

AGENDA ITEM 6i
REPORT NO. VAL/11/15

THE HIGHLAND & WESTERN ISLES VALUATION JOINT BOARD
POLICY AND GUIDANCE FOR PREVENTING VIOLENCE AT WORK

1. Introduction

- 1.1 The Highland & Western Isles Valuation Joint Board recognises that exposure to violence is not an acceptable part of employees' jobs and will take all reasonably practicable measures to prevent or reduce the risk of such exposure. In delivering its services to the community the Board expects that members of the public will treat its employees with courtesy and respect.
- 1.2 Employees are encouraged to report all instances of physical and/or verbal abuse to their Line Managers who should investigate and follow up each incident.
- 1.3 Serious or repeat instances of physical and/or verbal abuse may result in a risk of violence marker being placed against an individual's record in order that such information may be appropriately shared among employees who could come into contact with that individual.
- 1.4 The aim of the risk of violence marker is to help alert Board staff to individuals who pose or could pose a risk of violence and enable them to reduce this risk.
- 1.5 The marker should achieve this by:
 - Serving as an early warning of a particular individual or situation that represents a risk to them, their colleagues or other Board users enabling the department to review and update risk assessments.
 - Providing security warnings and handling advice to Board staff to avoid or minimise the risk.
 - Where appropriate, enabling Board staff to seek professional advice on what action should be taken.
 - Helping the Board meet its obligations under the Health and Safety at Work etc. Act 1974 and Management of Health and Safety at Work Regulations 1999.
 - Helping reduce the number of violent incidents at a local level.
 - Assisting in creating a safe and secure environment for staff, Board users and visitors to Board premises.

2. Definitions

2.1 For the purposes of this policy the term violence is defined as:

"Any incident, in which an employee is abused, threatened or assaulted by a member of the public (including clients) in circumstances arising out of the course of his or her employment".

2.2 This includes physical violence, aggression, verbal or written abuse, sexual or racial abuse, cyber bullying, animal attack and/or intentional damage to personal property.

2.3 The Board's Harassment at Work Policy will apply in relation to any incidents of violence occurring between employees.

3. Scope

3.1 This policy and guidance will apply to all Board employees and contractors.

4. Legislation and Board Policies

4.1 This policy and guidance meet the requirements of:

- The Health and Safety at Work, etc. Act 1974
- The Management of Health and Safety Regulations 1999
- The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995

4.2 This document should be read in conjunction with the following Board policy and guidance documents:

- Health, Safety and Wellbeing Policy
- Policy and Guidance on Risk Assessment
- Harassment at Work Policy
- Policy and Guidance on Accident Reporting and Investigation

5. Responsibilities

5.1 In addition to the general responsibilities for health and safety set out on the Health, Safety and Wellbeing Policy there are also specific responsibilities for preventing violence at work.

5.2 The Office & Support Manager is responsible for ensuring that the Senior Management Team regularly reviews the incident reports on a weekly basis and for ensuring that clients who have had a marker placed against them are informed in writing.

5.3 Central Admin staff will act as Violent Incident Co-ordinators and the Office & Support Manager will ensure that the resources and support are in place for staff to fulfil their duties.

5.4 The Assessor is responsible for ensuring that there are sufficient numbers of trained risk assessors in the department and that risk assessments are being conducted and reviewed, as appropriate.

The Senior Management Team is responsible for reviewing summary incident reports, approving decisions for a marker, reviewing the status of any markers, reviewing decisions not to notify an individual of a marker and considering any complaints. They are also responsible for notifying Highland Council Health Safety & Wellbeing team of any incidents for the marker list to be updated - <http://ntintra1/persintra/health&safety/hs-w-vaw.htm>

5.5 Line Managers are responsible for ensuring risk assessments are in place, investigating incidents, giving feedback to affected staff and for ensuring risk assessments are reviewed and updated following incidents.

6. Training

6.1 Training on the processes involved in this policy and guidance is available via Highland Council's Learning & Development team.

6.2 Training will be tailored to meet the needs of the group/individual, for example:

- Line Managers – reporting and investigating incidents
- Employees – reporting incidents

7. Guidance on reporting and investigating incidents of violence or aggression

7.1 Any employee who suffers violence or aggression arising at or out of their work should report this as soon as possible by notifying Central Admin staff or, if preferred, by contacting their Line Manager in the first instance who should report to Central Admin on their behalf. In any case the Line Manager should also be informed.

7.2 The Line Manager must investigate the incident and this will include a discussion with the employee and may involve discussions with witnesses and/or the alleged perpetrators.

