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PREVENTING AND DEALING WITH BULLYING AND HARASSMENT IN NHSSCOTLAND PIN POLICY

MAY 2011

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Ministerial Foreword



NHSScotland aims to deliver the highest quality healthcare services and, through this, to ensure that NHSScotland is recognised by the people of Scotland as amongst the best in the world. The *Quality Strategy*¹ sets the overall direction for achieving this, both now and in the future, focussing on three Quality Ambitions: ‘person-centred’, ‘safe’ and ‘effective’. Delivering against all three is dependent on having a committed, dedicated, professional and healthy workforce.

I am proud of the progress made by NHSScotland Boards in striving towards exemplar employer status. Staff Governance (ensuring the fair and effective management of staff) has been enshrined in legislation, and enjoys equal status with the other pillars of clinical and financial governance. Similarly, the evolution of partnership working between employers and trade unions/professional organisations at both local and national level has helped to ensure that we have a health service in which employees are actively involved in the decisions which affect them and engaged in delivering high quality services. Indeed, the approach to employee relations within NHSScotland has been described in a recent report as ‘groundbreaking’ and ‘arguably the most ambitious labour-management partnership so far attempted in the UK public sector’.²

The development of NHSScotland Partnership Information Network (PIN) policies provides a means of further ensuring sound staff governance practice. They set a minimum standard of practice in the area of employment policy, helping to ensure a fair and consistent means of managing staff which meets both current legislative requirements and best employment practice. These PIN Policies have been published following significant work in partnership between the Scottish Government, NHSScotland employers and recognised trade union/professional organisation partners, and following widespread consultation across the service.

¹ <http://www.scotland.gov.uk/Topics/Health/NHS-Scotland/NHSQuality/QualityStrategy>

² Nottingham University Business School, 2011. *Evaluating Labour-Management Partnership in NHSScotland: first-findings*.

These PIN Policies form part of the terms and conditions of employment of all NHSScotland employees. While Boards may develop policies to meet particular local needs, I expect all Boards to adhere to the PIN policies and ensure that practice never falls short of any of the provisions set out within these policies. By doing so, we can ensure that employees are treated fairly and consistently irrespective of the part of the service in which they work.

I am asking all NHSScotland managers and leaders to ensure that they adopt and embrace the PIN policies within their Boards and within their individual roles. I am also tasking Employee Directors and Board Partnership Forums to champion these policies and to raise non-compliance in a positive and constructive manner.

These PIN policies represent an exemplar approach to employment policy and practice, and I look forward to seeing evidence of their implementation across NHSScotland in the months and years ahead.

A handwritten signature in black ink, appearing to read 'Nicola Sturgeon'. The signature is fluid and cursive, with a large initial 'N' and a long, sweeping underline.

Cabinet Secretary for Health, Wellbeing and Cities Strategy

Preface

Staff Governance

Staff Governance is defined as “a system of corporate accountability for the fair and effective management of all staff”. The *Staff Governance Standard*³ which is applicable to all staff employed in NHSScotland, sets out what each NHSScotland employer must achieve in order to improve continuously in relation to the fair and effective management of staff. The Standard requires that all NHS Boards must demonstrate that staff are:

- Well informed;
- Appropriately trained;
- Involved in decisions which affect them;
- Treated fairly and consistently; and
- Provided with an improved and safe working environment.

It is recognised that staff are central to achieving the principal aims of NHSScotland, namely to improve health and wellbeing, and to deliver high quality care to those with ill health. Achievement against the Staff Governance standard is therefore key to the effective and efficient delivery of services by providing an environment that is inclusive and conducive to employees giving of their best.

NHSScotland’s commitment to staff governance has been reinforced by its legislative underpinning within the *National Health Service Reform (Scotland) Act 2004*⁴, which ensures parity with the other two governance pillars of clinical and financial governance.

PIN Policies

Partnership Information Network (PIN) policies define a minimum standard of best employment practice and are designed to achieve a consistent approach to the way NHSScotland deals with its employees. They have been developed in partnership between NHSScotland management, trade unions/professional organisations and Scottish Government. While local adaptations may be agreed in partnership to suit Boards’ own local needs, any such adaptations must still meet or exceed the minimum standards set out within the PIN policies.

³ <http://www.staffgovernance.scot.nhs.uk>

⁴ <http://www.legislation.gov.uk/asp/2004/7/contents>

Compliance with the Staff Governance Standard includes implementation of PIN policies. Boards will be expected to evidence adherence to the PIN policies as part of the annual SAAT and accountability review processes. Part 1: Principles and Partnership of the *Agenda for Change Terms and Conditions Handbook*⁵ incorporates PIN policies within the terms and conditions of employment of all NHSScotland staff and serves to further reinforce the fact that adherence to the minimum standards set out within them is mandatory for all NHSScotland Boards.

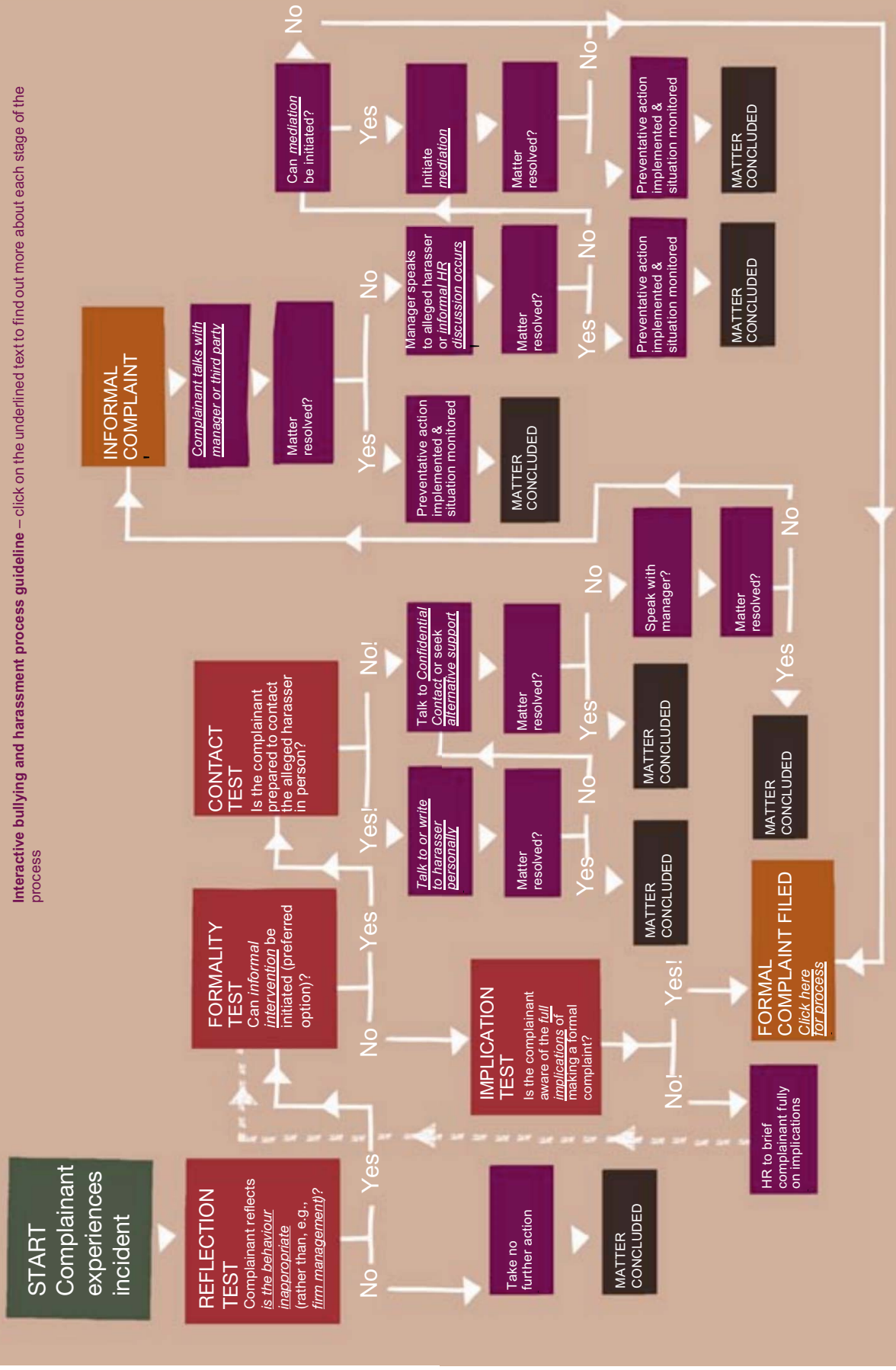
Board Partnership Forums therefore have a key role in ensuring that locally developed policies meet or exceed the minimum standards set out in the PIN policies; and in raising non-compliance in a positive and constructive manner.

⁵ <http://www.msg.scot.nhs.uk/wp-content/uploads/Agenda-for-Change-Handbook-Master-Scottish-Copy-Amendment-24.pdf>

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Interactive bullying and harassment process guideline – click on the underlined text to find out more about each stage of the process



1 The power of a dignified workplace

1.1 Introduction: Targeting bullying and harassment in NHSScotland

NHSScotland comprises 22 separate employers employing a combined total of circa 150,000 people in over 100 different job families. Each organisation is striving to be the best at what it does, whether delivering or supporting the delivery of quality healthcare, improving health or reducing inequalities, whilst at the same time driving change and meeting the demands of externally-set efficiency targets, ranging from waiting times through to sickness absence.

Due to the nature of these targets, the number of staff and diversity of roles, as well as the demands facing the organisations, NHSScotland has been described as the type of organisation where one would expect to see 'issues' (such as sickness absence, work related stress and bullying).

