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Appendices

Appendix One Fairness and Dignity at Work – Recording Sheet

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1. POLICY

- 1.1.** Wigton Town Council is committed to creating a work environment free of harassment and bullying, where everyone is treated with dignity and respect.
- 1.2.** Harassment and bullying can have very serious consequences for individuals and Wigton Town Council. Harassment or bullying may make people unhappy, may cause them stress and affect their health and family and social relationships, may affect their work performance and could cause them to leave their job. Severe cases of harassment and bullying can even lead to mental illness and suicide. Effects on Wigton Town Council can include loss of morale, poor work performance, increased turnover of staff, legal claims and damage to Wigton Town Council's reputation. Employees found guilty of harassment or bullying will face disciplinary penalties, up to and including dismissal, could be personally liable to pay compensation in legal claims, and may find their own family and social relationships are adversely affected. Serious harassment may be a criminal offence.
- 1.3.** Wigton Town Council will not tolerate bullying and harassment of any kind. All allegations of bullying and harassment will be investigated and, if appropriate, disciplinary action will be taken. Wigton Town Council will also not tolerate victimisation of a person for making allegations of bullying or harassment in good faith or supporting someone to make such a complaint. Victimisation is a disciplinary offence.

2. THE SCOPE OF THIS POLICY

- 2.1.** This policy covers bullying and harassment of and by councillors, managers, employees, contractors, agency staff and anyone else engaged to work at Wigton Town Council, whether by direct contact with Wigton Town Council or otherwise. If the complainant or alleged harasser is not employed by Wigton Town, e.g. if the worker's contract is with an agency, this policy will apply with any necessary modifications such as that Wigton Town Council could not dismiss the worker but would instead require the agency to remove the worker, if appropriate, after investigation and disciplinary proceedings.
- 2.2.** The policy covers bullying and harassment in the workplace and in any work-related setting outside the workplace, e.g. business trips and work-related social events.
- 2.3.** The policy does not cover bullying or harassment by customers, suppliers, vendors or visitors and, in these cases, employees should report any such behaviour to their manager who will take appropriate action. Bullying or harassment of customers, suppliers, vendors or visitors or others will be dealt with through the disciplinary procedure.
- 2.4.** For investigation procedure please see Appendix One.
- 2.5.** For Q & A please see Appendix Four.

3. WHAT IS BULLYING AND HARASSMENT?

3.1. Bullying is offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power which is meant to undermine, humiliate or injure the person on the receiving end.

3.2. Harassment is unwanted conduct related to sex, race or ethnic or national origins, disability, sexual orientation, religion or belief, age or any other personal characteristic which:

- has the purpose of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person; or
- is reasonably considered by that person to have the effect of violating his or her dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for him or her, even if this effect was not intended by the person responsible for the conduct.
- Conduct may be harassment whether or not the person behaving in that way intends to offend. Something intended as a 'joke' may offend another person. Different people find different things acceptable. Everyone has the right to decide what behaviour is acceptable to him or her and to have his or her feelings respected by others. Behaviour which any reasonable person would realise would be likely to offend will be harassment without the recipient having to make it clear in advance that behaviour of that type is not acceptable to him or her, e.g. sexual touching. It may not be so clear in advance that some other forms of behaviour would be unwelcome to, or could offend, a particular person, e.g. certain 'banter', flirting or asking someone for a private drink after work. In these cases, first-time conduct which unintentionally causes offence will not be harassment but it will become harassment if the conduct continues after the recipient has made it clear, by words or conduct, that such behaviour is unacceptable to him or her.

3.3. A single incident can be harassment if it is sufficiently serious.

3.4. All bullying and harassment is misconduct and is a disciplinary offence which will be dealt with under Wigton Town Council's disciplinary policy. Bullying or harassment will often be gross misconduct which can lead to dismissal without notice.