7.3 As part of the investigation process, the risk assessment should be reviewed and, if necessary, updated.

7.4 If the employee has been absent for over 3 days or incurred a 'major' injury as a result of the incident the Line manager should submit a RIDDOR report. In all cases the Line Manager should meet with the employee to discuss the outcome of the investigation.

- 7.5 Should the incident be of a particularly sensitive nature the employee is entitled to ask for the incident record to be recorded with the message: "Please contact the Line Manager for incident details". In this instance, the employee's line manager should keep all of the related case information in a secure location for a minimum of 3 years or until there is no longer a live marker against that customer.

8.0 Violent warning markers

- 8.1 In line with current guidance sharing information relating to a marker between the Board and Highland Council colleagues (internally or from one provider to another), to alert staff to the potential risks of violence, is permissible and legitimate, as long as the processing by the provider is fair and justified (See Appendix 3).
- 8.2 Serious or repeat instances of physical and/or verbal abuse may result in a risk of violence marker being placed against an individual's record in order that such information may be appropriately shared among employees who could come into contact with that individual.
- 8.3 A marker may be applied regardless of whether the act was intentional or not. The use of a marker will help reduce possible risks to Board and Highland Council staff by enabling them to consider and implement measures for their protection.
- 8.4 It is important to state that the marker is not a mechanism for attributing blame; it is a process for alerting staff to the possibility of violence, whether such actions are deliberate or take place as a result of a medical condition or as a response to treatment or medication.
- 8.5 The marker and associated additional information should be available to all Board staff who, because they may have face-to-face contact with a particular individual, may be subject to an increased risk of violence. This is in line with current health and safety guidance. Information-sharing with staff is permissible where the risk justifies it.
- 8.6 All incidents involving physical assault must be reviewed by the Senior Management Team to consider recommending placing a marker on records. Non-physical assault (including threatening behaviour) can be equally serious and incidents should be similarly reviewed.

9. Process for approving a marker

- 9.1 A risk of violence marker will only be placed on an individual's record where an agreement has been given by the Senior Management Team. This will serve as a safeguard to ensure that the decision-making process is objective, transparent and fair.
- 9.2 The Senior Management Team should review the summary incident reports on a weekly basis. While it is desirable to have as much information as

possible to inform a recommendation regarding a marker, it may be necessary for the Senior Management Team to make an immediate decision based on discussions with the appropriate members of staff if it appears that there is a serious or imminent risk to staff.

9.3 The following risk factors should be considered when determining whether a recommendation should be made that a record should be marked:

- Nature of the incident (i.e. physical or non-physical)
- Degree of violence used or threatened by the individual
- Injuries sustained by the victim
- The level of risk of violence that the individual poses
- Whether an urgent response is required to alert staff
- Impact on staff and others who were victims of or witnessed the incident
- Impact on the provision of services
- Likelihood that the incident will be repeated
- Any time delay since the incident occurred
- Staff are due to visit a location where the individual may be present in the near future
- The incident, while not serious itself, is part of an escalating pattern of behaviour.

9.4 The recommendation to use a marker should be based on a specific incident(s) and not personal opinion or hearsay.

9.5 The Senior Management Team recommendations, along with any supporting information, should be forwarded to a Violence Incident Co-ordinator to append a risk of violence marker against the individual.

9.6 For the purposes of the marker, the incident should be categorised as outlined in Appendix 1. This list is not exhaustive, but should serve as a helpful guide. If an animal is involved in an incident (e.g. a dangerous dog) and the service user is responsible for the animal, their records should also be considered for a marker.

9.7 If the police are called to an incident, the Board should liaise with the investigating officer to ascertain what action they are taking. Any wait to receive relevant information from the police should not delay the decision-

making process for a marker. If a recommendation is made to mark a record, this should not prevent or replace any legal action being taken against the individual.

- 9.8 It is important to stress that, in relation to decisions on marking records, the role of the Senior Management Team is not to establish whether the act was intentional, but to assist staff in managing future risks. For incidents where the employee is thought to be responsible for their actions, the Line Manager should facilitate further investigation in line with established policies.
- 9.9 The Board may decide to fast track the placing of a marker if the situation is deemed so serious as to warrant it.
- 9.10 The Senior Management Team is responsible for making the final decision on the need for a marker and the review period for that marker. All markers should be reviewed on a six-monthly basis following the process detailed above.
- 9.11 The decision to add a marker should not preclude any other existing lines of communication being used to inform staff if there is an imminent risk to them.

