Human Resources Policy

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Tackling Workplace Bullying and Harassment policy statement

Introduction

NHS Borders is committed to provide a working environment which is free from harassment, bullying or intimidation of any nature. Every employee of this organisation has a responsibility to treat colleagues with dignity and respect irrespective of their gender, race or ethnicity, relationship or health status, age, disability, sexual orientation, religion, political conviction, membership or non-membership of a staff-side/professional organisation.

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

NHS Borders Values

We know from evidence that staff who are valued and treated well improve patient care and overall performance. The 2020 Workforce Vision sets out a commitment to valuing the workforce and treating people well and this links intrinsically with the Tackling Workplace Bullying and Harassment policy.

NHS Borders values include such attributes as being dedicated, practicing the highest level of care, showing courage and embracing innovation.

The values that are shared across Scotland's Health Service are:

- care and compassion
- dignity and respect
- openness, honesty and responsibility
- quality and teamwork.

Principles and aims

We will make every effort to try and resolve all bullying/harassment allegations within our organisation via dialogue. It is the responsibility of every employee to foster a culture of open conversation to ensure that grievances 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, relatives, advocates, staff from other organisations and any other person who has access to NHS Borders premises.

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 may be characterised as unwanted conduct affecting the dignity of men and women in the workplace. It may be related to sex, race, disability, age, religion, sexual orientation, nationality or any other personal characteristic, and may be persistent or an isolated incident. The key is that the actions or comments are viewed as demeaning and unacceptable to the recipient.

Where possible, bullying/harassment issues will be dealt with informally. Even so, NHS Borders takes the view that bullying/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 Management of Employee Conduct Policy.

Additionally, to intentionally harass, alarm or distress anyone may be a criminal offence. Therefore reference to, and application of the bullying/harassment policy does not deny or inhibit in any way whatsoever, either NHS Borders’ 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 either ill-founded or malicious the organisation reserves the right to consider taking action against the complainant.

The attached policy is intended to support managers in dealing with bullying/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 on the effectiveness of the policy/procedure
- Providing, where appropriate, access to confidential counselling, advice and support for victims of bullying/harassment at work
- Providing a programme for the communication of the policy, monitoring its effectiveness and training for those involved in applying the policy
- 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/harassment at work, ensuring implementation of and adherence to this policy

Scope

This policy is endorsed by the Board, Senior Management and the recognised Trade Unions/Professional Associations and will be communicated to all of those who require to be made aware of its contents.
Tackling Workplace Bullying and Harassment protocol

1 Definition of bullying

There is no single agreed definition of workplace bullying. ACAS define bullying as:

- Any unwanted behaviour that makes someone feel intimidated, degraded, humiliated or offended. It is not necessarily always obvious or apparent to others and may happen in the workplace without an employers awareness.

It is the impact on the complainant which determines whether this policy should be used and not the intention of the alleged bully/ harasser.

Bullying can be regarded as using position or power to coerce others by fear, persecution or to oppress them by force or threat. Workplace bullying can range from extreme forms such as violence and intimidation to less obvious actions, like deliberately ignoring a colleague.

Bullying is most commonly associated with an abuse of power. However, other power relationships may equally lead to bullying by colleagues or a group of people who may target an individual.

Notwithstanding, managers may find themselves bullied by subordinate staff who use the threat of higher powers or formal procedures to make unreasonable demands. It may also be the case that staff can bully their managers by threatening them with bullying/harassment claims in situations where the manager may be managing them in line with NHS Borders policies and procedures.

Bullying takes similar forms to those of harassment. However, depending on the power relationship, bullying may also include undermining an individual's professional ability in front of others. Further examples of bullying behaviour are detailed at Appendix 1.

2 Definition of harassment

Harassment, as defined in the Equality Act 2010, is:

- Unwanted conduct related to a relevant protected characteristic, 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.

Harassment can take many forms, occur on a variety of grounds and may be directed at one person or a group of people. It is the impact on the complainant which determines whether this policy should be used and not the intention of the alleged bully/ harasser.