3.5. Some bullying or harassment will constitute unlawful discrimination, e.g. if it relates to a person's sex, race, religion or belief, sexual orientation or disability. From 1 October 2006, discrimination on grounds of age will also be unlawful. Serious bullying or harassment may amount to other civil or criminal offences, e.g. civil or criminal offences under the Protection from Harassment Act 1996 and criminal offences of assault.

4. EXAMPLES OF BULLYING OR HARASSMENT

4.1. Bullying and harassment may be misconduct which is physical, verbal or non-verbal, e.g. by letter or e-mail (so-called 'flame-mail').

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4.2. Examples of unacceptable behaviour that are covered by this policy include (but are not limited to) the following:

- physical conduct ranging from unwelcome touching to serious assault;
- unwelcome sexual advances;
- the offer of rewards for going along with sexual advances, e.g. promotion, access to training;
- threats for rejecting sexual advances, e.g. suggestions that refusing advances will adversely affect the employee's employment, evaluation, pay, advances, assigned work, or any other condition of employment or career development;
- demeaning comments about a person's appearance;
- unwelcome jokes or comments of a sexual or racial nature;
- questions about a person's sex life;
- unwanted nicknames related to a person's race or disability;
- the use of obscene gestures;
- the open display of pictures or objects with sexual or racial overtones, even if not directed at any particular person, e.g. magazines, calendars or pin-ups;
- spreading malicious rumours or insulting someone;
- picking on someone or setting him or her up to fail;
- making threats or comments about someone's job security without good reason;
- ridiculing someone;
- isolation or non-cooperation at work; and
- excluding someone from social activities.

5. WHAT IS VICTIMISATION?

5.1. **Victimisation** is treating someone less favourably than others because he or she has, in good faith, complained (whether formally or otherwise) that someone has been bullying or harassing him or her or someone else, or supported someone to make a complaint or given evidence in relation to a complaint. This would include isolating someone because he or she has made a complaint or giving him or her worse work.

5.2. Provided that you act in good faith, i.e. you genuinely believe that what you are saying is true, you have a right not to be victimised for making a complaint or doing anything in relation to a complaint of bullying or harassment and Wigton Town Council will take appropriate action to deal with any alleged victimisation, which may include disciplinary action against anyone found to have victimised you.

5.3. Making a complaint which you know to be untrue, or giving evidence which you know to be untrue, may lead to disciplinary action being taken against you.

6. WHAT SHOULD I DO IF I THINK I AM BEING BULLIED OR HARASSED?/OR WITNESS BULLYING AND HARASSMENT?

- 6.1.** You may be able to sort out matters informally. The person may not know that their behaviour is unwelcome or upsetting. An informal discussion may help them to understand the effects of their behaviour and agree to change it. You may feel able to approach the person yourself, or with the help of a councillor, a manager, trade union representative or another employee. Alternatively, an initial approach could be made on your behalf by one of these people. You should tell the person what behaviour of theirs you find offensive and unwelcome, and say that you would like it to stop immediately. You may want to add that, if the behaviour continues, you intend to make a formal complaint to your councillor or manager. You should keep a note of the date and what was said and done. This will be useful evidence if the unacceptable behaviour continues and you wish to make a formal complaint.
- 6.2.** If an informal approach does not resolve matters, or you think the situation is too serious to be dealt with informally, you can make a formal complaint by using Wigton Town Council's grievance procedure. In the case of grievances about bullying or harassment, the normal grievance procedure is modified so that you can choose whether to raise your grievance with your manager or directly with a councillor. We will ensure that you can bring your complaint in the first instance to someone of your own sex, if you so choose.
- 6.3.** In very serious cases, a criminal offence may have been committed and you may wish to report matters to the police. The Clerk or a councillor can arrange for someone to accompany you to make a complaint to the police.
- 6.4.** All complaints will be investigated promptly and, if appropriate, disciplinary proceedings will be brought against the alleged harasser. You will have the right to be accompanied by a work colleague or trade union representative of your choice at any meeting dealing with your grievance. You will be kept informed of the general progress of the process of investigation and the outcome of any disciplinary proceedings. Wigton Town Council will decide on a balance of probabilities, after considering all available evidence, whether harassment or bullying has occurred.
- 6.5.** Wigton Town Council will treat complaints of bullying and harassment sensitively and maintain confidentiality to the maximum extent possible. Investigation of allegations will normally require limited disclosure on a 'need to know' basis. For example, your identity and the nature of the allegations must be revealed to the person you are complaining about, so they are able to respond to the allegations. Some details may also have to be given to potential witnesses but the importance of confidentiality will be emphasised to them. If the complaint is upheld, and a person who has been found to have harassed you is kept in Wigton Town Council's employment, managers may need to be given some information where this is necessary for them to manage the risk of further harassment by that person against you or others.
- 6.6.** Wherever possible, Wigton Town Council will try to ensure that you and the alleged harasser are not required to work together whilst the complaint is under investigation. This could involve giving you the option of remaining

