continuous service. If you are required to work Bank Holidays then you will be entitled to an extra day's holiday being add to your holiday leave allowance. Employees covered by the Green Book will also be entitled to 2 "extra statutory" days' holiday, to be taken over the Christmas period.

A part-timer's right to annual leave is a pro-rata equivalent of a full-time entitlement.

i. Accrual of annual leave

In the first year of employment, annual leave accrues at the rate of 1/12 of the annual leave entitlement on the first day of each month of that year.

If an employee's portion of entitlement includes a fraction of a day, an employer is not obliged to round up to a whole number of days; however, days cannot be rounded down.

ii. **Carry Over of Annual Leave**

Under the Working Time Regulations (WTR), an employee is not permitted to carry over annual leave from one year to the next but this causes a problem when an employee has been off work due to illness or maternity leave and has been unable to take their holidays.

Following case law from the European Court, an employee accrues annual leave whilst off sick or on maternity leave. If the employee has not taken the accrued leave by the time the holiday year ends, he or she can, despite the wording of the WTR, take the unused portion of their annual leave in the next leave year (or in some cases even the year after that).

iii. **Upon termination of employment**

Upon termination of employment, a worker is entitled to payment in lieu of untaken annual leave entitlement which accrued during the final leave year. Unless a worker's employment has been terminated, no payment in lieu of annual leave is allowable.

2.5 Equal Opportunities Policy

The law on equality has been consolidated into the Equality Act 2010, which took effect on 1 October 2010.

The law prohibits discrimination on certain grounds. To discriminate against someone means to treat them less favourably, to harass or victimise them, or to subject them to a provision, criterion or practice which puts them at a disadvantage. This is unlawful if it is on certain grounds, known as "protected characteristics". These are:

- **Age**
- **Race** (including segregation)
- **Religion or belief**
- **Sex**
- **Sexual orientation**
- **Gender reassignment**, which is protection for transsexuals, including less favourable treatment because of an absence related to reassignment compared to absence because of sickness or injury etc
- **Pregnancy and maternity**, protection from discrimination applies during pregnancy from conception to the end of the maternity leave. The protection is against discrimination because of pregnancy or maternity, or illness suffered as result of pregnancy; and discrimination because a woman is on maternity leave, or is exercising or seeking to exercise a right to take maternity leave. Discrimination on the grounds of pregnancy or maternity cannot be "justified".
- **Disability**, which is a physical or mental impairment which has (or is likely to have) a substantial effect on a person's ability to carry out day to day activities for a period of a year or more. Certain medical conditions, such as cancer, Multiple Sclerosis and HIV are a disability from the outset, whatever their impact on day-to-day activities.. Protection from discrimination covers a person who has had a disability in the past.

i. **Disability Discrimination**

In the case of disability discrimination, there is no unfavourable treatment if the "discriminator" did not know or could not reasonably have known the person had a disability. More favourable treatment of disabled persons is not unlawful discrimination against non-disabled people.

As well as the usual forms of discrimination, the Act protects people from unjustified discrimination arising in consequence of a disability, which is very broad.

There is also a duty on an employer to make 'reasonable adjustments' where a "provision, criterion or practice" puts a disabled person at a substantial disadvantage compared to non-disabled persons. Then a duty arises on the employer to take such reasonable steps as are necessary to avoid the disadvantage; for example, to remove, alter or provide means to avoid a physical feature; to provide an auxiliary aid or service; or to adjust a working pattern or role etc. The adjustment must be made at no charge to employee.

An employer must not ask and act on answers about the health of an applicant before offering work except where this is necessary for:

- establishing requirements or adjustments needed for an interview or assessment
- establishing the person's ability to carry out a function intrinsic to the work
- monitoring diversity or
- checking the person has a disability which is required for the job

ii. **Marriage and civil partnership**

It is unlawful to discriminate against a colleague or employee on the ground that they are married or in a civil partnership. As previously, there is no protection of single people.

iii. **Defences to claims of discrimination**

Certain types of discrimination (but not less favourable treatment) can be defended on the basis that they are "justified" as being a "proportionate means of achieving a legitimate aim". This means that the employer has a business need which the otherwise discriminatory act is needed to fulfil (such as a rule that only male Prison Officers can hold certain posts as the role involves searching male prisoners, or offering a higher rate of pay to a highly-qualified and experienced individual). But the defence will only apply if there is no lesser measure the employer can put in place which is not discriminatory and which has the same impact in fulfilling the business need.