Harassment tends to be directed towards individuals on account of characteristics, for example race or ethnic origin, gender or sexual orientation, staff-side/professional organisation membership (or non-membership), disability, ex-offender status, age, health, physical characteristics or personal beliefs.
Forms of harassment can range from the use of offensive language to extreme violence. In whatever form, it is unwanted, unwelcome and unpleasant. It may include physical contact, jokes, offensive language, gossip or slander, posters or graffiti, isolation or non-cooperation, coercion for sexual favours, intrusion by pestering, spying or stalking.

3 Firm and fair management versus bullying/harassment

Within NHS Borders, 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 with relevant appraisal framework
- Disciplining staff for misconduct, where appropriate, following a fair and reasonable investigation
- Implementing action in respect of the management of sickness absence in line with the NHS Borders Management of Sickness Absence policy.
- Managing staff performance or attendance through the NHS Borders Management of Employee Capability 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/harassment. It is in the interests of the organisation that managers should be able to execute their duties without threat of ill-intentioned, 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 vexatious or malicious nature have been made that these will be dealt with appropriately – and this may involve disciplinary action.

It is recognised that it is not always easy to differentiate between firm, fair management and bullying/harassment. Please refer to Appendix 2 for comparisons between appropriate and inappropriate behaviours to help you discern between the two. 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
- Partner organisations such as Scottish Borders Council or other NHS boards
It is accepted that staff working within the NHS have to deal with clients/patients with a variety of conditions which may affect their behaviour. At the same time, where bullying/harassment is perpetrated by others, there has to be procedures in place to address this. In terms of the Staff Governance Standard for NHSScotland Employees (2002), employees need to be aware of this 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, that their contract may be terminated prematurely.

5 Impact of bullying and/or harassment

It is crucial that NHS Borders 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 under fear of bullying, harassment or abuse.

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/harassment enables staff to contribute more effectively and achieve higher levels of job satisfaction. It will also help to reduce staff turnover and retain staff with valuable skills and experience.

6 Legal framework

The UK’s legal framework as it relates to bullying/harassment is the cornerstone for setting policies and procedures to tackle them in the workplace. A list of relevant statutes/regulations can be found at Appendix 3.

7 Procedure for dealing with a bullying/harassment claim

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:

7.1 Accessing a confidential contact

NHS Borders has identified and trained individuals who are fully knowledgeable about the Bullying/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 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 from a similar group or ethnic origin or gender background who is familiar with the issues surrounding bullying/harassment and also understands the philosophy behind NHS Borders 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/harassment has taken place.

**Note:** It is also important to emphasise that a Confidential Contact should have no formal role within NHS Borders 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 NHS Borders 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 and formal stages of the procedure to begin with.

Further information on Confidential contacts may be found at Appendix 4.

### 7.2 Informal stage

NHS Borders would encourage any staff member who feels they are being bullied or harassed to seek informal resolution to their concerns in the first instance in order to maintain working relationships. The ACAS Code actively encourages all organisations to utilise dialogue as the main tool in dispute resolution. This may involve a facilitated or mediated discussion between the parties involved. This does not remove the right of the complainant to pursue the matter under the formal procedure.

The informal stage involves the complainant approaching the alleged bully/harasser in order to tell them that they are offended by their behaviour, how their behaviour offends them and to ask them to stop. The complainant may ask a colleague or a staff 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 staff-side/professional organisation representative, line manager, Confidential Contact or HR to support them with this. 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 should the bullying/harassment continue or subsequently recur.

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.

A flowchart summarising the informal stage of this policy can be found at appendix 5.

7.3 Formal stage

If a staff member (complainant) feels they are being bullied or harassed and wish to lodge a formal complaint, the complaint should be made to the complainant’s line manager/ 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/harassment has taken place. As stated above, a complainant may access a Confidential Contact for support and assistance prior to lodging a formal complaint.

A flowchart summarising the formal stage of this policy can be found at appendix 6.

