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PREVENTING & DEALING WITH BULLYING & HARASSMENT POLICY

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NHS HIGHLAND POLICY & PROCEDURE

1. INTRODUCTION

This 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 NHS Highland 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 NHS Highland PIN Policy to deal with incidents of bullying and harassment.

A different approach may be required with respect to management of conflict within teams and while some of the approaches adopted may be similar, this is outwith the scope of this policy. Attention is drawn, however, to the existence of the "Give Respect, Get Respect" toolkit which may assist with supporting relationships within Teams.

2. IMPACT OF BULLYING & 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 see Appendix 1 for some useful definitions and insights for inclusion in a policy and procedure document, to help staff identify bullying and harassment at work.

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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, at Appendix 2 you can review a list of relevant statutes / regulations.

5. PROCEDURE

Where a member of staff 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**

NHS Highland 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 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 has no formal role within NHS Highland'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;

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- 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.

Staff can seek procedural advice and updates on progress with their issue by making an enquiry to a Confidential Contact (see Appendix 4) who can advise as appropriate

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 Trade Union / Professional Organisation 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 a colleague, a Trade Union / Professional Organisation representative, or a member of HR Personnel Team 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.

Other informal actions could be considered at this stage, in conjunction with advice from Personnel, for example Mediation, Team Building, carrying out of Stress Audit, etc.

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

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A formal complaint should be made to the complainant's manager or supervisor, HR, or the 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 (Appendix 4) for support and assistance prior to lodging a formal complaint.

5.3.1 Investigation

It is the responsibility of appropriately / and / or trained Investigation Managers, 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 NHS Highland's 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 member of staff, their representative and the alleged bully / harasser must be advised of the estimated timescale in writing by the investigating manager when 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.

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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 Completion of Investigation

Following completion of the investigation, the receiving manager will advise the complainant and the alleged bully / harasser of the outcome in writing, and will explain this outcome at a face-to-face meeting(s) with the member(s) of staff (This should involve the receiving manager taking account of the circumstances of the case and applying judgement to the best way of relaying the outcome. This may involve letters and / or meetings with affected parties. Such communications should be sensitive to the employees' circumstances).

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.

5.3.3 No Formal Action (see also Appendix 3)

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

5.3.4 Formal Action

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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 alleged 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.

5.3.5 Reviews

If the complainant remains aggrieved following the outcome of the investigation, 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 Receiving Manager's decision.

The alleged bully / harasser may also seek a review if he / she feels that the process of the investigation has been unfairly or poorly carried out.

A meeting will be held to consider the grounds for review and the Reviewing Manager'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 Reviewing Manager to decide how the review meeting 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 meeting will be communicated to the complainant in writing as soon as possible following the review meeting. This and / or alleged bully / harasser will be the final stage of the procedure and there is no further right of review.

5.3.6 Confidential Counselling

Given the potential sensitivity of the issues involved and the stress present when dealing with bullying or harassment situations, the appropriate manager(s) must consider referring to Occupational Health to provide confidential counselling or other appropriate support for the complainant and/or the alleged bully / harasser at any stage during this procedure.

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6. POLICY MONITORING & REVIEW

Responsibility for monitoring the application of this policy will rest with the Highland Partnership Forum. This policy will be reviewed on an ongoing basis, with amendments being made as appropriate following consideration by HR, Trade Union / Professional Organisation and Management.

7. BULLYING & 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 replace the bullied or harassed employee with another employee without explaining to the complainant the reasons for this action. In all cases a Datix Report 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 NHS Highland 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.

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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 NHS Highland's premises.

A file note should be kept of the details in the appropriate Patient's Record, 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.

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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 NHS Highland's grievance procedure.

8. BULLYING & HARASSMENT BY CONTRACTORS & 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 NHS Highland 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 NHS Highland'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 Highland's premises and / or dealing with staff employed by NHS Highland, 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 NHS Highland's premises or refused continued contact with staff of NHS Highland.