Employers are liable for the discriminatory acts of their employees done in the course of their duties. There is a defence available to employers, however, who can show that they took all reasonable steps to prevent the employee from carrying out the acts of discrimination. The reasonable measures will include equalities training, having clear policies in place and consistent practices of disciplining employees for acts of discrimination etc.

iv. **Equal Pay**

A sex "equality clause" is to be read into a contract of employment under which an employee and a comparator of the opposite sex are employed where the two people are employed in equal work (like work, work rated as equivalent in a job evaluation study or work of equal value). This means the terms relating to pay or other benefits are amended to ensure the male and female have the same rights and terms.

This does not apply if the person responsible for their pay shows the difference is because of a material factor not involving sex and is a proportionate means of achieving a legitimate aim.

A similar 'sex equality rule' is implied into pension schemes so that men and women are given equal terms, and a 'maternity equality clause' takes effect during maternity leave so that a woman's pay during maternity leave in certain circumstances is increased in line with those doing equal work who are not on maternity leave.

v. **Contractual terms prohibiting discussions about pay**

Any term in a contract of employment which prevents or restricts people from discussing or disclosing details about pay is unenforceable if the purpose of the restriction is to deter an employee from finding out whether he/she may have a discrimination claim.

vi. **Those protected by equality laws**

Those protected are employees and job applicants as well as contract workers.

Discrimination and harassment is also unlawful if arises out of a relationship that used to exist. So former employees are also protected from discrimination, for example in terms of a job reference.

National Agreement on Pay and Conditions of Service ('Green Book') provisions

The Green Book refers to Equality at Part 2, paragraph 1 as follows:

"1.1 Employees will be afforded equal opportunities in employment irrespective of disability, gender, race, religion, age, sexuality, marital status, parental status, caring responsibilities and hours of work.

1.2 Local authorities will ensure that discriminatory practices are identified and removed and non-discriminatory practices introduced in all areas of employment including recruitment, training and promotion. Lawful positive action initiatives should be taken to achieve and maintain a representative workforce.

2.6 Harassment and Dignity at Work Policy

Purpose and Scope

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

This policy reflects the spirit in which the Council intends to undertake all of its business and outlines the specific procedures available to employees in order to protect them from bullying and harassment. It should be read in conjunction with the Council's policies on Grievance and Disciplinary Procedures and the Councillors' Code of Conduct.

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

i. **Definitions**

a. **Bullying**

"Bullying may be characterised as a pattern of offensive, intimidating, malicious, insulting or humiliating behaviour; an abuse of this use of power or authority which tends to undermine an individual or a group of individuals, gradually eroding their confidence and capability, which may cause them to suffer stress."

b. **Harassment** is

"unwanted conduct that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment." This usually covers, but is not limited to, harassment on the grounds of sex, marital status, sexual orientation, race, colour, nationality, ethnic origin, religion, belief, disability or age.

These definitions are derived from the ACAS guidance on the topic.

Bullying and harassment are behaviours which are unwanted by the recipient. They are generally evidenced by a pattern of conduct, rather than being related to one-off incidents.

Bullying and harassment in the workplace can lead to poor morale, low productivity and poor performance, sickness absence, mental health issues, lack of respect for others, turnover, damage to the Council's reputation and ultimately, legal proceedings against the Council and payment of legal fees and potentially unlimited compensation.

ii. **Examples**

of unacceptable behaviour are as follows; (this list is not exhaustive) Spreading malicious rumours, insulting someone, ridiculing or demeaning someone, exclusion or victimisation, unfair treatment, overbearing supervision or other misuse of position or power, unwelcome sexual advances, making threats about job security, making threats of physical violence against a person or their family,

deliberately undermining a competent worker by overloading work and/or constant criticism, blaming a person for others' mistakes, preventing an individual's promotion or training opportunities.

Bullying and harassment may occur face-to-face, in meetings, through written communication, including electronic communication such as e-mail or on social media, by telephone or through automatic supervision methods. It may occur on or off work premises, during work hours or non-work time.

iii. **Penalties**

Bullying and harassment by any employed persons can be considered examples of gross misconduct which will be dealt with through the Disciplinary Procedure at Gross Misconduct level and may result in summary dismissal from the Council. If Councillors are bullying or harassing employees, contractors, fellow Councillors or others, then a referral through the Standards process in place at the time reported as a contravention of the Councillors' Code of Conduct could be an appropriate measure. If an employee is experiencing bullying or harassment from a third party the Council will act reasonably in upholding its duty of care towards its own employees. In extreme cases harassment can constitute a criminal offence and the Council should take appropriate legal advice, often available from the Council's insurer, if such a matter arises.

iv. **The Legal position**

Councils have a duty of care towards all their workers and liability under common law arising out of the Employment Rights Act 1996 and the Health and Safety at Work Act 1974. If an employer fails to act reasonably with regard to this duty of care by allowing bullying or harassment to continue unchallenged an employee may decide to resign and claim 'constructive dismissal' at an Employment Tribunal.