7.4 Investigation

It is the responsibility of fully trained bullying and harassment investigators, with no previous knowledge of the complaint and with the support of an HR representative, 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 staff-side/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 according to provisions within NHS Borders Management of Employee Conduct Policy. Investigating Officers may wish to refer to the Conduct Policy for additional guidance on conducting and structuring their investigation.

Although it is not practical to stipulate within this procedure timescales to suit every situation, the complainant, their representative and the alleged harasser must be advised of the estimated timescale in writing by the investigating manager before the investigation begins. Every effort should be made to minimise timescales involved in the process. 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 resulting from the outcome of the investigation, these will be carried out taking account all of the 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 or it is in the best interests of their health and wellbeing.

At each stage of the process, the complainant and the alleged bully/harasser will have the opportunity to be accompanied by a colleague or staff-side/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 bullying/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 bullying/harassment. This in itself may be a form of bullying/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. However, this does not negate the need in certain circumstances, to arrange a further meeting to ascertain additional information or clarify facts gathered at a later stage in the investigation.

When the investigation has been concluded, it is the responsibility of the Investigating Officer to determine the appropriate next steps.

There are four potential outcomes following the investigation:

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

7.4.1 The complaint is unfounded

If the Investigating Officer determines that the complaint is unfounded, both the complainant and the alleged bully/harasser will be invited to separate meetings to confirm the outcome of the investigation. This will then be confirmed in writing within 10 days of the meeting. Both the complainant and the alleged bully/harasser will have the right to be accompanied to the meeting by a work colleague or staff side representative.

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

7.4.2 There is insufficient evidence

In some cases, the Investigating Officer may conclude that following a full and detailed investigation there is insufficient evidence available to support a claim of bullying or harassment. In this case, this outcome should be communicated in person to both the complainant and the alleged bully/harasser and the findings of the investigation
discussed in detail with both parties. The outcome will then be confirmed in writing to both parties within 10 days of the meeting. Both the complainant and the alleged bully/harasser will have the right to be accompanied to the meeting by a work colleague or staff side representative.

7.4.3 The evidence and/or nature of complaint justifies counselling/advice

The investigation may conclude that whilst no formal action should be taken, some informal action may be appropriate, such as counselling of the alleged harasser, mediation, or a facilitated or mediated discussion that attempts to bring resolution. In this case, the complainant will be invited to a meeting to be given feedback on the outcome of the investigation and this will be confirmed in writing within 10 days of the meeting. The alleged bully/harasser will also be invited to a meeting and an action plan will be developed to support the employee to address any behaviours causing concern. This will be confirmed in writing within 10 days of the meeting. The Line Manager of the alleged bully/harasser should be given a copy of the letter to progress the action plan within agreed timescales.

7.4.4 The evidence justifies formal disciplinary action

If a complaint is upheld following an investigation, appropriate formal action will be taken. Where this involves disciplinary action, which in serious cases may lead to dismissal, a disciplinary hearing will be convened in line with the NHS Borders Management of Employee Conduct policy.

In line with the Management of Employee Conduct policy, an investigating officer and HR representative will be identified to investigate the issue and develop a management case to be presented to a Disciplinary panel. It is expected that the manager and HR representative who investigated the original bullying or harassment complaint will go on to present the disciplinary case unless there is a compelling reason for them not to do so.

There may be a requirement to widen the scope of the investigation in line with the conduct policy which may result in new witnesses being interviewed and if necessary, a requirement to re-interview witnesses from the original investigation.

If it is found that the complainant has been bullied or harassed, it is irrelevant whether or not this was the intention of the bully/harasser.

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 adds stress to all parties involved and makes a satisfactory outcome less likely.

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

Additionally, in all cases where a bullying/harassment complaint is upheld, NHS Borders will seek to prevent the behaviour recurring. Individual review meetings should be held with both the accuser and the alleged bully/harasser within 3 months of the conclusion of the disciplinary panel to determine whether the issues have been concluded or if there are any ongoing concerns.
It is also recommended that the full team or department are asked to attend a Dignity at Work presentation to reinforce acceptable behaviours.