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home on special leave, if you wish. In a serious case, the alleged harasser may be suspended whilst the investigation and any disciplinary proceedings are underway.

- 6.7. If your complaint is upheld, and the person found to have bullied or harassed you or another member of staff remains in Wigton Town Council's employment, every effort will be made to ensure, if possible, that, if you do not wish to, you do not have to continue to work alongside the harasser. The options will be discussed with you.
- 6.8 If your complaint is not upheld, the council will support you and the alleged harasser in making arrangements for you both to continue or resume working and to help repair working relationships.
- 6.9 You have a right not to be victimised for making a complaint in good faith, even if the complaint is not upheld. However, making a complaint which you know to be untrue may lead to disciplinary action being taken against you.
- 6.10 Some types of bullying or harassment may constitute unlawful discrimination and may give rise to the possibility of other civil claims or criminal proceedings. Claims to an employment tribunal about unlawful discrimination must be presented to the tribunal within three months beginning with the act complained of.

7. WHAT CAN I DO TO HELP STOP BULLYING AND HARASSMENT?

- 7.1. We all have a responsibility to help create and maintain a work environment free of bullying and harassment. You can help to do this by:
 - being aware of how your own behaviour may affect others and changing it, if necessary - you can still cause offence even if you are 'only joking';
 - treating your colleagues with dignity and respect;
 - taking a stand if you think inappropriate jokes or comments are being made;
 - making it clear to others when you find their behaviour unacceptable, unless it should be obvious in advance that this would be the case;
 - intervening, if possible, to stop harassment or bullying and giving support to recipients;
 - making it clear that you find harassment and bullying unacceptable;
 - reporting harassment or bullying to your manager or Personnel, and;
 - if a complaint of harassment or bullying is made, not prejudging or victimising the complainant or alleged harasser.

Managers have a particular responsibility to:

- set a good example by their own behaviour;
- ensure that there is a supportive working environment;
- make sure that staff know what standards of behaviour are expected of them;

- intervene to stop bullying or harassment; and
- report promptly to the clerk, or councillor any complaint of bullying or harassment, or any incident of bullying or harassment witnessed by them.