Under the Equality Act 2010 bullying or harassment related to one of the protected characteristics covered by the Act (age, gender, marital status, sexual orientation, race, religion, belief, colour, disability) can be considered unlawful discrimination which could lead to an Employment Tribunal claim for discrimination against the corporate employer, i.e. the Council, and the perpetrator(s) as individual named Respondents.

In addition, the Criminal Justice and Public Order Act 1994 and Protection from Harassment Act 1997 created a criminal offence of harassment with a fine and/or prison sentence as a penalty and a right to damages for the victim. A harasser may be personally liable to pay damages if a victim complains to an Employment Tribunal on the grounds of discrimination. The 1997 Act was originally designed to assist in stalking situations but case law has demonstrated that it can be relevant to employment disputes, for instance; employers can be vicariously liable for harassment received in the workplace, that the conduct is viewed as 'serious', or 'oppressive and unacceptable', that a 'course of conduct' needs to be established but that this can link incidents which are separated by long time periods and that damages for personal injury and distress can be awarded under the Act.

v. **Process for dealing with complaints of Bullying and Harassment**

a. **Informal approach** – Anyone; employee, contractor, member or visitor, who feels he or she is being bullied or harassed should try to resolve the problem informally, in the first instance. It may be sufficient to explain to the person(s) involved in the unwanted behaviour, or an intermediary, that their conduct is unacceptable, offensive or causing discomfort. Anyone concerned about being bullied or harassed is encouraged to maintain a journal or other record of the incidents.

b. **Formal approach**

- **Employees:** Where the employee feels unable to resolve the matter informally any complaint about harassment or bullying can be raised confidentially and informally, initially

with the Chair of the Staffing/Personnel committee or another Councillor if more appropriate. It may be appropriate for the complaint to be put in writing after the initial discussion, as this will enable the formal Grievance Procedure to be invoked. The employee will be expected to provide evidence of the conduct about which s/he is complaining.

- **Others:** Any other party to the Council, other than an employee, who feels he or she is being bullied or harassed should raise their complaint with the Council, where possible, if an informal notification to the alleged perpetrator has been unsuccessful at eliminating the problem. The complaint should then be investigated and a meeting held to discuss the facts and recommend the way forward. A member of the public who feels s/he has been bullied or harassed by any Members or officers of a Council should use the Council's official Complaints Procedure. It is important that the Officer(s) or Member(s) being complained about do not prevent the Council operating impartially in its investigation and decision-making in this regard.

vi. **Grievance – Employees only**

A meeting to discuss the complaint with the aggrieved party will normally be arranged within five working days of a written complaint being received and will be held under the provisions of the Council's Grievance Procedure. This meeting will be to discuss the issues raised and a way forward for the member(s) of staff involved. Employees have a right to be accompanied by a work colleague or a trade union representative at this meeting.

A full investigation of the complaint will be held by an officer, or other duly appointed person as appointed by the committee of the Council which is handling the process. It may be appropriate for an external investigator to be involved in order to maintain objectivity and impartiality. The Hearing Panel will publish its recommendations following deliberation of the facts.

An action plan should be made available to the aggrieved employee to demonstrate how the problem is to be resolved. It may be decided that mediation or some other intervention is required and the Council should contact NALC, an employer's body or ACAS to this effect or the Council may offer counselling. The employee will have a right of appeal. At all times the confidentiality of the grievance will be of paramount importance in order to maintain trust in the process hence details of the full grievance will not be shared with the full Council without prior approval by the aggrieved party. The Council will commit not to victimize the aggrieved for raising the complaint once the appropriate dispute resolution process has been concluded.

vii. **Disciplinary Action**

Following a Grievance Hearing or investigation into allegations of bullying or harassment a full report will be made to all parties and this may result in disciplinary action being taken against the perpetrator of the alleged action/behaviour.

For an **Employee** found to have been bullying/harassing others this will follow the Council's Disciplinary procedure under the ACAS Code of Practice and would normally be treated as Gross Misconduct.

For **Members** who the Council reasonably believe have been bullying or harassing another person(s) whilst undertaking Council activities the range of sanctions available to the Council, are limited and must be reasonable, proportionate and not intended to be punitive. In some cases counselling or training in appropriate skill areas e.g. inter-personal communication, assertiveness, chairmanship etc. may be more appropriate than a penalty. Sanctions may include; admonishment, issuing an apology or giving an undertaking not to repeat the behaviour, removal of opportunities to further harass/bully such as removal from a committee(s) where direct contact with the employee or decision-making about that employee will take place, or removing the right to representation on any outside bodies where there will be contact with the employee who has raised the complaint. A referral under the Code of Conduct to the relevant reviewing body is usually an appropriate step and there may be further disciplinary sanctions available as a result of the Standards Committee reviewing the evidence under the Code in place at the time.