7.5 Appeal

If the complaint is progressed through the Management of Employee Conduct policy and the alleged bully/ harasser is dissatisfied with the conclusion of the disciplinary panel, they or their representative may lodge an appeal against the decision in line with the Management of Employee Conduct Policy and any appeal will be held in line with this policy.

If no formal action is taken and either party is dissatisfied with the outcome of the investigation, they may raise a grievance in line with the NHS Borders Grievance policy.

To protect those involved, attendance of witnesses at the Grievance Hearing will be kept to a minimum. The complainant has the right to be accompanied by a colleague or staff-side/professional organisation member.

In line with the Grievance Policy, the outcome of the Hearing will be communicated to the complainant in writing within 10 working days of the hearing.

7.6 Counter Complaints

In the event of a count complaint, it would usually be the same investigating officer/HR support who will investigate the counter complaint unless there is a compelling reason for this not to happen.

8.0 Mediation and Facilitation

Throughout this policy, reference is made to both facilitation and mediation. Although these terms are often used interchangeably, there are differences between the two processes.

8.1 Mediation

Mediation usually occurs in order to resolve a dispute. A neutral person, the mediator, is brought in to assist because the parties have been unable or unwilling to resolve their dispute on their own. Generally, the process is one of robust negotiation. The objective in mediation is usually to achieve a binding and enforceable agreement settling all matters in dispute.

8.2 Facilitation

Facilitation usually involves parties who are not so much in dispute as in a state of potential dispute but both parties want to engage in a discussion to achieve harmony. The role of the facilitator is to try to ensure that the discussions between both parties are as constructive as possible. The objective of the discussions is directed towards achieving better understandings in order to make sense of what has occurred, avoid future disputes or to path the way for future detailed agreement. Sometimes joint counselling is a form of facilitation.
9.0 Malicious Complaints

If an investigation concludes that a bullying and harassment complaint was raised maliciously, the complainant may find themselves subject to disciplinary action.

10.0 Monitoring and review

Responsibility for monitoring the application of this policy will rest with senior management. This protocol will be reviewed regularly, with amendments being made as appropriate following consideration by staff, staff representatives and management.

Confidential Contacts, Staff Side/Partnership representative or HR staff are all expected to complete a Contact Monitoring Form (Appendix 9), confidentially and anonymously recording information relating to any staff member who feels they are being bullied or harassed. These forms are an important tool in monitoring the effectiveness of this policy and how effective we are in dealing with complaints of bullying or harassment at either the informal or formal stage.

11.0 Bullying/harassment by patients, carers, relatives, visitors and/or advocates

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.

Informal stage

Wherever possible, any incident should initially be dealt with informally. If the employee feels able to do so they should inform the 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 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 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 harasser of the consequences of further incidents. Where it appears the harasser is refusing services on personal/racial grounds, they should be advised that their action might be discriminatory. It should also be made clear to the harasser 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 Borders 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.

**Formal action**

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

- 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
- 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/behaviour is not acceptable (and, if appropriate, that it is potentially discriminatory)
- That further incidents will not be tolerated
- 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. Any letters should be copied to the appropriate senior management.

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 the action taken, he or she may lodge a formal grievance in accordance with NHS Borders Grievance policy.
12.0 Bullying/harassment by contractors and staff from other agencies

In cases where the bullying/harassment involves contractors or staff from other agencies, the formal stages as previously detailed 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 NHS Borders 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 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 NHS Borders, 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 Borders premises or refused continued contact with NHS Borders staff.

If the employee who made the complaint is dissatisfied with the action taken, he or she may lodge a formal grievance in accordance with NHS Borders Grievance policy.
Examples of bullying or harassing behaviours

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 intimidating 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.

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.

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).

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

**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.

**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) and 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, jokes. Such conduct can be verbal or physical
- Displaying or sending offensive letters or publications, as well as threatening behaviour
- Being ‘frozen out’ of conversations, jostling, assault, or other non-accidental physical contact
- Derogatory nicknames or name-calling based upon religion
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. 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.