8. WHAT HAPPENS IF I AM ACCUSED OF BULLYING OR HARASSMENT?

- 8.1** If someone approaches you informally about your behaviour, do not dismiss the complaint out of hand because you were only joking or think the complainant is being too sensitive. Remember that different people find different things acceptable and everyone has the right to decide what behaviour is acceptable to him or her and to have his or her feelings respected by others. You may have offended someone without intending to. If that is the case, the person concerned may be content with an explanation and an apology from you and an assurance that you will be careful in future not to behave in a way that you now know may cause offence. Provided that you do not repeat the behaviour which has caused offence that may well be the end of the matter.
- 8.2.** If a formal complaint is made about your behaviour, this will be fully investigated and Wigton Town Council may bring disciplinary proceedings, if appropriate. Wigton Town Council will follow its disciplinary procedure and you will have the rights set out in that procedure. You will have the right to be informed of the allegations against you and to put your side of the story and to be accompanied to meetings by a trade union representative or work colleague of your choice. The procedure will be implemented at the appropriate stage for the seriousness of the allegation. Complaints of bullying and harassment will often be allegations of gross misconduct which, if proved, could lead to dismissal without notice.
- 8.3.** Wigton Town Council will treat complaints of bullying and harassment sensitively and maintain confidentiality to the maximum extent possible. Investigation of allegations and future management of risk, if complaints are upheld, will normally require limited disclosure on a 'need to know' basis. For example, some details may have to be given to potential witnesses but the importance of confidentiality will be emphasised to them.
- 8.4.** Wherever possible, Wigton Town Council will try to ensure that you and the complainant are not required to work together whilst the complaint is under investigation. If the allegation is of gross misconduct, you may be suspended on full pay during the investigation and, if a disciplinary hearing is to be called, until disciplinary proceedings have been concluded.
- 8.5.** If the complaint against you is upheld, on a balance of probabilities, a disciplinary penalty may be imposed up to and including dismissal, having regard to the seriousness of the offence and all relevant circumstances. If the complaint is upheld, but you are not dismissed, Wigton Town Council could decide to transfer you to another post.
- 8.6.** If a complaint is made against you which is not upheld and Wigton Town Council has good grounds for believing that the complaint was not made in

good faith, Wigton Town Council will take disciplinary action against the person making the false complaint.

- 8.7.** You must not victimise a person who has made a complaint in good faith against you or anyone who has supported him or her in making the complaint or given evidence in relation to such a complaint. Disciplinary action will be taken against you if Wigton Town Council has good reason to think that you may have victimised the complainant or someone else.
- 8.8** If the complaint against you is not upheld, the council will support you, the complainant and your manager(s) in making arrangements for you both to continue or resume working and to help repair working relationships. Wigton Town Council will consider making arrangements to avoid you and the complainant having to continue to work alongside each other, if either of you do not wish to do this.
- 8.9** Some types of bullying or harassment may constitute unlawful discrimination and allegations may give rise to the possibility of other civil claims or criminal proceedings against you, which would proceed independently of Wigton Town Council's disciplinary proceedings. You could be personally liable to pay compensation to the complainant if a successful claim in the employment tribunal or other courts was brought against you. Criminal proceedings could lead to conviction and criminal penalties.

9. MAKING THIS POLICY WORK

- 9.1.** Wigton Town Council will provide training to all existing and new employees and others engaged to work at Wigton Town Council to help them understand their rights and responsibilities under this policy and what they can do to help create a working environment free of bullying and harassment.
- 9.2.** Wigton Town Council will review the outcomes of cases where complaints of bullying and harassment have been made to check that the proper procedures have been followed and to identify any points that can be learned from those cases and implement any necessary changes.

10 TIMESCALES

- 10.1. Stage 1 Informal Procedure** – response from investigator 10 working days.
- 10.2. Stage 2 Formal Procedure** - response from investigator within 10 working days
- 10.3. Stage 3 Appeal** – Full Council to meet within 20 working days of the Stage 2 Hearing.
- 10.4.** These timescales are the maximum time within which that level of authority may deal with the issue, if any delay is foreseen the complainant(s) must be informed **in writing** of the reasons for the delay and given a date by which a response or hearing will take place.

11. INFORMAL PROCEDURE

- 11.1.** Wherever possible, an employee who believes that he or she has been the subject of harassment or bullying should in the first instance ask the person responsible to stop the harassing behaviour either verbally or in writing. It should be specified what aspects of their behaviour are offensive and unacceptable and the effect it is having on them. If the individual feels unable to make this approach on their own, it can be made with the support of a colleague or trade union representative. Should the behaviour continue the complaint should be raised in accordance with the formal procedure.
- 11.2.** Complainants may find it helpful to keep records of incidents of behaviour which they consider to be harassment or bullying, noting the date and time of the incident and details of any witnesses.
- 11.3.** Should the complaint be against an immediate supervisor, then the complaint should be made to the Clerk or a councillor. Each and every case of harassment or bullying reported must be **immediately** recorded and investigated and appropriate action taken.
- 11.4.** The person handling the complaint of harassment or bullying will discuss the matter informally with the alleged harasser. This should take place without delay. If the matter is not resolved informally, the supervisor, clerk, or councillor will initiate an investigation under the formal procedure.
- 11.5.** A collective representation may need to be made in situations where a group of individuals feel they are working under intimidation.

