

# Penrice Community Council

## Employment Responsibilities at 20.02.2019

### 1.0 Introduction

- 1.1 The PCC is an employer with the legal, administrative and personnel responsibilities that this entails.
- 1.2 The PCC should have a broad understanding of the regulatory framework so that it knows when it can act and when further information might be required.
- 1.3 The PCC should have in place procedures for routine administration of employment matters so that it can manage its affairs properly and can demonstrate this when required.
- 1.4 This document highlights areas of responsibility. Details can be recorded in Appendices.

### 2.0 Significant Points

- 2.1 Many aspects of employment are personal to an employee and should be treated as **confidential** as far as possible. Where relevant and possible agenda items should be held in camera and personal details should not be posted online or included in public minutes. This policy cannot cover all situations as, for example, the annual return (which includes a declaration of the costs of employment) must be published.
- 2.2 The Council and the Clerk should agree a **designated Councillor** for personnel matters - to be a recognised point of contact, to enhance continuity and consistency, and to help address the Council's responsibility for staff well-being. This should be an individual and not a post (such as "the Chair") and is in addition to (not to replace) other channels of communication.
- 2.3 The PCC and the Clerk can rely on guidance and **model documents** from national organisations, including NALC (National Association of Local Councils), OVW (One Voice Wales), SLCC (Society of Local Council Clerks) and NJC (National Joint Council for Local Government Services).

### 3.0 Terms of Employment

- 3.1 Terms of employment consist of underlying legislation and regulations, implied terms (such as good-faith) and the explicit terms of a contract.
- 3.2 In its appointment of the Clerk/RFO the PCC adopted a package of terms which included a written contract and job description in the form agreed by NALC and SLCC and related pay scales prepared by NJA. Interpretation guidance has been supplied by NJA and SLCC.
- 3.3 The PCC and the Clerk should keep the terms of employment under review to ensure they continue to meet requirements and circumstances.

3.4 HMRC have ruled that the Clerk to the Council, as a paid office holder, must always be considered an employee and not as self-employed.

## 4.0 Employment Framework

### 4.1 Recruitment & Appointment

The PCC must run any recruitment process in an open and fair way. This would include advertising a vacancy, giving accurate information about the position, not discriminating and not seeking information which could later lead to accusations of discrimination.

A job specification (what the work involves), a person profile (the type of attributes a good candidate should have) and a summary of terms & conditions should be prepared before advertising. (These may not match the existing role.)

It is recommended that a short list include no more than six candidates. The decision to appoint the selected candidate should be made by the Council. An offer in writing should be made to the selected person confirming the terms of employment.

Arrangements should be made to introduce the new post holder to the work involved. Depending on the circumstances this should be supported by the outgoing post holder or a Councillor familiar with the role.

### 4.2 Employee Rights & Obligations

Some **rights and obligations** have effect from the time of appointment (eg the right to terminate) but most only have effect once the employment has begun. Changes to contracts (other than those determined by legislation) should be by agreement and Council should be aware that disputed change could lead to a claim for **unfair dismissal**.

Council should recognise its responsibility for the **well-being** of its employees. The Clerk should feel supported in carrying out the duties of the Council. It should be clear what is required of her and sufficient time should be allowed overall and within the available timeframe.

The Council owes a duty of care to its employees and the Clerk owes a duty of care as an officer of the Council. **Health & Safety** issues associated with the Clerk's role in meetings, in the community, in remote locations and working at home should be managed through risk assessment and appropriate insurance should be held.

The contract of employment requires the Clerk to allow visitors on Council business into her **home**. This should be exceptional, for example, where an auditor or inspector requires access to Council records in situ. Otherwise, the Clerk should have the option of meeting Councillors or Council visitors at a village hall or a public venue.

### 4.3 Management

**Management decisions** cannot be made by individual Councillors and this continues to apply to managing employment. **Routine management** is made more straightforward if there are agreed policies for lawfully managing leave, sick leave, etc.

Council should make provision for **staff development** and **constructive appraisal**.

The Council should have policies for handling **grievances, disciplinary matters** and **disputes**. These should comply with the ACAS Code of Practice. Employees have a statutory right to be accompanied in grievance and disciplinary proceedings. They should also have the right to appeal decisions.

Some problems can be addressed informally with the agreement of all but care should be taken to avoid acting illegally or undermining any future formal process. When provision needs to be made for the option to appeal the Council should designate a sub-set of its members to meet as a panel to seek a way forward, leaving the opportunity to create a second panel to consider an appeal (without an overlap of members). Proper terms of reference must be in place for such panels.

The Clerk has access to SLCC for support and guidance. The Council has access to OVW through the Chair and Clerk as appropriate. Mediation services can be used in some circumstances.

### 4.4 Administration

#### 4.4.1 Payroll - Pay & Expenses

The Clerk/RFO should maintain proper records for the purposes of the Council.

Payment for this position is below the threshold for tax and nics. Where the Clerk has a second employment that employer and HMRC have to be advised that the PCC employment is using up an agreed band of nil or zero tax. The Clerk will be responsible for making any additional adjustments through her other employment or her personal tax return. This arrangement has been confirmed with HMRC.

The PCC should refund expenses agreed and incurred by the Clerk for her work. These expenses should comply with the guidelines of HMRC for exemption from tax, nics and reporting. The Clerk should draw to attention any concern that a reasonable expense would be taxable or subject to reporting.

#### 4.4.2 Pension

Employers have to advise their employees of any entitlement under pension legislation. Entitlement to join a pension fund is based on pay for the position. Entitlement to receive contributions from the employer is based on a higher payment threshold. Where circumstances require the employer must set-up a pension fund through an authorised pension provider.

The Council had to write to the Clerk in the proscribed manner to advise her that she has an entitlement to join a pension fund authorised by the Council but that she does not have an entitlement to benefit from contributions into the fund from the PCC. The Clerk has not chosen to take up this option but it remains open to her.

A similar notice will have to be sent to any future employees.

#### **4.4.3 Other Employment**

The Clerk works part time for the PCC and it is accepted that she may also work part time for other suitable organisations. She should advise the Council of her intention to do this so that the Council is satisfied that the other employment is compatible with her role for the Council and to be confident that the above payroll arrangements are in place.