10. Notifying the individual

- 10.1 In the majority of instances, the individual should be informed in writing as soon as possible following a decision to mark their records.
- 10.2 The Office & Support Manager is responsible for sending a notification letter (see Appendix 2 for template letter) to the individual outlining the reasons for the marker. The letter should clearly explain:
 - The nature of the incident
 - That their records will show a marker
 - The reasons why the marker is being placed on their records
 - Who the information may be shared with and for what purpose
 - When the marker will be reviewed for removal
 - The process for complaints.
- 10.3 There may be exceptional cases when it is decided that notifying the individual may increase the risk that they pose to staff and that notification is not appropriate. This may include situations where informing the individual may provoke a violent reaction and put staff at further risk. A detailed record of any decision not to notify an individual and the reasons for this course of action must be kept on record.

11. Informing the victim

- 11.1 It is important that the Board informs the victim of the decision reached. When a marker is placed on record, this feedback will assist in developing a pro-security culture and encourage more staff to report future incidents. If a decision has been reached that a marker is not required, the Board should

explain the reasons to the victim and offer them any further assistance that is necessary.

12. Complaints/Appeals

- 12.1 When an individual is notified that a marker is to be placed on their records, they are advised how to complain about the decision if they wish to, in line with the Board's complaint procedure.

13. Reviewing markers

- 13.1 Best practice requires that markers are periodically reviewed, to ensure they are up to date and remain relevant. Any updates in relation to risks and handling advice should be included as necessary. Records should not be marked for longer than necessary and markers should be removed when there is no longer a risk. The Office & Support Manager will notify the Senior Management Team on new cases of violence/aggression notified by Highland Council and Board employees and any existing markers for consideration. Once they have made a decision, they must inform the Violent Incident Co-ordinators of the decision to place, retain or remove markers so that the relevant case can be updated with this information.
- 13.2 As part of the decision-making process, those reviewing the marker should consider the original decision on which the marker was based. If the decision is made to retain the marker on the record, a further date for review should be set. This review date should be no more than six months from the original decision.
- 13.3 When a decision is taken that the individual's behaviour gives no further cause for concern and the marker should be removed, the Board is responsible for ensuring that this is completed. The individual should be notified of the removal of the marker as soon as possible.

14. Checking for warning markers

- 14.1 A list of marked addresses will be produced by Highland Council's Lagan CRM and automatically e-mailed to the Highland Council Health and Safety Team to update on <http://ntintra1/persintra/health&safety/hs-w-vaw.htm>. The Board will ensure that staff are made aware of the location of the list so that those who are out visiting addresses can check for markers prior to making a visit.
- 14.2 If the address being visited is marked it is the responsibility of the employee to discuss with their Line Manager prior to visiting a marked property. The Office & Support Manager or Violent Incident Co-ordinators should contact Highland Council to provide the employee's Line Manager with more detailed information such as the control measures detailed in the marker and risk assessment held against the case. The employee must ensure that they

discuss these details with the Line Manager before any visit is actually conducted.

15. Record retention

- 15.1 A case will only be formally 'Closed' once a decision has been made either not to place a marker at all or to remove a marker from the recording system due to no further cause for concern. Once the case has been closed, all records pertaining to violent and/or aggressive incidents will be kept for a period of 3 years after the incident date – unless the marker is still "live" - and subsequently destroyed.

16. Monitoring and review

- 16.1 The Board should monitor the frequency and type of violent and/or aggressive incidents and ensure that appropriate control measures are being implemented. Local information should be reported to Highland Council Health and Safety Working Groups.
- 16.2 This policy and guidance will be reviewed on an annual basis to ensure continuing compliance with legislation and best practice.

21 May 2015

Incident classification

1. Physical violence – injury
2. Physical violence – no injury
3. Aggression, verbal or written abuse
4. Cyber bullying
5. Sexual abuse
6. Racial abuse
7. Intentional damage to personal property
8. Animal attack

Dear <<Customer name>>

Notification of Violent Incident Marker being placed on the Highland & Western Isles Valuation Joint Board records

I am writing to you as the Assessor & Electoral Registration Officer. Part of my role is to protect Board staff from abusive and violent behaviour and I am writing to you in connection with the incident below:

Incident Details

Date of Incident:	<<Date of Incident>>
Time of Incident:	<<Time of Incident>>
Type of Incident:	<<Type of Incident>>
Location of Incident:	<<Location of Incident>>
Police Contacted:	<<Police Contacted>>

Behaviour such as this is unacceptable and will not be tolerated. The Board is firmly of the view that all those who work in or provide services on behalf the Board have the right to do so without fear of violence, threats or abuse.