12. FORMAL PROCEDURE

- 12.1.** Where the informal procedure has failed, or the person who has been the subject of harassment or bullying is unable to raise the matter with their immediate line manager, the following formal procedure should be instigated:
- 12.2.** As a first stage the line manager will arrange to interview separately both the complainant and the alleged harasser, in order to establish the issues, the seriousness and to see if resolution is possible. Both the complainant and the person who has been accused shall be entitled to trade union representation.
- 12.3.** If the initial interviews reveal that the complaint will require further full investigation, discretion shall be used in determining whether or not the alleged harasser should be suspended whilst the investigation is taking place. The alleged harasser shall be given full details of the nature of the complaint and the opportunity to respond. Complainants may need to be given help, advice and support during and after the investigation.
- 12.4.** The line manager will then arrange for a full formal investigation to be undertaken. All complaints shall be treated seriously and handled in a timely and confidential manner. The complainant shall receive written confirmation of receipt of the complaint, stating a time limit within which the complaint will be processed and heard.

- 12.5.** All employees shall be protected from intimidation, victimisation or discrimination for filing a complaint or assisting in an investigation. Retaliating against an employee for complaining about harassment will be treated as a serious disciplinary offence.
- 12.6.** Internal investigations shall be handled with sensitivity and with due respect for the rights of both the complainant and the alleged harasser. They shall be independent and objective and carried out by persons unconnected with the allegation. Written and signed statements shall be obtained from all witnesses, emphasising the importance of confidentiality. Full records shall be kept of all meetings and investigations.
- 12.7.** If the investigation reveals that the complaint is valid, prompt attention shall be initiated with action designed to stop the harassment immediately and prevent its recurrence. The possible outcome shall consider whether the people involved are still able to function in the same workplace. In such circumstances, if relocation proves necessary, every effort will be made to relocate the harasser and not the complainant.
- 12.8** The decision of the line manager will be confirmed in writing to both the complainant and the person against whom the complaint was made.
- 12.9.** Where disciplinary action is considered necessary, such action shall be undertaken strictly in accordance with the Council's agreed Disciplinary Procedure.
- 12.10.** Both the complainant and the alleged harasser have the right to appeal against the findings on the complaint. Appeals must be lodged within three months of the outcome of investigation.
- 12.11.** Where a complaint is not upheld, the Council shall take reasonable steps to ensure the reputation of the alleged harasser is restored. Malicious complaints of harassment or bullying will not be condoned and will be regarded as a disciplinary offence.

13. GUIDING PRINCIPLES

- 13.1.** Every effort shall be made to protect the legitimate rights of all parties involved. The following principles shall be adhered to:-
- The rules of natural justice shall apply to all investigations in that those involved in the process will have the right to explain or defend their actions, there will be the right to be represented and both parties shall have the right to appeal;
 - That the principle of confidentiality shall apply in relation to the details of the case and investigation.
 - During the whole of the investigation process, the complainant, the person whom the allegations have been made and any others interviewed shall be entitled to be accompanied at any stage of the investigation by a trade union representative or a work colleague;
 - That all complaints will be dealt with expeditiously and at least within the timescales prescribed;
 - Allegations will be considered against the principles of reasonable belief and the balance of probabilities.