Bullying/harassment takes many forms and occurs for a variety of reasons. It can be directed at individuals or groups, but can also be carried out by both individuals and groups (e.g. mobbing). Due to the fact that it is often misunderstood, badly misinterpreted and largely unrecognised in the workplace, it is necessary to have written definitions to appreciate the nature of the behaviour. Whilst the effects may go beyond the words of any written definition, the problems of not identifying such behaviour can have devastating effects on the personal performance and well-being of individuals, as well as the overall effectiveness of the employing organisation and society at large.

Bullying/harassment impacts upon the individual/group being harassed, on their colleagues and on the employing organisation as a whole. Intimidation in any form leads to under-performance at work. If ignored, incidents of bullying/harassment lead to and perpetuate a working environment in which it is unpleasant to work. People cannot contribute their best or work well in teams when they fear bullying/harassment. It may cause much avoidable demoralisation, stress, anxiety and sickness. There may also be hidden psychological and social effects on the person being bullied/harassed, as well as their family and friends.

1.2 Dignity at work – a definition

In recent years, ‘dignity at work’ has been used as a term to describe a working environment free from bullying and harassment. For the purpose of this policy, we are defining dignity at work as a combination of factors leading to Dignified Workers.

These factors are:

- Dignified Work – interesting and meaningful work with a degree of responsible autonomy and recognised social status; and
- Dignified Workplace – a workplace with structures and practices that offer equality of opportunity, collective and individual voice, safe and healthy working conditions, secure terms of employment and just rewards.

This definition has been developed using parameters suggested by Bolton (2005)⁶. Clearly such a broad definition of dignity at work encompasses factors way beyond the development and implementation of a bullying and harassment policy. Many of these factors relate to the organisational culture and may be influenced by other organisational systems and processes.

⁶ Bolton, S; Dignified work, dignified workers and dignified workplaces: exploring dignity at work as promising practice; Lancaster University Management School, Working Paper 2005/074

1.3 Focussing on bullying and harassment

Dignity is a term that has been used for many years in NHSScotland to describe the rights of employees to operate in a respectful and safe environment where their personal values are respected. This also extends to ensuring that employees operate in a respectful manner, thus ensuring that their colleagues are able to work in a safe environment where their personal values are respected.

In recent years, 'dignity at work' has been used as a term to describe a working environment free from bullying and harassment. Of late, however, the term has evolved to be used to describe the much broader overall conditions of an employee and an employer. Hence this policy will focus on tackling one essential aspect of a dignified workplace, namely bullying and harassment.

NHSScotland is committed to ensuring that its environment is one where people are respected as individuals and treated with dignity. However, we recognise that people and processes aren't always perfect. This policy document has therefore been developed to provide the required support and direction for when things go wrong. It provides legal information and practical advice to help you put in place a policy that tackles bullying and harassment, helping you deal with staff who have bullied/harassed, and support staff who have been bullied/harassed in the workplace. As such, it represents the minimum standard expected of organisations responding to bullying and harassment across NHSScotland.

There are other factors that underpin dignity at work (e.g. organisational culture) which should not be ignored. Information on the broader factors that influence dignity at work, and accompanying guidance and supporting resources are available on the Staff Governance website. This PIN policy, however, focuses upon dealing with bullying and harassment in the workplace as one of the factors that will lead to a more dignified workplace.

Throughout the policy, the terms 'bullying' and 'harassment' will be used together to ensure that all possible perceptions of such actions are covered. However, in general terms, the authors wish to ensure that any incident or behaviour which is not explicitly stated within the definitions contained within Appendix 1, but which is deemed to be comparable with the descriptions given, is dealt with appropriately.

As a large organisation committed to delivering a service to the people of Scotland, NHS Boards and the line managers within them have a responsibility to deliver the performance the people of Scotland deserve. It is within this performance context that this policy seeks to provide protection and support for all employees who may experience bullying or harassment.

Moreover, this policy also seeks to support the expectations placed upon managers to deliver outstanding performance through appropriate management. Whilst bullying and harassment must be tackled wherever it occurs, this policy cannot be seen as an opportunity for poorly performing employees to challenge a manager's responsibility to manage, as long as that management is appropriate and balanced.

1.4 Recommended principles for dealing with complex issues

Given the often complex and sensitive issues that are associated with bullying and harassment, simply adhering to this policy will not ensure that the outcome will be perceived to be successful by all who are involved. However, in using it, organisations can be satisfied that they are adopting best practice principles when dealing with these complex issues.

In addition to the bullying and harassment of, among and by staff, this policy also addresses bullying and harassment by patients, clients, relatives, advocates, contractors and staff from other agencies. It is recognised that the latter area may have significant legal and ethical implications for organisations that may have differing views on how such issues should be dealt with.

Nevertheless, what is clear is that provision must be made within organisations to deal with such issues when they arise and that staff must know the procedure applicable in each one.

1.5 The impact of the new ACAS Code

On 6th April 2009, new legislative measures for dealing with discipline and grievance came into force under the *Employment Act 2008*⁷. This Act paved the way for the *ACAS Code of Practice on Disciplinary and Grievance Procedures*⁸. This Code sets out the principles employers should follow when dealing with disputes at work. The new Code has implications for all parties involved in a bullying/harassment scenario; namely, the responsibility to seek a resolution to grievances through INFORMAL means.

This focus on informal procedures has arisen from the perception that too many cases of bullying and harassment were being pursued through formal process. More often than not, utilising informal procedures such as facilitated discussion or mediation would have adequately resolved the issue, thereby increasing the likelihood of sustaining an ongoing working relationship. In line with the new ACAS Code, this policy seeks to emphasise and support employing informal procedures whenever possible.

The Code states that whenever a grievance or disciplinary process is undertaken, the basic standards of fairness should still apply. For example, issues should be raised and dealt with promptly by both employers and employees and employees should be informed of the allegations against them and given the opportunity to put their case in response before decisions are reached.

Although a failure to follow the Code does not make a person or an organisation liable to proceedings, employment tribunals are legally required to take the Code into account when considering relevant cases. The tribunal has the discretion to adjust any awards made to either party by up to 25 per cent for unreasonable failure to comply with any part of the ACAS Code.

⁷ <http://www.legislation.gov.uk/ukpga/2008/24/contents>

⁸ <http://www.acas.org.uk/index.aspx?articleid=2174>

1.6 The need for a new Preventing and Dealing with Bullying and Harassment in NHSScotland PIN Policy

Much has changed since 2001 when the first Dignity at Work PIN guidelines were published. NHSScotland operates within a performance culture, putting patients and service users at the heart of decision making, and moving in focus from treatment to prevention as outlined in *Better Health Better Care*⁹ (2008). This strategy will be delivered through the NHS workforce via its workforce strategy *A Force for Improvement*¹⁰ (2009), which sets out five key ambitions:

- All staff will be ambassadors for health improvement, safety and quality, using every interaction with individuals, communities, populations, and every patient care episode to maximise their public health and education role;
- NHSScotland will develop and implement multi-disciplinary and multi-agency models of care which are more responsive, more accessible and more joined up to meet the needs of local communities and ensure efficient utilisation of skills and resources;
- NHSScotland will be an employer of choice – acquiring the best talent, motivating employees to improve their performance, keeping them satisfied and loyal, and providing opportunities for them to develop and make greater contributions;
- All staff in NHSScotland will work together to promote the benefits of preventative action and measures of self care for patients and the public across a range of health issues, supporting them in ensuring that they have the knowledge and understanding to undertake this and where appropriate to seek expert advice and treatment; and
- We will work together with universities, further education and the wider education sector to encourage and maximise flexible access to education and training for people already working in NHSScotland and those with aspirations to join, reflecting the changing demography and increasing diversity of Scotland.

⁹ <http://www.scotland.gov.uk/Publications/2007/12/11103453/0>

¹⁰ <http://www.scotland.gov.uk/Topics/Health/NHS-Scotland/BHBC>

For us to deliver on these ambitions, the workforce across NHSScotland must develop a culture of collaboration and an intentional focus on outstanding performance.

Tackling bullying and harassment will be key to creating the workforce environment where employees are able to deliver results in a supportive environment.

Recent legislative changes around discipline and grievance have put the onus upon organisations to seek solutions to disputes through dialogue rather than legal process. This allows NHSScotland to start tackling bullying and harassment far more collaboratively.

The introduction of the first set of PIN guidelines in 2001 produced a range of positive benefits: a more consistent approach to tackling inappropriate workplace behaviour; clear messages around what constitutes inappropriate behaviour; a level of consensus; and mutual understanding.

However, we also recognise that the 2001 PIN guidelines contributed to an over-emphasis on procedure rather than dialogue, a lack of focus on genuine culture change and an emphasis on punishing bad behaviour rather than rewarding good behaviour.

Perhaps most importantly, there is now a recognition that individuals have a responsibility to promote and maintain a dignified workplace. Clearly, if organisations are to foster an inclusive culture, it is ultimately the employees who will define that culture, which is why the new PIN policy aims to empower employees to resolve issues without the need for any kind of process, by developing the confidence to challenge and the awareness to understand what support is available.

The new policy is therefore designed to encourage a formal process only where there is no other alternative. So the focus for all NHSScotland organisations will be upon dispute resolution through informal dialogue, in a structured and safe environment, where the rights of the individual involved, the team and the organisation are fully respected and valued equally.

1.7 The high cost of bullying and harassment

Bullying and harassment cost organisations money. This can be measured in under-performance, high sickness absence rates, costs of recruiting and retraining where staff leave, cost of legal action (where the compensation awards which tribunals can impose are unlimited in some cases) and adverse publicity.

There are two types of costs to an organisation associated with bullying and harassment – direct and indirect costs. Direct costs include issues such as injuries, sickness absence and staff turnover. Indirect costs go further and include lost opportunity, cost of time, lost productivity and reduced quality of life. Indirect costs would also include factors such as the short and long term effects of bullying/harassment on victims and bystanders, including lost wages and costs associated with psychological and physical distress.