All employers have a legal obligation to inform staff of any potential risks to their health and safety. One of the ways this is done is by marking the records of individuals who have in the past behaved in a violent, threatening or abusive manner and therefore may pose a risk of similar behaviour in the future.

A copy of the policy on placing risk markers is enclosed/can be obtained from [insert details]. I have carefully considered the reports of the behaviour referred to above and have decided that a risk of violence marker will be placed on your records. This information will be shared with Highland Council Services and possibly other organisations with whom we jointly provide services for the purpose of their health and safety.

This decision will be reviewed in 6 months' time (insert date if known) and if your behaviour gives no further cause for concern this risk marker will be removed from your records. Any other provider we have shared this information with will be advised of our decision.

If you do not agree with the decision to place a marker on your record, and wish to submit a complaint in relation to this matter you can do so using our online form available at:

http://www.highland.gov.uk/info/20001/the_highland_and_western_isles_valuation_joint_board/461/the_highland_and_western_isles_valuation_joint_board/4

Yours (faithfully)

William J Gillies
Assessor & Electoral Registration Officer

Dear <Customer Name>

Notification of risk of violence marker being retained on the Highland & Western Isles Valuation Joint Board records

Further to my letter of (insert date of letter) informing you that a risk of violence marker had been placed against your record I would like to inform you that the records have been reviewed and the decision has been taken to retain the risk of violence marker. This decision has been taken as a result of:

(Insert reason marker is being retained – further information available from Highland Council Lagan CRM)

Behaviour such as this is unacceptable and will not be tolerated. The Board is firmly of the view that all those who work in or provide services to the Board have the right to do so without fear of violence, threats or abuse.

All employers have a legal obligation to inform staff of any potential risks to their health and safety. One of the ways this is done is by marking the records of individuals who have in the past behaved in a violent, threatening or abusive manner and therefore may pose a risk of similar behaviour in the future. Such a marker may also be placed to warn of risks from those associated with Board customers (e.g. relatives, friends, animals, etc.).

A copy of the policy on placing risk markers is enclosed/can be obtained from [insert details]

This decision will be reviewed in 6 months' time (insert date if known) and if your behaviour gives no further cause for concern this risk marker will be removed from your records. Any other provider we have shared this information with will be advised of our decision.

If you do not agree with the decision to place a marker on your record, and wish to submit a complaint in relation to this matter you can do so using our online form available at:

http://www.highland.gov.uk/info/20001/the_highland_and_western_isles_valuation_joint_board/461/the_highland_and_western_isles_valuation_joint_board/4

Yours (faithfully)

William J Gillies
Assessor & Electoral Registration Officer

Dear <Customer Name>

Notification of risk of violence marker being removed from the Highland & Western Isles Valuation Joint Board records

Further to my letter of (Inset date of letter) informing you that a risk of violence marker had been placed against your record, I would like to inform you that the records have been reviewed and the marker has now been removed.

Yours (faithfully)

William J Gillies
Assessor & Electoral Registration Officer

DATA PROTECTION GOOD PRACTICE NOTE

THE USE OF VIOLENT WARNING MARKERS

This guidance explains to those working with the public how best to manage the use of violent warning markers.

Employers have a duty of care to their staff to protect them in the workplace. Violent warning markers are a means of identifying and recording individuals who pose, or could possibly pose, a risk to the members of staff who come into contact with them. We understand that, in practice, a flagged piece of text is attached to an individual's file. These markers should be used very carefully and should contain the reasons for identifying individuals as being potentially violent. They are likely to record information relating to:

- The apparent mental stability of an individual; or
- Any threatening actions, incidents or behaviour they have or are alleged to have committed.

This means personal data, and often sensitive personal data, will be included in a violent or potentially violent warning marker and so must comply with the Data Protection Act 1998 (the Act).

Compliance with the Act - fairness

The first data protection principle requires that the processing must be fair and lawful. This means that a decision to put a marker on an individual's file must be based on a specific incident or expression of clearly identifiable concern by professional, rather than general opinions about that individual. The individual should pose a genuine risk and the decision should be based on objective and clearly defined criteria and in line with a clear and established policy and review procedure. The criteria should take into account the need to accurately record any incident.

For consistency, you should make sure a senior nominated person in the organisation is responsible for making these decisions. Decisions should be reviewed regularly. When making a decision this person should take into account:

- The nature of the threat;
- The degree of violence used or threatened; and
- Whether or not the incident indicates a credible risk of violence to staff.