A referral to the Police under the Protection from Harassment Act 1997 may also be appropriate in the more extreme cases.

This list is not exhaustive.

False or malicious allegations of harassment or bullying which damage the reputation of a fellow employee/Member will not be tolerated and will be dealt with as serious misconduct under the Disciplinary Procedure or a referral to the Standards process.

viii. **Responsibilities**

All parties to the Council have a responsibility to ensure that their conduct towards others does not harass or bully or in any way demean the dignity of others. If unacceptable behaviour is observed then each individual can challenge the perpetrator and ask them to stop. There needs to be agreement about how "robust people management" and "bullying" differ; effective management of performance will usually include feedback based on objective evidence, delivered by a committee specifically designated and often trained to manage and appraise staff, with dialogue occurring on a face to face basis in confidential surroundings. Bullying is more likely to be complained about when individual Councillors criticise staff, often without objective evidence, without the mandate from the corporate body of the Council and in environments which are open to the public or other employees or by way of blogs, social media comments, or in the pub or local playground.

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

A review of the policy shall be undertaken each year (or as appropriate) and necessary amendments will be undertaken by the Clerk and reported to the full Council for approval. The Council will undertake to ensure that its Councillors and workers are trained in the processes required by this policy as deemed appropriate.

ix. **Useful contacts**

ACAS www.acas.org.uk tel: 0845 7 47 47 47

Equalities and Human Rights Commission www.equalityhumanrights.com

SLCC www.slcc.co.uk

DirectGov website www.GOV.uk

2.7 Data Protection Policy

The Data Protection Act 1998 was enacted to bring the UK into line with European privacy laws and defines UK law of processing data on identifiable living people. It allows individuals to have control over information which is kept about them.

A Council acting as an employer is required to comply with the Data Protection Act. In such circumstances, the Council will be deemed to be a data controller for the purposes of the Act and in this capacity it will determine the purposes for which and the manner in which any personal data, is, or is to be, processed. "Processing" includes obtaining, recording, holding or using information.

i. **Subject Rights**

The Act creates rights for those people who have their data stored and also responsibilities for those who store, process or collect personal data.

A person who has their data processed by a data controller (the Council in this instance) has a number of rights in relation to the data which is held about them. The person can do the following:

- View the data which is held for a maximum fee of £10;
- Request that information which is incorrect be corrected;
- Require that data is not used in a way which may cause damage or distress;
- Require that their data is not used for direct marketing.

ii. **Subject Access Requests**

Under section 7 of the Data Protection Act, a person may make a subject access request in relation to information held about them. A person who makes a request and pays a maximum £10 fee is entitled to the following information:

- To be told whether any personal data is being processed;
- A description of the personal data which is held, why the data is being processed and whether this data will be given to any other organisations or people;
- A copy of the information comprising the data; and
- The source of the data.

Once the Council receives such a request, should the data be disclosable, the request must be dealt with within 40 calendar days of receiving the request.

If the personal data which is the subject of the request is normally held for less than 40 days, then the request may be legitimately refused.

iii. **How to deal with a Subject Access Request which concerns other people's information**

A person may request access to data about them which also carries information regarding a third party. In such circumstances, the Council must assess whether the request can be complied with, without infringing the third party's privacy.

For example, if the Council receives a request from an employee to access some personal data and complying with the request would mean disclosing information relating to another individual who can be identified from that information, then the request can be legitimately declined unless the third party consents to the disclosure or it is reasonable for the Council to comply with the request without the third party's consent.

There is an obligation upon a data controller to comply with as much of a request as possible and it may be the case that if you cannot gain consent of the third party and compliance with the request is reasonable, then the Council should consider whether separation the disclosable information from the non disclosable information.

iv. **What is 'personal data'?**

The Data Protection Act covers any data which concerns a living and identifiable individual, for example emails about an employee but not necessarily an email from an employee concerning a business matter.

Personal data could be a name accompanied by other information about the individual such as address, age or telephone number.

The Act does not cover information which is anonymous or aggregated data provided that the anonymisation or aggregation is not reversible.

v. **Exceptions**

There are circumstances in which a data controller is not obliged to supply certain information to the requester. Some of the most important exemptions apply to:

- Crime prevention and detection;
- Confidential references given by you (but not ones given to you);and
- Information covered by legal professional privilege.

As an employer, the Council has obligations in relation to the data it holds on computer or in structured filing systems about its employees. The main requirements of the Data Protection Act can be complied with in relation to this data if the Council –

- has individuals' consent to holding the information about them
- use the information only for the purposes for which they obtained it
- keep the information up-to-date, secure and only for so long as it is needed
- does not disclose the information to others without the individual employee's consent.

Appendices

- 1. Officer – Councillor Relations Protocol**
- 2. Your Contract of Employment and Job Description**