The costs of bullying and harassment in the workplace can be significant for both individuals and organisations. It is estimated that in the UK in 2007, 33.5 million days were lost in organisations due to bullying-related absenteeism and the total cost of bullying-related absenteeism was £13.75 billion, of which £3.06 billion stemmed from absenteeism, £1.55 billion from employee turnover and £9.75 billion from lost productivity.¹¹

NHSScotland employers are legally responsible for the health and safety of their employees as well as the patients within their care. The onus is, therefore, on the good employer to foresee the potential for bullying and harassment and to take reasonable steps to reduce the risk and to take immediate action where such incidents come to their attention.

All of those involved in the workplace must recognise their own responsibilities, be it as employer, employee, trade union/professional organisation representative, patient, relative, advocate, representative of another organisation or contractor, to be alert to bullying/harassment when it occurs. Unacceptable behaviour must not occur and, when it does, must not be allowed to continue unchecked. Inaction is not an option.

This policy contains best practice principles to help organisations within the NHS to review current policies and procedures to ensure that the arrangements that they have in place are based on sound practice.

¹¹ *Giga Hoel et al. (2008)*

It must be emphasised that the behaviours that are displayed within the workplace may be derived from the overall culture of the organisation itself. Therefore, if attitudes and behaviours need to change, the most effective way to achieve this is by developing processes to deal with bullying and harassment in a fully inclusive manner.

Organisations are, therefore, encouraged to use this document as a starting point for this process and to involve staff, trade union/professional organisation representatives and managers in developing procedures to deal with these issues. However, the mere implementation of a policy or procedure without an active development process runs the risk of ignoring the wider organisational development issues that are crucial to eliminating bullying and harassment in the workplace.

2 Strategic framework and culture

Drawing on research into best practice in the public and private sectors (see Appendix 6) the following section outlines seven key points to consider when drawing up a strategy for eliminating bullying and harassment.

2.1 Organisational development

- The organisation needs to actively encourage an open and trusting culture;
- Organisations should draw up a 'Code of Conduct' in partnership with staff and trade union/professional organisations ensuring that all employees can be confident that they will be treated with dignity. Codes of Conduct should highlight positive issues such as good management practice and employee conduct, and not simply focus upon negative behaviours. These should be prepared on a system wide basis to set the fundamental principles, but also allow for some local flexibility;
- The Code of Conduct should also specify the responsibility of employees to ensure that they interact with colleagues both internally and externally in an appropriate manner. It should also set out the right and responsibility of line managers to manage fairly and reasonably. It should also advise on action which may be taken where there is a failure to adhere to the Code;
- Organisations should incorporate bullying and harassment into their Health and Safety Risk Assessment programmes;
- Organisations should be proactive in assessing the extent of the problem within the organisation (e.g. through staff surveys, exit interviews, etc.). It is not sufficient to merely react to incidents when they occur; and
- Any policies and procedures must be developed locally, fully inclusively and in partnership, so that they may be owned locally and impact upon the organisational culture, thereby effecting the necessary changes in attitude and behaviour.

2.2 Policy and procedure

- Organisations should have a clearly defined policy and procedure for dealing with bullying/harassment complaints and which apply to all employees;
- In line with *ACAS Code of Practice (2009)*¹², the policy should highlight the requirement for attempts to resolve disputes through informal procedures and dialogue where possible, only resorting to the formal procedure when all other avenues have been exhausted. The policy should recognise that there will be instances where the circumstances of a situation are such that they require to be dealt with formally from the outset given their level of gravity and seriousness;
- The policy and procedure should be drawn up in partnership with trade union/professional organisation representatives and staff;
- The policy should define types of behaviours which will be regarded as bullying/harassment;
- The policy should incorporate separate informal and formal procedures. In both situations, as far as is possible, all complaints will be treated confidentially;
- There should be time limits in the procedures so that complaints may be dealt with quickly without unreasonable delay. The time limits will often depend upon the nature, breadth and gravity of the allegation(s) and may therefore be different for every instance. The policy should therefore suggest that all stakeholders agree timescales on a case-by-case basis on the presumption of no unreasonable delay;
- The policy must include ensuring feedback, as appropriate, to all involved of the outcome of the processes applied;
- The policy should allow employees to request a review of any formal decision made. Reviews of decisions on bullying/harassment complaints sometimes have to be scheduled alongside other disciplinary or grievance processes (including other appeals/reviews) and the review procedure should take this into account; and
- The effectiveness of the policy and procedure should be monitored on a regular basis by senior staff.

¹² <http://www.acas.org.uk/index.aspx?articleid=2174>

2.3 Communication

- Senior staff must show visible commitment and support for the policy in order that it is genuinely adopted within the organisation;
- Employees should be provided with clear examples of the types of behaviour that could constitute bullying/harassment;
- Employees should be made aware that bullying and harassment will be treated as serious disciplinary offences;
- Employees should be made aware of the consequences of making malicious or vexatious complaints;
- It should be made clear that an organisation's managers have a responsibility to manage staff and that this in itself does not constitute bullying/harassment, but equally that if management is carried out in an inappropriate manner and proves to be bullying/harassment then this will be dealt with appropriately; and
- Where possible, organisations, management and trade union/professional organisations should set up local/national networks to compare best practice.

2.4 Training

- Managers and trade unions/professional organisations should adopt proactive awareness programmes to ensure that all staff are familiar with the policy and procedure;
- A core part of a line manager's function is the ability to deal with complaints of inappropriate behaviour. Organisations should consider how line managers can be trained to develop sufficient competence in dealing with such matters;
- Organisations may consider appointing investigators to deal with bullying/harassment complaints, though they must ensure that those undertaking such a role are fully trained in undertaking investigations; and
- Organisations may adopt various approaches to mediation or facilitated discussion. However, irrespective of the approach adopted, they must ensure that those involved are appropriately trained.

2.5 Support

- Organisations should have mechanisms of support available to employees who feel they have been the victims of bullying/harassment such as Confidential Contacts;
- It may be appropriate, subject to specific circumstances and the availability of an appropriate resource, to consider providing professional counselling support to those who feel they are being subjected to bullying/harassment, as well as to those alleged to be carrying it out; and
- Where appropriate, facilitated discussion (or another forum for discussion between those involved) should be provided to restore effective working relationships. In line with the [ACAS Code](#),¹³ these informal routes should be the first port of call in most cases before formal routes are pursued.

2.6 Principles and culture

2.6.1 Organisational values

As stated previously, organisational culture has a crucial part to play in engendering a working environment in which there is a low risk of bullying/harassment occurring. The values of NHSScotland are explicitly defined as follows:

- To ensure equity of access to services;
- To identify and meet people's needs and wishes;
- To set and aim to achieve the highest standards possible of care and respect for each person and of results; and
- To improve standards through research, education, monitoring and review while enabling those who work in the service to achieve its purpose and to share its values, whilst feeling valued themselves.

2.6.2 Organisational responsibilities

To support this clear statement, each organisation within NHSScotland must ensure a working environment that visibly demonstrates its commitment to and support of all staff, including agency and contracted staff. An organisation with such a culture will:

- Encourage openness, trust and teamwork;
- Demonstrate that all staff will be treated, and be expected to treat each other with dignity and respect; and that their overall contribution to the work of the organisation will be valued;

¹³ <http://www.acas.org.uk/index.aspx?articleid=2174>

- Give clear signals that bullying and harassment is unacceptable anywhere in the organisation;
- Give clarity on what types of behaviour will be regarded as unacceptable and acceptable, through the development of a Code of Conduct for all staff;
- Communicate clearly defined policies and procedures for addressing complaints of bullying/harassment;
- Take appropriate steps to reduce the risk of bullying and harassment, establish structures for identifying the potential of it occurring, and take prompt action whenever incidents occur; and
- Make it clear to employees that, in a performance driven organisation, managers have the responsibility to manage and therefore appropriate performance management does not constitute bullying/harassment.

Organisations must examine their own organisational culture and decide which are the most important principles, values, behaviours and attitudes it wishes to adopt. It is advised that the following principles and values should underpin any strategy, policy or procedure for dealing with bullying and harassment. The organisation should:

- Value all of its employees;
- Encourage them to value each other;
- Foresee the potential for bullying and harassment;
- Take reasonable steps to reduce the risk; and
- Take appropriate action where incidents are raised, but also recognise that not all incidents raised may necessarily have an organisational solution or be within the responsibility of the organisation to resolve.

2.6.3 Employee rights

All employees have a right to work in an environment that:

- Is safe;
- Promotes dignity at work;
- Encourages individuals to treat each other with respect;
- Promotes speaking politely, openly and honestly with others;

- Is open, transparent and fair; and
- Encourages staff to take responsibility for each other.

2.6.4 Employee responsibilities

All employees have a responsibility to:

- Ensure their own behaviour within the organisation helps create a culture free from bullying and harassment;
- Ensure they are supportive of individuals who state they have been bullied/harassed and take full account of their feelings and perceptions of the situation;
- Encourage such individuals to seek help from an appropriate source;
- Refrain from participating in, encouraging or condoning gossip related to cases of alleged or actual bullying/harassment;
- Take appropriate steps to prevent or stop such gossip in their area of work; and
- Attend training sessions, which may be arranged to increase their awareness and appreciation of the issues involved in bullying and harassment.

2.6.5 Misconceived or unreasonable complaints

In order to avoid a complaint being judged as misconceived or unreasonable, employees should reflect on the nature of the complaint before making a formal allegation. Was the behaviour simply performance management, a clash of personalities or a simple disagreement?

NHSScotland takes formal complaints very seriously. Whenever someone makes a malicious or vexatious complaint, consideration will need to be given to whether disciplinary action against the complainant is required.

3 Legal framework and relevant legislation

The general legislative framework that underpins workplace dispute resolution (which would include complaints of bullying and harassment) changed as a result of the *Employment Act 2008*¹⁴. The act moves the focus for employers away from adherence to the strict former three-stage process towards the new *ACAS Code (2009)*¹⁵.