Bullying and harassment are not necessarily face to face. They may also occur in written communications, email, phone, and automatic supervision methods such as computer recording of downtime from work or the number of calls handled if these are not applied to all workers.

Bullying and harassment make someone feel anxious and humiliated. Feelings of anger and frustration at being unable to cope may be triggered. Some people may try to retaliate in some way. Others may become frightened and demotivated. Stress, loss of self-confidence and self-esteem caused by harassment or bullying can lead to job insecurity, illness, absence from work, and even resignation. Almost always job performance is affected and relations in the workplace suffer.
## Firm and fair management versus bullying/harassment

<table>
<thead>
<tr>
<th>Effective management</th>
<th>Ineffective management</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assertive and respectful</td>
<td>Aggressive</td>
</tr>
<tr>
<td>Consistent and fair</td>
<td>Inconsistent and unfair</td>
</tr>
<tr>
<td>Determined to achieve the best results, but reasonable and flexible</td>
<td>Unreasonable and inflexible</td>
</tr>
<tr>
<td>Knows their own mind and is clear about their own ideas, but willing to consult with colleagues and staff before drawing up proposals</td>
<td>Believes that they are always right has fixed opinions, believes they know best and is not prepared to value other people’s opinions</td>
</tr>
<tr>
<td>Expects high standards of service in quality of and behaviour within the team with the focus on support and constructive solutions rather than apportioning blame</td>
<td>Insists on high standards of service and behaviour but blames others if things go wrong</td>
</tr>
<tr>
<td>Will discuss, in private, any perceived deterioration in performance before forming any views or taking action</td>
<td>Loses temper regularly, degrades people in front of others, threatens official warnings without listening to any explanation</td>
</tr>
<tr>
<td>Asks for people's views, listens and assimilates feedback</td>
<td>Tells people what will be happening, does not listen</td>
</tr>
</tbody>
</table>

It is accepted that these descriptions represent extremes of behaviour. In practice things will not be so clear and perpetrators may display characteristics which fall somewhere in the middle.
Legal framework and relevant legislation

The general legislative framework that underpins bullying and harassment changed as a result of the Employment Rights 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 legislation came into force on 6th April 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 dispute resolutions such as mediation far more frequently. As such, the Dignity at Work Steering Group research into the role and effectiveness of mediation will be relevant. The report together with more guidance around mediation services is due for publication late in 2009.

Some of the relevant statutes or regulations that may be used against either the harasser, the organisation or both are detailed below. It should be noted that there is no one specific piece of legislation that deals with bullying/harassment at work.

Please also note that the following isn’t an exhaustive list.

**Health and Safety at Work etc. Act 1974 (Sections 2 & 3) and the Management of Health and Safety at Work Regulations Act 1999, plus related legislation**

Places a duty of care on employers to ensure the health and safety of their employees, and to conduct assessments of potential risks to employees and to take appropriate remedial action. This may extend to acts by people over whom the employer has no direct control but, whom the employer might have reasonably foreseen the potential for harassment e.g. patient, carers etc.

**Employment Act 2008**

The 2008 Act strengthens, simplifies and clarifies key aspects of UK employment law. The Act brings together both elements of the Government’s employment relations strategy – increasing protection for vulnerable workers and lightening the load for law-abiding business. The core purpose of the act is to change and simplify the process for workplace dispute resolution

**Sex Discrimination Act 1975 and the Race Relations Act 1976**

May be used by the employee where the bullying/harassment is based on gender or race. The employer may be held vicariously liable, even when unaware that such incidents have occurred
Protection from Harassment Act 1997

This legislation was developed to cover ‘stalking’ cases, and allows an employee to pursue a civil case where they believe that a colleague’s conduct amounts to harassment.

Disability Discrimination Act 1995

Makes it unlawful to harass a disabled person at work for any reason relating to their disability.

