



COUNCIL NEWSLETTER

MAY 2021

Why Councils need to review their workplace policies and ensure that training for Members and Staff is current and up to date.

The recent case of *Forstater v Centre for Global Development (CGD)* should act as a signal to Councils to ensure that they review their policies and procedures regularly. Maya Forstater's contract was not renewed following comments she tweeted expressing her beliefs about sex and gender. One such tweet read; *"Yes I think that male people are not women. I don't think being a woman/female is a matter of identity or womanly feelings. It is biology."*

Importantly for Councils this case highlights a number of issues relevant to Conduct and communications with Employees.

Social Media Policies

Forstater used her personal Twitter accounts, rather than a CGD account, to share her views. As has been shown in a number of Employment Tribunal cases, even when people are using their personal social media accounts, this can have negative effects on a Council, including adverse publicity and damaging employee relations. It is not unusual for such conduct to result in various claims to the Employment Tribunal including Constructive Dismissal, harassment and discrimination.

Although our experience has shown that some Monitoring Officers can be reluctant to take action against Councillors who were using their own Facebook/Instagram/Twitter/Whatsapp accounts, Employment Tribunals often have no such qualms. Consequently, a Council can find itself answering claims at the Tribunal as a result of 'offensive' comments made by a Member who was using their own media accounts.

There is a fine balancing act between freedom of speech, adhering to Council values and expressing opinions that others may find offensive. To help Councils navigate this tricky landscape, a robust social media policy is key. Such policies should clearly state the Council's position on posting content on social media (including personal accounts where a link could be made with the workplace), providing guidelines and a defined framework for staff to follow

and setting out the consequences of breaching the policy (such as disciplinary action or referral to the District Monitoring Officer).

Workplace Handbooks

It is part of the democratic process for Members to have very strongly held opinions which can be contradictory to those of other Members and on occasions Council Employees. Fiery debates within the Council may leave some feeling offended, bullied, harassed, discriminated against and in turn, expose a Council to staff complaints, Grievances and claims for Constructive Dismissal.

Threats to workplace congeniality may come not just from within, but also from third parties such as the public.

Councils need to ensure that they have adequate policies in place to deal with such workplace issues. This includes:

- Anti-bullying and anti-harassment policies ensuring they clearly define what behaviour will and will not be tolerated;
- Grievance and whistleblowing policies ensuring the people know how to raise an issue and the process that will follow;
- Equal opportunities policies to encourage a culture of diversity and inclusion;
- An Officer/Member communication protocol
- A simple and accessible Dispute Resolution Procedure to help staff have their concerns heard and appropriate action taken.
- Setting up a Panel of Councillors (2-3) to conduct investigations into Employee grievances, and support them in submitting a Code of Conduct Complaint if appropriate.
- Ensure Standing Orders are clear about confidentiality, and prevent Members from posting personal data about Employees on Social Media.
- Implement a stress management policy and procedure to help Employees.
- Conducting a Stress Risk Assessment, based on the Health and Safety Executives six point assessment tool.
- Ensuring staff Appraisals are conducted regularly and that resultant action plans are implemented.
- Providing a Mediation option for staff to address their complaints.

Education and Training

In 2019 Leeds City Council found itself in an Employment Tribunal facing a claim for Race Discrimination (*Leader v Leeds City Council & Hossack*). The Judge took the rare decision to dismiss the claim against the Council on the grounds that its policies, procedures and staff training were comprehensive, current and staff had been fully informed of them.

Obviously a Town or Parish Council does not have the resources available to Leeds City Council, but it can take similar steps using the resources available to it.

Providing education and training to Members and staff regarding conduct within the workplace, and the implementation of effective policies and procedures, can help a Council to achieve this. According to current case law, to rely on this defence the training has to be current, usually provided within the last twelve months.

Some Councils do complain that they provide this training but not all Members are willing to attend. The point of the *Leeds* case is that as long as the Employer/Council has made this available in the last twelve months, it has done all that it reasonably can do within its resources. It cannot force Members to attend.

PROFILE

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