14. CONFIDENTIALITY

- 14.1.** Claims of harassment and/or bullying will always be treated seriously and dealt with in the utmost confidence. Confidentiality is important to provide all parties concerned with a degree of security and to ensure that all procedural aspects are dealt with sympathetically, impartially and objectively. Any breaches of confidentiality will be treated seriously and may result in disciplinary action.
- 14.2.** In order that the Council can resolve, revise and develop its procedures and practices, key information from cases may be used to assist in this process. This policy has been devised to provide mechanisms that will help the Council improve best practice based on the outcomes of cases whilst protecting any individual or group of people involved.
- 14.3.** It is necessary to make it clear to anyone involved in part of the process that “confidentiality” relates to the details of the case and the investigation. Steps will be taken to ensure that only those who are required to know details of the case will have access to information, including both the complainant and the person whom the allegations have been made. Anonymity can not be guaranteed, especially where there may be a breach of the law or where criminal proceeding may be initiated.

15. SUPPORT FOR ANYONE INVOLVED IN A COMPLAINT

- 15.1.** The Council recognises that all employees involved in harassment or bullying at work may experience emotional or psychological reactions to their experience. This includes the complainant, the person against whom the allegations have been made and any witnesses. It is therefore considered essential that the management response to these situations is sympathetic and supportive.
- 15.2.** The support available to all concerned is:-
- Access to a confidential counselling service may be arranged to all concerned;
 - Integration into the workplace following a complainant will require sensitive handling to establish effective working relationships. This may involve professional mediation, a review of job roles etc;
 - Redeployment maybe considered as an option where a complaint under this policy is upheld. However, where as a result of disciplinary proceedings a complaint is upheld, it is advised that only the harasser should be redeployed as opposed to the complainant.

16. MONITORING AND POLICY REVIEW

- 16.1** All records of reported incidents of harassment and/or bullying are confidential and as such will be maintained in the strictest confidence.
- 16.3.** This policy will be reviewed annually by Wigton Town Council..

17. LAW RELATING TO THIS DOCUMENT

Disability Discrimination Act 1995

Health and Safety at Work etc Act 1974

Protection from Harassment Act 1997

Race Relations Act 1976

Sex Discrimination Act 1975

Employment Equality (Religion or Belief) Regulations 2003 SI 2003/1160

Employment Equality (Sexual Orientation) Regulations 2003 SI 2003/1161

Management of Health and Safety at Work Regulations 1999 SI 1999/3242

Race Relations Act 1976 (Amendment) Regulations 2003 SI 2003/1626

Employment Equal Treatment Framework Directive 2000/78/EC

Equal Treatment Directive 76/207/EC as amended by Directive 2002/73/EC

European Commission Recommendation 92/131/EEC and Code of Practice on the protection of the dignity of women and men at work (on the European Commission website)

The Sex Discrimination Act 1975 does not, as yet, contain any express provisions dealing with harassment. However, harassment at work on grounds of sex has been recognised by case law as a type of direct discrimination: being subjected to a detriment and less favourable treatment on a prohibited ground. Harassment on grounds of gender reassignment is also prohibited by the Sex Discrimination Act 1975.

Harassment of a customer or client on grounds of sex, race or disability will constitute unlawful discrimination in the provision of goods, facilities or services. The Race Relations Act 1976, since the Race Relations Act 1976 (Amendment) Regulations 2003 came into force on 19 July 2003, now contains express provisions defining and prohibiting harassment in relation to employment and vocational training on grounds of race, or ethnic or national origin. Harassment is defined by section 3A as being where, on grounds of race or ethnic or national origins, a person engages in unwanted conduct that has the purpose or effect of:

- violating another person's dignity; or
- creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

Where there is no intention to violate the other's dignity or create such an environment, the behaviour is to be regarded as having the effect of doing so only if, having regard to all the circumstances, including in particular the perception of the other person, it should reasonably be considered as having that effect.

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The Employment Equality (Religion or Belief) Regulations 2003, Employment Equality (Sexual Orientation) Regulations 2003 and Disability Discrimination Act 1995 contain similar express provisions dealing with harassment.

Harassment on grounds of colour or nationality will constitute unlawful race discrimination only if the individual is subjected to less favourable treatment on grounds of colour or nationality and is subjected to a detriment.