Public Interest Disclosure Act 1998

Amends the Employment Rights Act 1996 to protect so-called ‘whistle-blowers’. Where any employee establishes that he or she was dismissed because he or she had made a ‘protected disclosure’, the dismissal will be deemed automatically unfair. Such an employee is also protected from being subjected to detrimental treatment on the same grounds.

Trade Union & Labour Relations (Consolidation) Act 1992

Employees are protected from detrimental treatment and from unfair dismissal on the basis of staff-side activities or membership, or of non staff-side membership.

Rehabilitation of Offenders Act 1974

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

Employment Equality (Religion or Belief) Regulations 2003

Makes it illegal to discriminate against, harass or victimise someone on the grounds of their religion or belief. Exceptions are permitted in cases of genuine occupational requirement.

Employment Equality (Sexual Orientation) Regulations 2003

Makes it illegal to discriminate against, harass or victimise someone on the grounds of their sexual orientation.

Employment Equality (Age) Regulations 2006

Makes it unlawful, on the grounds of age, to discriminate directly or indirectly (for example, in recruitment, promotion, training, the terms on which employment is offered, and dismissal), unless:

- such discrimination can be objectively justified as a proportionate means of achieving a legitimate aim
- there is a genuine occupational requirement for employing a person of a certain age for a particular post
- because such different treatment is covered by a specific exemption within the regulations.
In common with existing legislation, the Employment (Equality) Age Regulations 2006 renders unlawful both harassment on the basis of age and victimisation for having made a complaint about treatment of oneself or another on grounds of age.

**The Human Rights Act 1998 means that:**

- Convention rights and responsibilities form a common set of binding values for public authorities throughout the UK
- Public authorities must have human rights principles in mind when they make decisions about people’s rights
- Human rights must be part of all policy making

**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**

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

When you speak to a confidential contact, you can expect the following:

Confidentiality

So that you are clear about how the confidential contact can help you, he or she will explain to you:

- The role of the contact and what you can expect from him or her
- The organisation’s policy and procedure on Dignity at Work
- Possible ways forward for you as an individual

Representative of all staff

The confidential contacts represent a wide range of staff and locations in the organisation. You should feel free to approach any confidential contact from the attached list.

Accessibility

When you get in touch with a confidential contact, you should be able to speak to him or her within two working days to arrange a date and time for you both to meet. He or she will come to you, or you can go to where he or she is based, or you can arrange to meet at a different location if you would prefer.

Non-judgemental

The confidential contact will not make judgements about you.

Fully trained

Although the confidential contacts are not counsellors, they are all fully trained to listen, to know the possible ways forward and to outline your options without telling you what to do or making a decision for you.

Note: Please be aware that although some contacts are local Trade Union representatives, they will not act in this capacity if you go to see them as a confidential contact under this policy.

For an up to date list of Confidential Contacts, please refer to the Work and Wellbeing Intranet site>Dignity at Work or contact Work and Wellbeing on 01896 825982.
Bullying and Harassment Policy – Informal Stage Flowchart

NHS Borders would encourage any staff member who feels they are being bullied or harassed to seek informal resolution to their concerns in the first instance in order to maintain working relationships. However, this does not remove the right of the complainant to pursue the matter under the formal procedure should they wish to do so.

Complainant feels they are being bullied or harassed.

Does the complainant feel they could approach the other person to let them know how they feel?

Yes

Complainant should approach their bully/harasser and let them know that they are upset/offended by their behaviour and ask them to stop.

Complainant should make a note of date/time and make a record of their discussion and who was involved.

Or

Complainant should seek support from Staff-side/ Line Manager/ HR/ Confidential Contact to approach bully/harasser to let them know they are upset/offended by their behaviour and ask them to stop.

Facilitation/ mediation should be considered

Or

Complainant could write to alleged bully/ harasser detailing the offensive behaviour, how it makes them feel and confirming requirements for behaviour to stop

Have the behaviours improved and is the issue now resolved?