For the processing to be fair, you should normally inform individuals who have been identified as being potentially violent soon after you make the decision to add a marker to their record. It should be part of your procedure to write to the individual setting out why their behaviour was unacceptable and how this has led to the marker.

You should tell them:

- The nature of the threat or incident that led to the marker;
- That their records will show the marker;
- Who you may pass this information to; and
- When you will remove the marker or review the decision to add the marker.

There may be extreme cases where you believe that informing the individual would in itself create a substantial risk of a violent reaction from them. For example, because of the nature of the incident or the risk to another individual. In these cases it may not be sensible to inform the individual as described earlier.

If this is the case, you must be able to show why you believe that by informing the individual of the marker there would be a substantial risk of further threatening behaviour.

You should make all decisions on a case-by-case basis and keep records.

Compliance with the Act - processing conditions

The Act states that you should not process personal data unless you can meet one of the conditions in schedule 2 of the Act, and for sensitive personal data, one of the conditions in schedule 3.

As employers have a duty of care towards their staff, for example, under health and safety legislation, the appropriate schedule 2 condition to allow processing of information in markers is that processing is necessary to comply with any legal obligation imposed on the data controller (which in this case would be the employer). The appropriate schedule 3 condition is that processing is necessary to comply with any legal obligation imposed on the data controller in connection with employment.

The individual's rights

The Act gives individuals the right to make a subject access request. In most circumstances, you should reveal the fact that there is a violent warning marker on the individual's record. Although, in most cases, you should already have informed the individual. However, you should make this decision on a case-by-case basis and consider any other individuals (third parties) that may be included in the information. For more information about this, please see our guidance 'Subject access requests involving other people's information'.

There may be rare cases where you will need to consider whether:

- Revealing the existence of the marker;
- Revealing the information in the marker; or
- What the individual may infer from the existence of the marker;

may actually cause serious harm to the physical or mental health or condition of that individual. In these cases, you must get specialist advice from health and data protection professionals. For some of these cases there may be relevant statutory

instruments that modify the provisions in the Act that relate to the individual's rights (see note 1).

Requests from individuals to stop processing their personal information

Section 10 of the Act gives individuals the right to require you to stop processing their personal information if this is likely to cause them substantial and unwarranted damage or distress. If an individual gives you a section 10 notice relating to a violent warning marker then you should be aware that you may ultimately have to justify creating the marker in court.

Passing the information to other organisations

From a legal point of view, the appropriate schedule 3 condition for processing mentioned earlier will not cover disclosing the marker information to other organisations, as the condition relates to a legal obligation on the employer for their own staff, not other organisations' staff. However, where there is a good reason for providing the information to another organisation, for example, to alert them to the potential risk to their staff, this will be justified even though no Schedule 3 condition obviously applies. In these cases, our focus is on whether the processing is justified and not unfair.

The senior nominated person in the organisation should determine this on a case-by-case basis where there is a credible risk that an unlawful act, such as an assault, will occur. They should only provide the information to an individual of a similar level in the other organisation.

If you pass the information on to another organisation, you should inform the individual, unless that would be a serious risk to the person or another individual as described earlier. If you review the marker and decide to change or remove it, you should then inform the other organisations you previously sent the information to.

Retention

The fifth data protection principle states that personal information should not be kept longer than necessary. You must make sure violent warning markers are removed when there is no longer a threat. This should be part of the standard review procedure. The retention period is likely to depend in part on:

- The original level or threat of violence;
- How long ago this was;
- The previous and subsequent behaviour of the individual; and
- Whether or not an incident was likely to have been a 'one-off'. For example, where the individual was suffering an unusual amount of stress due to a particular set of circumstances.

Security

All files containing an indication that an individual is potentially violent should be retained securely whether they are paper files or held on computer. You should also take steps to prevent unauthorised access to any information indicating that an individual has been violent.

Staff training

Staff should be trained to use the system and procedures you have relating to violent warning markers. They should be aware of:

- Their duty to report all violent or threatening incidents or professional expressions of concern about real or potential violence;
- The name of the person they should report the incidents to; and
- The senior nominated person who makes the decisions about markers.

More information

If you need any more information about this or any other aspect of data protection, please contact:

Phone: 08456 30 60 60 (Lo-call rate); 01625 54 57 45 (National rate)

E-mail: please use the online enquiry form on our website

Website: www.ico.gov.uk