The Code emphasises the importance of fairness from both employer and employee and encourages resolution of disputes via informal means wherever possible.

As the Code is implemented, organisations will be identifying and utilising informal means of dispute resolution, such as mediation, far more frequently. A report into the role and effectiveness of mediation is available on the *Staff Governance website*¹⁶.

The relevant legislation which may apply in cases of bullying/harassment is detailed below. It should be noted that there is no one specific piece of legislation that deals with bullying/harassment at work.

3.1 Harassment

*Equality Act 2010*¹⁷

Harassment on the basis of age, disability, gender reassignment, race, religion or belief, sex and sexual orientation is covered under the Act. Individuals are protected from harassment both while applying for a job, during it, and in some cases after the working relationship ends (for example in terms of the provision of a reference). Harassment does not have to be directed at the individual who complains, if it creates an environment that the individual finds intimidating, hostile, degrading, humiliating or offensive. The Act also covers harassment coming from a third party (a customer, for example), where the employer would be liable if it has happened on two or more occasions, they knew that it had happened and had done nothing to stop it. The *Employment Statutory Code of Practice*¹⁸ has been developed, and is designed to provide detailed explanations of the provisions in the Act and to apply legal concepts in the Act to everyday situations.

¹⁴ <http://www.legislation.gov.uk/ukpga/2008/24/contents>

¹⁵ <http://www.acas.org.uk/index.aspx?articleid=2174>

¹⁶ <http://www.staffgovernance.scot.nhs.uk/>

¹⁷ <http://www.legislation.gov.uk/ukpga/2010/15/contents>

¹⁸ http://www.equalityhumanrights.com/uploaded_files/EqualityAct/employercode.pdf

*Trade Union & Labour Relations (Consolidation) Act 1992*¹⁹

There is also protection for people against harassment on the basis of their membership or non-membership of a trade union.

3.2 Bullying

The legal position with respect to bullying is more complex as there is no separate piece of legislation which deals with workplace bullying in isolation. Bullying might be part of discriminatory behaviour, or related to a myriad of different legal principles, for example:

- Breach of contract – usually breach of the implied term that an employer will provide reasonable support to employees to ensure that they can carry out their job without harassment and disruption by fellow workers;
- The common law responsibility to take care of the safety of workers;
- *Employment Rights Act 1996*²⁰ – for example, constructive unfair dismissal;
- Personal injury protection involving the duty to take care of workers arising out of the law of tort;
- *Health and Safety at Work etc. Act 1974*;²¹
- *Trade Union and Labour Relations (Consolidation) Act 1992*²² – dealing with special types of intimidation etc.;
- Protection for whistleblowers under the *Public Interest Disclosure Act 1998*²³;
- *Criminal Justice and Public Order Act 1994*²⁴;
- *Public Order Act 1986*²⁵;
- *Protection from Harassment Act 1997*²⁶;
- *Human Rights Act 1998*²⁷.

¹⁹ <http://www.legislation.gov.uk/ukpga/1992/52/contents>

²⁰ <http://www.legislation.gov.uk/ukpga/1996/18/contents>

²¹ <http://www.legislation.gov.uk/ukpga/1974/37/contents>

²² <http://www.legislation.gov.uk/ukpga/1992/52/contents>

²³ <http://www.legislation.gov.uk/ukpga/1998/23/contents>

²⁴ <http://www.legislation.gov.uk/ukpga/1994/33/contents>

²⁵ <http://www.legislation.gov.uk/ukpga/1986/64/contents>

²⁶ <http://www.legislation.gov.uk/ukpga/1997/40/contents>

²⁷ <http://www.legislation.gov.uk/ukpga/1998/42/contents>

3.3 Other forms of discrimination

There are other areas of employment legislation where discrimination based on the specified characteristic is unlawful, albeit such legislation does not make specific reference to bullying or harassment.

*Rehabilitation of Offenders Act 1974*²⁸

Essentially considers detrimental treatment of employees with spent convictions as similar to a 'discriminatory treatment'.

*Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000*²⁹

Make it unlawful for part-time workers to be treated less favourably than full-time workers.

*Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002*³⁰

Fixed-term employees now have the right not to be treated less favourably than full-time employees.

²⁸ <http://www.legislation.gov.uk/ukpga/1974/53/contents>

²⁹ <http://www.legislation.gov.uk/uksi/2000/1551/contents/made>

³⁰ <http://www.legislation.gov.uk/uksi/2002/2034/contents/made>

4 Interventions

4.1 Early action and informal interventions

As outlined earlier, dealing with bullying and harassment is only one aspect of NHSScotland's agenda to create a 'dignified workplace'. A dignified workplace reflects an organisation where dignified workers (employees who are respected and valued) conduct dignified work (work that makes a difference to society). To read Sharon Bolton's paper on *Dignified Work, Dignified Workers and Dignified Workplaces*, [click here](#)³¹.

Organisations striving to create such a workplace may have a range of culture change interventions in place to try and pre-empt bullying and harassment situations. These may include a coaching philosophy that encourages an ongoing feedback loop, for example. However where this is not the case, or the pre-emptive measures have been unsuccessful, early action and informal intervention should be the next step.

There is a positive duty upon ALL parties to try to resolve a dispute or disagreement whenever it is reasonable to do so.

Therefore, wherever possible, interventions to informally resolve a bullying/harassment issue will be offered and encouraged as a way forward.

All parties involved should remember that the alleged bully/harasser also has rights and that premature conclusions should not be made until the due process has been completed. Timely action is essential to ensure the impact for both alleged victim and alleged perpetrator is minimised.

4.1.1 Early action by management

Employers have a duty of care to all their employees. Managers have a duty to act promptly and to intervene early when behaviours that could indicate bullying/harassment are spotted or suspected. In many cases, the need to take appropriate action will be clear.

However, managers should also take time to reflect on the behaviours identified and question whether the behaviour is indeed bullying/harassment, or rather a personality clash, performance management or an inappropriate management style. An employee may perceive any of these situations as bullying/harassment.

Managers should therefore reflect upon what situation caused the allegation. If the allegation came about as a result of a performance discussion, why was that the case?

³¹ <http://eprints.lancs.ac.uk/48818/>

Managers should ensure that feedback follows the BOOST model (Balanced, Observed, Owned, Structured and Timely). Was the feedback balanced and observed? Was it delivered in a timely fashion (i.e. not six months after the behaviour was observed)? Did the feedback come as a complete surprise to the employee?

If it is possible to identify why the allegation has been made, it may make resolution before formal process much easier.

4.1.2 Appropriate challenges from employees

As a first step, employees should reflect on the behaviour and try to establish whether or not it was indeed bullying, performance management, or a clash of personalities etc. (see Appendix 1).

If, having done so, an employee still perceives that the behaviour used towards them was inappropriate, they may choose to try appropriately challenging that behaviour themselves, either by speaking or writing to the person(s) concerned.

It may be that the other person is not fully aware of their own behaviour and its impact. By appropriately challenging the behaviour, the employee can create the possibility of mutual understanding and change. The employee also shows that they are acting with dignity and that they are respecting the dignity of the other person.

Appropriate challenging is an option available to individuals as a form of personal action. However, it may not be possible to use it in all situations (e.g. if there are safety issues/other risks).

When appropriately challenging behaviour, it is important for the employee to remain calm and:

- Describe the behaviour in neutral terms (e.g. “There have been occasions like the one this afternoon and last Tuesday when your voice was raised/very loud when you spoke to me in front of the others”);
- Describe the effect on their performance (e.g. “This makes it difficult to concentrate on what’s being said/difficult to take part in things/difficult to do my job”); and
- Describe how they would like the behaviour to be different (e.g. “I would like/prefer to hear about feedback/have problems highlighted in a less public setting/in a less forceful way/in a quieter tone”).

They should again ensure feedback follows the BOOST model (Balanced, Observed, Owned, Structured and Timely).

In the above examples, the employee is acting respectfully and looking for the other person to listen respectfully and consider what they are saying. The desired outcome is that both individuals agree how things will be different in the future and put this into practice. If an employee feels they are unable to deal with the behaviour directly or where a personal intervention has been unsuccessful, further options may be required.

4.1.3 Early action - seeking support

An employee who believes that they are the victim of inappropriate behaviour can seek support from a Confidential Contact. The Contact will listen to their concerns and describe the options available to them without making any judgements about the issues. In some organisations, this may be down to designated Confidential Contacts, whilst in other organisations, senior line managers may be the first contact for informal support.

4.2 Structured informal approaches

Where early action has been unsuccessful, employees and other stakeholders may feel the need to pursue a more structured informal process. There are a number of options for such structured informal approaches:

4.2.1 Mediation

Mediation can be used early in a dispute or later on (i.e. before or after, but not during, a formal process).

Mediation is a confidential, off-the-record method in which the parties are brought together in a neutral setting for up to a day, to try to achieve a mutually acceptable outcome, with the help of trained mediators, who are independent and have no involvement in a case, either before or after the mediation.

Mediation is helpful where conflict involves relationship issues and/or misunderstandings between people. Mediation follows a set of practices and values that include impartiality, independence, neutrality, equality, collaboration and respect for the ability of the parties to make decisions. It is always a voluntary process. What is said in mediation is privileged and cannot be disclosed or used in any subsequent procedure.

Mediation is not arbitration or conciliation and mediators do not make any judgments about the issues (i.e. a facilitative model is used). Fully trained mediators may be either internal or external but should always be completely impartial. The purpose of the mediation process should be to reach a mutual agreement that resolves each stakeholder's issues.

4.2.2 Meetings facilitated by Human Resources (HR) personnel

If stakeholders agree that a resolution can be reached through a structured informal discussion rather than through mediation, they may decide to conduct a facilitated meeting.