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

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Appendix 1

DEFINITIONS

1. Definitions of Bullying & 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;

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- 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;

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- 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;

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- Derogatory nicknames or name-calling based upon religion.

3. Firm & Fair Management vs. Bullying & 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

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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 & 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* 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.

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Appendix 2

LEGAL FRAMEWORK & 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*. The act moves the focus for employers away from adherence to the strict former three-stage process towards the new *ACAS Code (2009)*.

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*.

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.

1. Harassment

Equality Act 2010

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* 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.

Trade Union & Labour Relations (Consolidation) Act 1992.

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

2. Bullying

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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* – 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*;
- *Trade Union and Labour Relations (Consolidation) Act 1992* – dealing with special types of intimidation etc.;
- Protection for whistleblowers under the *Public Interest Disclosure Act 1998*;
- *Criminal Justice and Public Order Act 1994*;
- *Public Order Act 1986*;
- *Protection from Harassment Act 1997*;
- *Human Rights Act 1998*.

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

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

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

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

Appendix 3

DIGNITY AT WORK

Protocol for No Formal Action

This protocol provides for the above to ensure fairness and consistency in communicating outcomes from investigations. This focuses on those where no formal action is to be taken.

1. Formal complaint received

2. Investigation:

- Investigation Team appointed
- Formal investigation meetings conducted.
- Report findings and include conclusions and recommendations
- Investigation Team to submit their report to the manager who appointed them for consideration of report. That manager will make the final decision on the way forward.

3. For cases where allegations are not upheld – no formal action recommended:

- Manager decides whether or not to agree to conclusions and / or recommendations from Investigation Team
- Manager will do this with personnel advice who has no prior knowledge of the case
- Manager to feedback conclusions and recommendations to be provided to complainant and employee whom allegations raised against.
- This will take form of individual/group meeting (depending on the nature of the complaint) and an outcome letter. It is not an opportunity to adjust the decision but is the means of providing the necessary feedback.
- Those attending the feedback meeting have the right to be accompanied
- Timescale for this meeting – ASAP. Even though no formal action, it should still be treated as urgent and taken seriously.
- The manager may need to consider how general feedback is given to the wider team depending on the case – Personnel advice should be sought.
- Complainant offered right to request a review

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- Indication to those involved of how recommendations will be taken forward to be explained with timescale and who responsible for leading on this.

4. For cases where allegations still not upheld following review:

- Manager decides whether or not to agree to conclusions and / or recommendations from the review team
- Manager will do this with personnel advice who has no prior knowledge of the case
- Manager to feedback conclusions and recommendations to complainant and employee whom allegations raised against.
- This will take form of individual/group meeting (depending on the nature of the complaint) and an outcome letter. It is not an opportunity to adjust the decision but is the means of providing the necessary feedback
- Those attending the feedback meeting have the right to be accompanied
- Timescale for this meeting – ASAP. Even though no formal action, it should still be treated as urgent and taken seriously.
- The manager may need to consider how general feedback is given to the wider team depending on the case – Personnel advice should be sought.
- Indication of how recommendations will be taken forward to be explained with timescale and who responsible for leading on this.

5. Action Plan for the way forward to be implemented in full and reviewed.

- The manager receiving the report will make it clear who will be responsible for the action plan and outcome letters.

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Appendix 4

CONFIDENTIAL CONTACTS

NHS Highland - North

- Anna Morrison
Personnel Information Officer

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Contact Hours: Mon – Fri, 8:30am – 4:30pm

NHS Highland – A&B CHP

- Helen Cameron
Senior HR Assistant

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eMail: helen.cameron2@nhs.net

Contact Hours: Mon, Tues & Weds, 9am – 2pm

- Tracey Smith
Senior HR Assistant

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Contact Hours: Tues, Weds, Thurs & Fri, 8:30am – 4pm

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