Employers will be liable for discriminatory acts of harassment committed by their employees against other employees or customers in the course of their employment unless they can show that they took such steps as were reasonably practicable to prevent those acts. There is no limit on compensation for unlawful discrimination, which includes compensation for injury to feelings and personal injury.

The European Commission Recommendation 92/131/EEC and Code of Practice on the protection of the dignity of women and men at work made recommendations on how employers, trade unions and employees should combat sexual harassment. The Code of Practice defines harassment as 'unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work'.

The Protection from Harassment Act 1997 created a new statutory tort of harassment and provided a civil remedy for those subjected to harassment at work or outside work. Section 1 provides that a person must not pursue a course of conduct that amounts to harassment of another and which he or she knows, or ought to know, amounts to harassment of the other. For these purposes, the person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think that the course of conduct amounted to harassment of the other.

Harassment is not precisely defined, but includes 'alarming the person or causing the person distress'. A course of conduct involves conduct on at least two occasions and includes speech. The Act also makes harassment a criminal offence.

Harassment may constitute other criminal offences, e.g. rape, indecent assault, assault or grievous bodily harm.

It may also give rise to other civil liabilities under common law, e.g. assault and battery or personal injury caused by negligence. An employer can be liable in damages for foreseeable personal injury, which could be mental and/or physical, suffered as a result of its negligence.

The Health and Safety at Work etc Act 1974 requires employers to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all their employees. The Management of Health and Safety at Work Regulations 1999 place specific obligations on employers including the duty to assess risks to the health and safety of their employees at work and to identify the measures that they need to take to comply with health and safety requirements. Bullying and harassment could be risks recognised in the workplace. There are criminal sanctions for failure to comply with health and safety obligations.

Notes

Having a policy dealing with bullying and harassment should assist in reducing the risk of bullying and harassment occurring and is an essential part of a possible reasonable steps defence to a claim of unlawful discrimination.

The types of bullying and harassment covered by this policy go beyond the types that would constitute unlawful discrimination. However, there may be other legal liabilities that could arise from bullying and harassment, even if this does not constitute unlawful discrimination. As a matter of good practice, employers will want to try to eliminate bullying and harassment on any ground.

Warning

Having a policy is not enough, by itself, to reduce the risk of bullying and harassment occurring and to provide a reasonable steps defence to unlawful discrimination. It is essential that the policy is widely available to, and known to, all employees and others to whom it is to apply. Training of staff to support the policy will almost certainly also be required if an employer is to have a realistic prospect of having a reasonable steps defence to a claim of harassment of one employee by another.

Future developments

Amendments will be required to the Sex Discrimination Act 1975 by 2005 to comply with the revised Equal Treatment Directive. These will include express definitions and prohibitions of sexual harassment and sex-based harassment.

Age discrimination legislation, required to comply with the EU Employment Framework Directive, came into force on 1 October 2006. This will include a prohibition on harassment on age grounds.

APPENDIX ONE

1. Policy

- 1.1. Wigton Town Council is committed to providing a working environment for its entire staff that is comfortable and free from all forms of bullying and harassment. Wigton Town Council adopts a zero-tolerance approach towards bullying and harassment and any employee who is found to have harassed or bullied a colleague will be subject to disciplinary action, up to and including summary dismissal.
- 1.2. If Wigton Town Council has grounds to believe that an employee may have been bullying or harassing another employee, whether or not there has been a formal complaint, Wigton Town Council will instigate an investigation into the alleged bullying or harassment.
- 1.3. Any employee who believes that another employee's conduct amounts to bullying or harassment has the absolute right to complain to their Line Manager/ Clerk or Councillor. Employees are encouraged to report any incidents of bullying or harassment that they experience or witness so that Wigton Town Council can investigate and resolve the matter. Wigton Town Council will take all such complaints seriously and an employee who makes a genuine complaint of bullying or harassment will be protected and will not be penalised or victimised in any way.