Facilitated meetings can be offered by Human Resources personnel, to provide an opportunity to explore options and develop a way forward towards resolving an issue.

The purpose of a particular facilitated meeting, as well as ground rules for the meeting, will be stated at the outset, but within these parameters a facilitated meeting can involve a broad range of issues and methods. For example, negotiation and/or compromise can be used and representatives can participate (i.e. a trade union/professional organisation representative or work colleague). Each NHSScotland organisation will have their own procedures regarding appropriate representatives.

Special attention should be paid to communications with employees who have limited experience of working life, those with learning difficulties, with physical disabilities, or mental health issues (which may impact on their ability to understand or express themselves) as well as employees whose first language is not English. Where required, a translator will be provided when requested.

It is important to note that a meeting facilitated by HR is not a form of arbitration and should not be confused with conciliation, although the outcome of a facilitated meeting might be binding (e.g. if it has to do with fulfilling an employment contract or complying with the law).

Facilitated meetings are also different from mediation. The parties or their representatives can request a facilitated meeting. Alternatively, management or HR can recommend it. For a meeting to occur, the participants must be willing to take part.

In some circumstances, the HR professional who is facilitating the meeting will not be directly involved in the issue but will report back to whoever is engaged on the case in the HR team. In other situations, the HR professional who is dealing with the matter as part of their own caseload will facilitate such meetings.

Notes will normally be taken to aid recall of what was discussed and a record will be produced of any decisions reached and actions agreed. This is shared with the participants and, if agreed as part of the outcome, may be shared with persons not actually present at the meeting (e.g. service manager, HR etc.). It may also be referred to in the future by anyone involved. If required, there can be a review meeting after a period of time to monitor progress and follow-up on any issues.

Facilitated meetings can last for several hours. If they form part of a series of meetings spread across a number of days, it is important to establish a timescale for concluding the process promptly.

4.2.3 Meetings facilitated by other third parties

Sometimes a manager or other third party may be called in to facilitate an informal discussion between two or more individuals. It is essential that this is conducted in a fair and consistent manner to facilitate equal participation by the parties making decisions.

The third party invited to facilitate must not have any stake in the issue or have any relationship to the situation that could cause any of the parties to feel disadvantaged.

They must outline their role and agree ground rules for the discussion and establish that the parties are both willing to continue before proceeding. They must use good listening and conflict management skills, and refrain from taking sides or bringing their own opinions, issues and concerns into the discussion.

Please note that there is no need to have a facilitated meeting before mediation and that a case may need both interventions.

4.3 Sources of support

4.3.1 Confidential Contacts

In some organisations Confidential Contacts provide an initial point of contact for a private discussion. Confidential Contacts may be internal or external and will primarily act as a signposting service for employees. Other organisations may have individuals conducting a similar role but may not be described as Confidential Contacts.

Confidential Contacts (CCs) provide independent, confidential support to employees who may be affected by or accused of bullying, mobbing and/or harassment. They will meet to listen to an employee's concerns and help them explore the options available.

4.3.2 Human Resources (HR)

HR personnel can provide advice and support, helping to clarify employee expectations and discuss possible options. Depending on how each incident develops, HR personnel will also take up other roles (e.g. facilitating meetings, taking part in hearings etc.).

4.3.3 Occupational Health Service (OHS)

OHS can provide confidential advice on health issues that may cause difficulties within the workplace either following management referral or self-referral. Additional support services such as counselling are available.

4.3.4 Trade union/professional organisation representatives

Trade union/professional organisation representatives will discuss the situation to help identify the problem and look at options for resolution. Depending on how things develop, they may take up roles such as accompanying and representing parties at meetings, presenting cases at hearings etc.

5 Training implications

5.1 Raising awareness

Central to this policy's successful implementation are a range of training interventions that support our drive towards a dignified workplace, underpinning the values and principles outlined in the *Staff Governance Standard*.³²

All employees in NHSScotland should be aware of the policy on bullying and harassment. Organisations should ensure that HR policies are brought to the attention of new staff during their induction period and that all staff have access to these policies in their place of work. The information to be provided should include identification and definition of unacceptable behaviours that could constitute bullying/harassment and clear pathways of support and guidance for all staff seeking assistance.

5.2 Training and implementation

In order to ensure the widespread implementation of this policy, organisations need to provide information and training to key personnel within their organisation on recognising and dealing with bullying and harassment in the workplace. This includes staff who are responsible for or who supervise/manage other employees, Human Resources, trade union/professional organisation representatives and Occupational Health.

Where possible, organisations should consider nominating a specific individual(s) to implement and monitor this policy. This should be achieved through partnership working within the Area Partnership Forum.

5.3 Training/supervision/support for Confidential Contacts

Organisations are encouraged to put in place a network of volunteer Confidential Contacts to provide confidential support to staff who feel they are being bullied/harassed at work. Staff representatives, line managers or HR personnel may undertake this role; however, this would negate any other role in the same case.

These Confidential Contacts will require training about their role within their organisation and support from other Confidential Contacts at regular intervals.

³² <http://www.staffgovernance.scot.nhs.uk>

Training should include basic listening skills, setting of boundaries, record keeping, recognising bullying and harassment and an understanding of the organisation's policy and procedure. HR departments should provide periodic supervision and regular meetings for Confidential Contacts to support them in this work.

The principle of establishing a network of Contacts is the goal. Organisations may then decide to call them something more appropriate to their cultural context.

5.4 Training support for investigators

Where organisations intend to use internal investigators for the investigation of complaints, appropriate training should be put in place to ensure that the investigators are competent. Ensuring investigators have adequate skills and can also demonstrate objectivity will be essential to thorough investigations.

5.5 Training and support for mediators

Where organisations intend to utilise internal mediators to help resolve bullying/harassment issues, the organisation should ensure that they are trained to appropriate standards through credible and professional sources.

5.6 Resources

As with the development of partnership working, implementation of new cultures and policies will require investment in time and effort to communicate and promote changes in behaviours. Potential Confidential Contacts will also need support from their managers to enable them to provide this service.

Organisations should also consider the provision of a safe environment for meetings to take place. Organisations are encouraged to ensure their organisational development budgets include resources to implement changes in human resource policies and the training that is required to support this.

6 Development, implementation and communication of policy and procedure

6.1 Policy development

Each organisation's goal should be to develop a culture and Code of Conduct in which bullying and harassment are known to be unacceptable and where individuals are confident enough to raise concerns without fear of ridicule or reprisal. Everybody needs to feel responsible for challenging all forms of inappropriate behaviour including bullying and harassment and for upholding personal dignity. Developing and implementing preventative policies and procedures creates a climate of greater confidence to challenge bullying and harassment.

6.2 Implementation

To achieve successful implementation, any policy/procedure must be developed in partnership with staff and trade union/professional organisation representatives. Thereafter, it must be communicated to all employees to ensure that they:

- Understand what the organisation regards as appropriate and inappropriate behaviour;
- Know their rights and personal responsibilities under the policy;
- Understand the commitment from senior management;
- Are aware of the names of Confidential Contacts and how to contact them; and
- Are aware of the informal and formal procedures which are in place to try to resolve issues of bullying/harassment.

An effective policy is one that is agreed as a result of partnership working between staff, trade union/professional organisations and employers and is widely known and put into practice. The legal basis of the policy should be made clear as well as the intention to provide a workplace in which all employees are valued equally and treated with dignity and respect.

6.3 Communication

Commitment to the bullying and harassment policy must be demonstrated from the Board and Area Partnership Forum and cascaded throughout the organisation, utilising partnership working. It is not the responsibility of one person to communicate the principles of the bullying and harassment policy, but every employee must take ownership of it. Line managers' objectives should include communicating the bullying and harassment policy to their staff.

Organisations must promote their bullying and harassment policy in a proactive way using, for example, posters, notice boards and leaflets, as well as pledge cards which summarise the points at a glance and can be used as a quick reference guide. These should also inform employees what to do in the first instance if they think they are being bullied/harassed (for example, keeping a diary of incidents and sharing their concerns with a Confidential Contact).

This will help ensure all employees are aware of the policy – from their induction period onwards – of what constitutes bullying/harassment and what action they should take if they are being bullied/harassed or if they witness a colleague being bullied/harassed. An open communication network is essential to enable employees to report any issues.

Organisations should consider introducing a Code of Conduct, containing a clear and open declaration of basic rights at work and describing preferred behaviour when working together. It should set out the way in which individuals and the organisation will value each other, communicate, collaborate, take responsibility and support one another. This can be displayed as a poster throughout the organisation.

7 Success indicators and evaluation

7.1 Success indicators

In order to gauge how successful the policy/procedure has been in operation, it is important to set baseline criteria to begin with. In line with the *Staff Governance Standard*,³³ the NHSScotland staff survey will be an important source of baseline data.

Other sources may also supply useful indicators. For example, monitoring the number of complaints resolved without resorting to formal process, qualitative evaluation regarding the satisfaction of employees (victims and alleged perpetrators), or monitoring the number of employees who leave the organisation following an allegation of bullying/harassment.

It will therefore be necessary for organisations to gather both quantitative and qualitative data and put the relevant systems in place to assess them.

Other indicators of success can include:

- Staff awareness that a policy/procedure exists and an understanding of how it works;
- Management and staff using the policy/procedure to raise genuine concerns;
- Management and staff having confidence in the policy/procedure and feeling comfortable when using it;
- Improvements with reporting and handling such incidents; and
- Open discussion at Area Partnership Forums on the effectiveness of the policy/procedure.

³³ <http://www.staffgovernance.scot.nhs.uk>

7.2 Evaluation

A basis for evaluation could include:

- Feedback from the general staff survey on changes in organisational culture and the incidence of bullying and harassment;
- Return to work interviews undertaken in the management of absence, which should include the opportunity to raise any bullying/harassment problems and for these to be noted;
- Collation of anonymous information to be held from these meetings;
- Discussion of case studies at set timescales;
- Staff/management discussion groups;
- Anonymous facts and figures collated by Confidential Contacts, trade union/professional organisation representatives, occupational health, managers or HR personnel, with a view to monitoring the overall picture; or
- Information gained from the use of exit interviews.

8 Conclusions

- Bullying and harassment in the workplace is becoming more widely recognised as a significant issue for employers. It impacts on the effectiveness of the organisation and the well-being of staff. This policy seeks to demonstrate that by implementing a planned strategy, it is possible to work effectively towards dealing with bullying and harassment in the NHS.
- This '*Preventing and Dealing with Bullying and Harassment in NHSScotland*' PIN Policy is only one step in the journey towards NHSScotland becoming a 'Dignified Workplace', as many other activities will be required to effect genuine culture change.
- We want to encourage a 'performance culture' in which employees are clear about the need to deliver results and where managers are clear about the boundaries between effective management and inappropriate behaviour.
- Where any employee feels they have been subjected to inappropriate behaviour, we want to create a culture where that behaviour may be investigated and dealt with swiftly.
- Formal processes should be a last resort for dealing with dignity at work issues within NHSScotland. Within a 'Dignified Workplace', disputes will be resolved through dialogue in a safe and mutually inclusive environment.

Appendix 1

Definitions

1 Definitions of bullying and harassment

These terms are used interchangeably by most people, and many definitions include bullying as a form of harassment. However, the terms are differently defined by ACAS as follows:

- Harassment is “unwanted conduct related to a relevant protected characteristic (age, disability, gender reassignment, race, religion or belief, sex, or sexual orientation), which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual”.
- Bullying may be characterised as “offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient”.

Bullying or harassment may be by an individual against an individual (perhaps by someone in a position of authority such as a manager or supervisor) or involve groups of people. It may be obvious or it may be insidious. Whatever form it takes, it is unwarranted and unwelcome to the individual.

Examples of bullying/harassing behaviour include:

- Spreading malicious rumours, or insulting someone by word or behaviour (particularly on the grounds of age, race, sex, disability, sexual orientation and religion or belief);
- Copying memos that are critical about someone to others who do not need to know;
- Ridiculing or demeaning someone – picking on them or setting them up to fail;
- Exclusion or victimisation;
- Unfair treatment;
- Overbearing supervision or other misuse of power or position;
- Unwelcome sexual advances – touching, standing too close, the display of offensive materials, asking for sexual favours, making decisions on the basis of sexual advances being accepted or rejected;

- Making threats or comments about job security without foundation;
- Deliberately undermining a competent worker by overloading and constant criticism;
- Preventing individuals progressing by intentionally blocking promotion or training opportunities.

2 Examples of harassing behaviour

2.1 Sexual harassment

- Unwanted, non-accidental physical contact, ranging from unnecessary touching, patting, pinching or brushing against a colleague's body, to assault or coercing sexual relations;
- Unwelcome sexual advances, propositions or pressure for sexual activity; offensive flirting; continued suggestions for social activity in or outside the workplace, after it has been made clear that such suggestions are not welcome;
- Suggestions that sexual favours may further a colleague's career or refusal may hinder it (e.g. promotions, salary increases etc.);
- Displaying pornographic or sexually suggestive pictures, objects or written materials;
- Leering, whistling or making sexually suggestive comments or gestures, innuendoes or lewd comments;
- Conduct that denigrates or ridicules or is intimidatory or physically abusive of an employee because of his or her sex, such as derogatory or degrading abuse or insults which are gender-related and offensive comments about appearance or dress.

2.2 Racial harassment

- Conduct that denigrates or ridicules a colleague because of his or her race, such as derogatory remarks, graffiti, or jokes. Such conduct can be verbal or physical;
- Displaying or sending offensive letters or publications; threatening behaviour;
- Being 'frozen out' of conversations, jostling or assault, or other non-accidental physical contact;
- Derogatory nicknames or racial name-calling.

2.3 *Disability harassment*

- Mimicking the effect of a disability or speech impairment;
- Ostracising, 'freezing out', ignoring and staring;
- Making fun of a disability;
- Using inappropriate terms (e.g. 'cripple', 'spastic');
- Inappropriate personal questions/comments about a disability;
- Belittling or patronising comments/nicknames;
- The display or sending of offensive letters or publications; threatening behaviour;
- Moving a wheelchair without the user's agreement;
- Practical jokes (e.g. hiding a disability aid);
- Disability-based derogatory nicknames or name-calling;
- Touching a visibly impaired person (to annoy).

2.4 *Age harassment*

- Conduct that denigrates, ridicules or is intimidating or physically abusive of an employee because of his or her age, such as derogatory or degrading age-related abuse, insults or offensive comments and jokes about appearance or dress. Such conduct can be verbal or physical;
- Being 'frozen out' of conversations or excluded from social interaction;
- The display or sending of offensive letters or publications; threatening behaviour;
- Derogatory nicknames or name-calling based upon age;
- Being discounted from development opportunities.

2.5 *Sexual orientation harassment*

- Conduct that denigrates or ridicules a colleague because of his or her sexual orientation, such as derogatory remarks, graffiti, jokes. Such conduct can be verbal or physical;
- The display or sending of offensive letters or publications; threatening behaviour;
- Being 'frozen out' of conversations, jostling, assault, or other non-accidental physical contact;
- Derogatory nicknames or name-calling based upon sexual orientation.

2.6 *Religious harassment*

- Requiring or coercing an employee to abandon, alter, or adopt a religious practice as a condition of employment;
- Subjecting an employee to unwelcome statements or conduct (based on religion) which is so severe or pervasive that the individual being harassed reasonably finds the work environment to be hostile or abusive;
- Conduct that denigrates or ridicules a colleague because of his or her religion, such as derogatory remarks, graffiti or jokes. Such conduct can be verbal or physical;
- Displaying or sending offensive letters or publications; threatening behaviour;
- Being 'frozen out' of conversations, jostling, assault, or other non-accidental physical contact;
- Derogatory nicknames or name-calling based upon religion.

3 **Firm and fair management vs. bullying and harassment**

Within organisations, it is necessary and appropriate for managers to be able to manage their staff. This will involve:

- Issuing reasonable instructions and expecting them to be carried out;
- Setting and publicising expected standards of performance supported by a relevant appraisal framework;
- Disciplining staff for misconduct, where appropriate, following a fair and reasonable investigation; or
- Implementing action in respect of the management of sickness absence in line with the local policy.

It is reasonable to expect a manager to perform these functions fairly, firmly and consistently. Performing them does not constitute an act of bullying/harassment, although some staff may feel stressed or anxious while the procedures are ongoing. However, abusing these procedures may constitute bullying/harassing behaviour.

It is important to differentiate between firm, fair management and bullying and harassment. It is in the interests of the organisation that managers should be able to execute their duties without threat of malicious or vexatious complaints – which in themselves could be deemed to be a form of bullying/harassment.

It must also be recognised that where it is found that complaints of a malicious or vexatious nature have been made that these will be dealt with appropriately – and this may involve disciplinary action.

Because of differences in perception, it is not always easy to differentiate between firm, fair management and bullying and harassment. So here are a few comparisons to help you discern between the two:

Appropriate Behaviour	Inappropriate Behaviour
Consistent	Inconsistent
Shares information	Withholds selectively
Fair	Has favourites
Truthful	Distorts, fabricates
Delegates	Abdicates
Builds team spirit	Creates fear, divides
Leads by example	Sets a poor example
Listens	Snaps
Admits mistakes	Blames others
Challenges constructively	Avoids conflict

It is accepted that these descriptions represent extremes of behaviour, although in practice things may not be so clear and individuals may display characteristics which fall somewhere in the middle.

4 Bullying and harassment by 'others'

'Others' may include:

- Patients, residents and clients;
- Relatives, carers and advocates;
- Contractors and agency workers;
- Staff from other agencies; or
- Staff from partner organisations to NHSScotland (such as local councils) or other NHS boards.

It is accepted that staff working within the NHS have to deal with patients/clients with a variety of conditions which may affect their behaviour. At the same time, where bullying/harassment is perpetrated by others, there have to be procedures in place to address this. Employees need to be aware of the *Staff Governance Standard*³⁴ and the support they can expect from their employer should such situations arise.

Where contractors are the perpetrators of bullying/harassment, they must be advised that if the behaviour does not stop, or if the behaviour is serious in nature, then their contract may be terminated prematurely. Organisations must ensure that when awarding contracts, the appropriate documentation includes provision for this eventuality. A suggested procedure for dealing with bullying/harassment by others is given in Appendix 3: Model policy and procedure.

³⁴ <http://www.staffgovernance.scot.nhs.uk>

Appendix 2

Policy statement on bullying and harassment at work

With input from the highest levels of the organisation and in partnership with key stakeholders, Boards should adapt the following outline to devise their organisation's own policy statement.

The organisation is committed to provide a working environment which is free from bullying and harassment. Every employee of this organisation has a responsibility to treat colleagues with dignity and respect irrespective of their race, nationality, sex, sexual orientation, disability, age, religion or belief, marriage or civil partnership, pregnancy, maternity, gender recognition, political conviction, membership/non-membership of a trade union/professional organisation or work pattern.

Therefore, the bullying or harassment of any member of staff for any reason is unacceptable and the organisation will not condone or tolerate bullying or harassment in any form.

We will make every effort to try and resolve all bullying or harassment allegations within our organisation via dialogue. It is the responsibility of every employee to foster a culture of open conversation to ensure that formal complaints are minimised and all employees feel supported and valued.

The requirement to behave towards others in an acceptable manner applies not only to employees, but also to agency staff, contractors, patients, service users, carers or relatives of patients or service users, members of the public, advocates, staff from other organisations and any other person who has access to the organisation.

Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient.