2. Investigations

- 2.1. As part of its investigations, Wigton Town Council will:
 - check whether the employee suspected of bullying or harassment has received previous warnings for similar misconduct (or other types of misconduct) and, if so, whether any earlier warnings are active;
 - talk in confidence to any employees who may have evidence relating to the employee's alleged behaviour;
 - endeavour to persuade any employees who may have been witness to the employee's alleged bullying or harassment, or who may have knowledge of it, to give a written statement to that effect;
 - set up an interview with the employee believed to have bullied or harassed a colleague, allowing them the right to be accompanied at the interview;
 - allow the employee a full and fair opportunity to answer any allegations against their and/or explain their conduct;
 - assess objectively whether the employee's conduct appears to have amounted to bullying or harassment;
 - adopt an objective and balanced approach to the information gained as a result of the investigation;

- avoid allowing personal views about the employee to influence the overall assessment of the conduct under review; and
- keep confidential records of the investigation and ensure that these are handled in accordance with the Data Protection Act 1998.

3. Suspension/Redeployment

- 3.1. Wigton Town Council reserves the right to suspend or temporarily redeploy either the employee suspected of bullying or harassment or the employee raising a complaint of bullying or harassment during the investigations, if it is considered in the interests of the individual(s) or Wigton Town Council to do so. Suspension in these circumstances does not constitute disciplinary action and will be on full pay.
- 3.2. As soon as possible following the conclusion of the investigation, Wigton Town Council will inform the employee suspected of bullying or harassment as to the outcome. Wigton Town Council will decide at that point whether or not it is appropriate to instigate disciplinary action against the employee. Any disciplinary proceedings will, where possible, be conducted by a different manager from the person who conducted the investigation.

4. When to use this document

- 4.1. Use this document to set out the procedure that will be used to investigate a complaint or suspicion of bullying or harassment. The policy could form part of an overall anti-bullying/harassment policy, or part of an equal opportunities policy.

5. Law relating to this document

5.1. Leading statutory authority

- Data Protection Act 1998
- Disability Discrimination Act 1995
- Employment Rights Act 1996
- Race Relations Act 1976
- Sex Discrimination Act 1975
- Employment Equality (Religion or Belief) Regulations 2003 SI 2003/1660
- Employment Equality (Sexual Orientation) Regulations 2003 SI 2003/1661

- 5.2. If an employee is subjected to harassment, whether physical, verbal or non-verbal, on grounds of sex, transgender status, marital status, race, disability, sexual orientation or religion or belief, he or she may have grounds to bring a complaint to an employment tribunal under the relevant anti-discrimination legislation. There is no minimum period of service required to bring a claim for discrimination or harassment to tribunal. Courts and tribunals have consistently interpreted harassment as behaviour that is unwanted and offensive to the person on the receiving end, irrespective of the motive of the harasser. The Race Relations Act 1976, the Disability Discrimination Act

1995, the Employment Equality (Religion or Belief) Regulations 2003 and the Employment Equality (Sexual Orientation) Regulations 2003 contain express definitions of harassment.

- 5.3. If an employee complains to management about harassment and the employer takes no action to support the employee and resolve the problem, the employer's lack of action may itself be regarded as a form of unlawful discrimination, and may also give the employee grounds to resign and claim constructive dismissal.
- 5.4. If an employee is the victim of bullying that has no connection with sex, race, disability, sexual orientation or religion, he or she may choose to resign and claim constructive dismissal based on the assertion that the bullying amounted to a breach of trust and confidence, and hence a fundamental breach of contract.

**Fairness and Dignity at Work:
Recording Sheet**

Use a separate form for each incident. Use an extra sheet of paper to elaborate on the incident if you need to.

Name of the person (s) causing the alleged offence:	
Date of incident:	Time of incident:
Where the incident took place:	
What happened? (<i>describe the incident, stating whether you think it was discrimination, harassment, victimisation or bullying</i>)	
How did you feel at the time?	
How do you feel now?	
Names of people who witnessed the incident (if any):	
What informal steps were taken (if any) to resolve the matter, and what was the outcome?	
State what you want, or expect, the alleged offender (s) to do:	
Signed:	Date:

[Type here]