Harassment is unwanted conduct related to a relevant protected characteristic (age, disability, gender reassignment, race, religion or belief, sex, or sexual orientation), which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

Bullying or harassment may be by an individual against an individual or involve groups of people. It may be obvious or it may be insidious. Whatever form it takes, it is unwarranted and unwelcome to the individual.

Where possible, bullying and harassment issues will be dealt with informally. Even so, the organisation takes the view that bullying and harassment may amount to serious or gross misconduct, depending upon the specific circumstances of each case, and which will be subject to action under the disciplinary procedure.

Additionally, to intentionally harass, alarm or distress anyone may be a criminal offence. Therefore reference to, and application of the bullying and harassment policy does not deny or inhibit in any way whatsoever, either the organisation's or the individual employee's legal rights, responsibilities, obligations and remedies. In serious cases, dismissal and criminal prosecution may result.

If, following investigation, a complaint has been found to be malicious or vexatious, the organisation reserves the right to consider disciplinary action against the complainant.

The attached policy, procedure and guidelines are intended to support dealing with bullying and harassment in the workplace by:

- Raising staff awareness that a policy/procedure exists and an understanding of how it works;
- Encouraging management and staff to raise genuine concerns using the policy/procedure;
- Achieving a position whereby management and staff have confidence in the policy/procedure and feel comfortable when using it;
- Improving the reporting and handling of such incidents;
- Facilitating open discussion at Area Partnership Forums on the effectiveness of the policy/procedure;
- Providing, where appropriate, access to confidential counselling, advice and support for victims of bullying and harassment at work;
- Providing a programme for the communication of the policy, monitoring its effectiveness and training for those involved in applying the policy; and

- Raising awareness that all staff, patients and visitors have a responsibility to ensure that their actions, attitudes or behaviours do not cause distress or upset to others. Additionally, managers and supervisors have a specific responsibility to be vigilant about identifying and dealing with bullying and harassment at work, ensuring implementation of and adherence to this policy.

This policy, procedure and guidelines are endorsed by the Board, senior management and the recognised trade unions/ professional organisations and will be communicated to all of those who require to be made aware of its contents.

Appendix 3

Model policy and procedure

1 Introduction

This model policy and procedure has been developed as a distinct procedure to deal with alleged bullying and harassment incidents that arise in the workplace.

The policy and procedure must be used in conjunction with the Board's local policy developed in line with the *Management of Employee Conduct PIN Policy* where it has been determined that an allegation of bullying and harassment has been founded following a thorough investigation.

The policy and procedure provides for an informal, formal and review stage which takes cognisance of the current legislative framework for dealing with employee grievances. Therefore, this procedure may be used and there is no requirement to use the Board's local policy developed in line with the *Dealing with Employee Grievances in NHSScotland PIN Policy* to deal with incidents of bullying and harassment.

2 Impact of bullying and harassment

It is crucial that organisations treat seriously any form of intimidating behaviour. Failure to do so may encourage a working environment which is unpleasant to work in, since staff are unable to perform to the best of their ability if in fear of bullying or harassment.

The health and morale of staff may suffer and levels of stress, anxiety and sickness may increase. It makes sense that a working environment free from bullying and harassment enables staff to contribute more effectively and achieve higher levels of job satisfaction, and it will also help to reduce staff turnover and retain staff with valuable skills and experience.

3 Definitions

Whilst there may be no universally agreed definitions of workplace bullying and harassment, you can [click here](#) for some useful definitions and insights for inclusion in a policy and procedure document, to help staff identify bullying and harassment at work.

4 Legal framework

The UK's legal framework as it relates to bullying and harassment is the cornerstone for setting policies and procedures to tackle them in the workplace.

Therefore, [click here](#) to review a list of relevant statutes/regulations.

5 Procedure

Where a complainant believes that they have been bullied or harassed, there are a number of options available to them dependant upon the circumstances of their own particular situation. These options are listed below:

5.1 *Accessing a Confidential Contact*

The organisation has identified and trained individuals who are fully knowledgeable about the bullying and harassment policy and procedure. They are available for staff to contact independently in order to discuss their situation and to seek support in making a decision about how they would like an incident to be handled.

These trained individuals are also able to provide the complainant with support and assistance during a potentially stressful period before and during an informal complaint being made to line management.

It may be helpful for a complainant who believes he or she is being bullied or harassed to talk to someone who is familiar with the issues surrounding bullying and harassment and also understands the philosophy behind the organisation's policy.

A Confidential Contact may also be asked to provide support and advice to an alleged bully/harasser, but this would not be appropriate in a situation where they were already providing support to the complainant who is alleging that bullying or harassment has taken place.

Note: It is also important to emphasise that a Confidential Contact should have no formal role within the organisation's disciplinary process and is not expected or trained to fulfil a professional counselling role. It is not the role of the Confidential Contact to make the decision for the complainant, but merely to provide them with the information they need so that they can decide how to proceed.

Complainants may access a Confidential Contact from a different area of the organisation from that in which they are employed if they would find this more helpful.

There are three possible outcomes from this contact:

- Use of the informal stages of this procedure;
- Use of the formal stages of this procedure; or
- Take no further action.

A complainant does not have to access a Confidential Contact as part of the procedure. If they prefer, they may access the informal or formal stages of the procedure to begin with.

5.2 *Informal stage*

This involves the complainant approaching the alleged bully/harasser in order to tell them that their behaviour is found to be offensive, why this is the case, and to ask them to stop. The complainant may ask a colleague or a staff-side representative to be present for moral support.

If the complainant would find confronting the alleged bully/harasser too difficult, but still wishes to pursue the matter informally, they can ask their line manager/HR for support in speaking to the person concerned. Alternatively, the complainant can write directly to the alleged bully/harasser detailing the offensive behaviour and confirming the requirement to stop any further bullying or harassment.

The complainant should keep a record of any informal action taken, along with a note of the date and what was said by those involved. This is necessary should evidence be required at a later date if the bullying or harassment continues or subsequently recurs.

It has to be emphasised that in order to maintain working relationships, matters should be dealt with by informal intervention wherever possible. The ACAS Code actively encourages all organisations to utilise dialogue as the main tool in dispute resolution. This may involve facilitated discussion between the parties involved. Even so, this does not remove the right of the complainant to pursue the matter under the formal procedure.

Should the informal approach prove unsuccessful, or the complainant has chosen to go straight to the formal stage of the procedure, the following arrangements will apply.

5.3 *Formal stage*

A formal complaint should be made to the complainant's line manager or supervisor, HR, or with the line manager of the alleged bully/harasser. Any formal complaint should be made

in writing detailing the basis upon which the alleged bullying or harassment has taken place. As stated above, a complainant may access a Confidential Contact for support and assistance prior to lodging a formal complaint.

5.3.1 *Investigation*

It is the responsibility of fully trained internal investigators, with no previous knowledge of the complaint, to investigate the allegation and to come to a conclusion regarding the action to be taken. This process should be discussed in partnership with the complainant and their trade union/professional organisation representative if they have chosen to be represented.

All parties involved will be guaranteed a fair and impartial hearing. Strictest confidentiality should be pursued throughout the investigation process and, as formal disciplinary action is a possible outcome following an investigation, it should be conducted with reference to the provisions within the Board's local policy developed in line with the *Management of Employee Conduct PIN Policy*. This will prevent the need for a further disciplinary investigation if the matter goes to a formal hearing and the decision is that disciplinary action is required.

All parties must make every effort to proceed with and complete the investigation as swiftly as possible, recognising that lengthy and drawn-out processes only add stress and make a satisfactory outcome less likely. Although it is not practical to stipulate, within this procedure, timescales to suit every situation, the complainant, their representative and the alleged bully/harasser must be advised of the estimated timescale in writing by the investigating manager before the investigation begins. Any significant changes to the timescale must also be advised in writing, citing reasons for these changes. In the event of suspensions/relocations of individuals, these will be carried out taking account of all circumstances.

At each stage of the process, the complainant and the alleged bully/harasser will have the opportunity to be accompanied by a colleague or trade union/professional organisation representative. Again, it is crucial that at all stages confidentiality is assured.

Those involved in carrying out the investigation must recognise the difficulty which some complainants will have talking to a third party about the incidents involved and that they may become distressed at some point in the process. They may harbour feelings of embarrassment, a fear of being disbelieved or not being taken seriously, a fear of further damaging the working environment or a fear of management being biased against them.

Whilst recognising that talking and being questioned about the incident(s) may serve to add considerably to the stress already suffered as a result of the alleged bullying or harassment itself, we must also recognise that dialogue is the best way to resolve the problem.

It is important that a complainant is not questioned in a way which implies that they have either consciously or unconsciously invited the alleged bullying or harassment. This in itself may be a form of bullying or harassment, which may add to the stress being experienced by the complainant.

It should not be necessary for any complainant or alleged bully/harasser to have to repeat their statements to different managers at different times, thereby potentially increasing the stress they may suffer. Therefore, full, written and signed statements from all involved should be taken at an early stage, and a written and dated record of all investigatory interviews should be made.

5.3.2 *Formal hearing*

Any formal hearing should be conducted according to the provisions of this policy, which is in line with the *Preventing and Dealing with Bullying and Harassment in NHSScotland PIN Policy*.

Note: It will be for the organisation to determine the panel composition in line with existing policies and the provisions outlined herein. After consulting both parties, it will be for the panel's chairperson to determine how the hearing will be structured, taking into account the sensitivity of the issues involved and the need to protect the rights of all concerned.

5.3.3 *Decision*

There are four potential outcomes following the investigation and any formal hearing:

- The complaint is not founded;
- There is insufficient evidence;
- The evidence and/or nature of the complaint justifies counselling/advice only; or
- The evidence justifies formal disciplinary action.

5.3.4 *No formal action*

If no formal action is taken following the investigation and hearing, the alleged bully/harasser will be notified of the outcome in writing (with due regard for the confidentiality of both parties). If a claim is found to be malicious or vexatious in

nature, then the complainant may find themselves subject to formal disciplinary action.

It may be the case that whilst no formal action is taken, some informal action may be appropriate, such as counselling of the alleged bully/harasser, mediation, or a facilitated discussion that attempts to bring resolution. In these situations, both the complainant and alleged bully/harasser will be notified of the outcome in writing, again with due regard for the confidentiality of both parties.

5.3.5 *Formal action*

If a complaint is upheld following an investigation and formal hearing, appropriate formal action will be taken. Where this involves potential disciplinary action, which in serious cases may lead to dismissal, a disciplinary hearing will be convened. For the avoidance of doubt, the investigation conducted when the complaint was submitted can be used as the basis of a disciplinary hearing.

In serious circumstances, if relocation proves necessary, every effort will be made to relocate the bully/harasser and not the complainant, unless the complainant specifically asks to be moved.

Additionally, in all cases where a bullying or harassment complaint is upheld, the organisation will seek to prevent the behaviour recurring.

Both the complainant and the alleged bully/harasser will be notified of the outcome in writing, with due regard for confidentiality of both parties.

5.3.6 *Reviews*

If the complainant remains aggrieved following the outcome of the formal hearing, they or their representative may request a review. The designated senior manager to whom a request for a review should be addressed will be identified within the letter confirming the formal panel's decision.

A hearing will be held to consider the grounds for review and the formal panel's views. To protect those involved, attendance of witnesses will be kept to a minimum. The complainant has the right to be accompanied by a colleague or trade union/professional organisation representative.

It will be for the review panel to decide how the review hearing will be structured, following consultation with the parties, taking into account the sensitivity of the issues involved and the need to protect the rights of all concerned.

The outcome of the review will be communicated to the complainant in writing as soon as possible following the review hearing. This will be the final stage of the procedure and there is no further right of review.

5.3.7 *Confidential counselling*

Given the potential sensitivity of the issues involved and the stress present when dealing with bullying or harassment situations, the organisation may consider providing confidential counselling for the complainant and the alleged bully/harasser at any stage during this procedure.

6 **Policy monitoring and review**

Responsibility for monitoring the application of this policy will rest with senior management. This policy will be reviewed on an annual basis, with amendments being made as appropriate following consideration by staff, staff-side representatives and management.

7 **Bullying and harassment by patients, carers, relatives, visitors or advocates**

7.1 *Background*

Staff have the same rights as patients and other service users – that is, to be treated with respect and dignity at all times – and have the right to complain if bullied or harassed by a patient, service user, carer, relative, visitor or advocate.

It is inappropriate to swap the bullied or harassed employee with another employee without explaining to the complainant the reasons for this action. In all cases an Incident Report Form should be completed.

If a member of staff is bullied or harassed in the course of carrying out their duties, the following procedure should be adopted. It is a priority of the organisation to ensure that no staff are put in a situation of potential risk and the following procedures are put in place to protect staff whilst carrying out their duties.

7.2 *Informal stage*

Wherever possible, any incident should initially be dealt with informally. If the employee feels able to do so they should inform the alleged bully/harasser, at the time if possible, that they find their actions/remarks and behaviour to be unacceptable. They should state that they wish the unwelcome behaviour to stop.

If the situation warrants the need for a witness, the complainant is advised to approach a colleague to accompany them when approaching the alleged bully/harasser. The employee should then report the matter to their manager as soon as possible.

If the employee does not feel able to speak to the alleged bully/harasser personally, they can ask their manager to do so on their behalf. It will be the responsibility of the manager involved to discuss the action taken to date and what should be done if any further incidents occur.

At any stage, if the employee who made the complaint is dissatisfied with the action taken by management, he or she may lodge a grievance.

If the harasser is a patient or service user, it may be appropriate to discuss the matter with a carer or relative at the earliest opportunity. It may be that a carer or relative could be more successful in addressing the unwanted behaviour with the patient or service user.

If the alleged bully/harasser is a carer, relative, member of the public or advocate, it may be appropriate to discuss the matter with the patient/service user. In these circumstances, care and consideration should be taken regarding the duty of confidentiality to the patient or service user.

The manager must inform the alleged bully/harasser of the consequences of further incidents. Where it appears that the alleged bully/harasser is refusing services on potentially discriminatory grounds, they should be advised that this is the case and that in taking this action they may be deemed to be refusing services altogether which could result in either the withdrawal of a service or the loss of access to the organisation's premises.

A file note should be kept of the details of the incident, the action taken and by whom. If informal action proves insufficient to deal with persistent acts of bullying/harassment, then management reserves the right to take further formal action. In serious cases, it may be appropriate to move directly to this next stage.

7.3 *Formal action*

The manager must consider the following prior to making their decision and taking any action:

- The degree to which the incident undermines the relationship between parties;

- If any previous incidents have occurred and, if so, how severe they were;
- The health problem of the patient/service user; and
- The effects of the incident on the employee.

If the incident is serious, or a repetition of a previous incident(s) which resulted in informal action being taken, then the bully/harasser should be written to officially by the relevant senior manager informing them:

- That their comments/actions/behaviours are not acceptable (and, if appropriate, that it is potentially discriminatory);
- That further incidents will not be tolerated; and
- That further incidents may result in the withdrawal of services.

Where the incident is sufficiently serious, the senior manager will meet with the complainant prior to putting the matter in writing as above. A copy of any such letters should be sent to other relevant senior managers as appropriate.

In cases of physical violence or serious threats of violence, the senior manager should also involve the police as appropriate. Notwithstanding this, a member of staff may at any time involve the police as they wish.

If the employee who made the complaint is dissatisfied with management action taken, he or she may lodge a formal grievance in accordance with the organisation's Grievance procedure.

8 Bullying and harassment by contractors and staff from other agencies

In cases where the bullying or harassment involves contractors or staff from other agencies, the stages as detailed at Sections 4.2 and 4.3 should be applied. However, due to the specific nature of the relationship between the organisation and these individuals/organisations, the following additional steps should be included at the informal stage:

- If the harasser is a contractor or staff member from another agency, the manager will contact the appropriate senior person within the company/organisation concerned to advise them that this type of behaviour is unacceptable and that, if it is repeated, the individual concerned may be refused entry to the organisation's premises.

This action is predicated on the basis that all contractors are advised that the provisions of the policy apply to them before entering into the contract for services under which they are operate. It is also predicated on the basis that partnership organisations are aware that whilst their representatives are on NHS premises and/or dealing with staff employed by the NHS organisation, such individuals will be expected to behave acceptably at all times.

Should the matter not be resolved informally, the formal stage would require the appropriate senior manager to write to the appropriate senior person within the company/organisation concerned to advise them again that this type of behaviour is unacceptable and that if it is repeated then the individual concerned may be refused entry to the organisation's premises or refused continued contact with staff of the organisation.

If the employee who made the complaint is dissatisfied with management action taken, he or she may lodge a formal grievance in accordance with the organisation's Grievance Procedure.

9 Guidelines

It is considered to be of vital importance to the success of any bullying and harassment policy/procedure implemented that all those who have responsibilities within it, namely managers and individual employees, understand the philosophy that lies behind the formal documents.

It is therefore recommended that guidelines for both managers and employees are prepared. These should be prepared in an inclusive manner in conjunction with trade union/professional organisation representatives and management.

Appendix 4

Policy checklist

Use this checklist to help ensure your organisation's bullying and harassment policy contains these essential elements.

1 Core strategy elements

- Acceptance that bullying and harassment are organisational issues;
- Measures to assess and prevent bullying and harassment;
- Information and training about the bullying and harassment policy;
- Development of an organisational-specific 'Code of Conduct';
- Access to confidential support (Confidential Contact);
- Access to professional counselling services;
- Provision for monitoring and reviewing the policy/procedure;
- Communication of the legal framework; and
- Access to facilitated discussion.

2 Key policy and procedure elements

- Commitment from senior management;
- Statement that bullying and harassment is unacceptable and will not be tolerated;
- Clear definitions of unacceptable behaviour;
- Statement that bullying and harassment will be treated as a disciplinary offence;
- Responsibilities of employees and managers;
- Confidentiality provisions within the process;
- Informal stage (incorporating processes for mediation and facilitated meetings);
- Jointly developed and agreed with staff and staff-side representatives;
- Applicable to all staff; and
- Incorporates bullying and harassment by clients, patients, relatives, contractors, advocates, agency staff and staff from other agencies.

Appendix 5

PIN Policy Review Group

Chair:	Caroline Sharp	HR Director, NHS Dumfries and Galloway
Members:	Shazia Ashraf	Staff Governance Associate, Scottish Government
	Elaine Barr	HR Manager, National Waiting Times Centre
	Irene Bonnar	OH Manager, NHS Borders
	Barbara Anne Boyter	Deputy Director of HR, NHS Fife
	Peter Connor	Head of Ambulance Services (Edinburgh), Scottish Ambulance Service
	Ros Derham	RCN
	Sarah Duncan	UNISON
	Rachel Fishlock	HR Advisor, NHS Greater Glasgow & Clyde
	Janet Fraser	Dignity at Work Officer, NHS Grampian
	Ruth Hibbert	Divisional HRD (South CHP), NHS Lanarkshire
	Jennifer Jamieson	Head of Human Resources (Acute Service), NHS Tayside
	Isabel Marr	Services Manager (Elderly Services), NHS Ayrshire and Arran
	Val Marshall	HR Manager, NHS Forth Valley
	Darren Paterson	Staff Governance Associate, Scottish Government
	Ann Tobin	Workforce Planning and Recruitment Manager, Scottish Ambulance Service
	Josephine White	HR Manager, Health Scotland
Advisors:	Lynn Anderson	Dignity at Work Programme Manager, NHS Dumfries and Galloway
	Claire Puller	Managers in Partnership

Appendix 6

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