Yes

No further action required

No

Refer to formal element of the policy
Bullying and Harassment Policy – Formal Stage Flowchart

If a staff member (complainant) feels they are being bullied or harassed and they have exhausted the informal stage (or feel they wish to progress the matter through the formal stage of the policy) the following steps apply.

Have there been attempts to resolve issues informally?

- No
  - Consider whether issue can be resolved informally. If not, refer to next step under ‘Yes’ in flowchart

- Yes, but no resolution agreed
  - Complainant lodges formal complaint with:
    - Their Line Manager/Supervisor
    - Human Resources
    - Line Manager of alleged bully/harasser
  - Investigating officer identified who has no prior knowledge of the case. HR support identified.
  - Investigating Officer and HR Support meet with complainant and their representative for full details of complaint and agree appropriate next steps. This will usually involve full investigation, meeting with alleged bully/harasser and any potential witnesses and taking signed statements from all interviewees.
  - When the investigation is concluded, Investigating Officer should determine next steps. There are 4 potential outcomes:
    1) The complaint is unfounded
    2) There is insufficient evidence
    3) The evidence and/or nature of complaint justifies training/counselling or advice only
    4) The evidence justifies formal disciplinary action
  - If outcome is 3), Investigating Officer and HR Support will meet with complainant to feedback outcome of investigation. Also meet with alleged bully/harasser to agree action plan outlining support timeframes to address concerns in behaviour. Outcome confirmed in writing to both parties – copy sent to manager of alleged bully/harasser to take forward action plan
  - If outcome is 4), refer to Management of Employee Conduct Policy. Expectation that same Investigating Officer and HR support will carry out conduct investigation, unless compelling reason for them not to do so
Appendix 7

**Expected Standards of Behaviour**

Treat colleagues the way you would like to be treated yourself - with respect at all times.

This means creating working conditions conducive to successful working i.e:

- Be aware that the way you speak and act may affect colleagues
- Understand where a colleague is coming from, personally and professionally, and treat each person with respect for the:
  - person (s)he is
  - job (s)he does
  - views (s)he holds
- Be open and honest: raise concerns with the appropriate person first
- Do everything you can to boost other colleagues’ self-confidence and self-esteem
- Use a moderate tone of voice at all times (there is never a need to shout except in the case of fire or an emergency)
- Value each colleague’s contribution and do not undermine this contribution or decisions made by colleagues, especially not when others are present
- Acknowledge that all colleagues have private lives
- Delegate effectively
- Give necessary information to enable colleagues to complete allocated work within clear parameters
- If you have a supervisory role, leave staff to get on with allocated work without excessive work monitoring
- Give and receive feedback in a positive and constructive way
- Be supportive of colleagues when adverse incidents/errors occur
Code of Dignity and Respect

What you can expect from NHS Borders:

- Right to go about your work, as far as possible, free from verbal abuse
- Right to go about your work, as far as possible, safe from violence or threat of violence
- Right to express concerns of a professional, private or health & safety nature without fear of victimisation
- Right to fair and consistent treatment including accessing opportunities
- Right to say no to unreasonable requests without fear of victimisation
- Right to know that any complaints or allegations made are fairly and thoroughly investigated
- Right of access to information required to carry out your role to the best of your abilities.

What NHS Borders expects from you:

- Right for you to respect the contribution of all staff groups working within the Trusts
- Right for you to use the correct policy for making concerns known
- Right to expect you to familiarise yourself with new policy or practice
- Right to expect you to behave appropriately and professionally
- Right for you to treat patients, colleagues and visitors with respect, care and dignity
- Right for you to work in a co-operative and supportive manner for the benefit of patient care
TACKLING WORKPLACE BULLYING AND HARASSMENT CONTACT MONITORING TOOL

Please summarise the key points of any contact you have in your role regarding Dignity at Work by completing this form. Please feel free to include separate sheets for any other relevant information. This will help NHS Borders to audit the effectiveness of the Dignity at Work Policy.

<table>
<thead>
<tr>
<th>Location:</th>
<th>BGH</th>
<th>Comm.Hosp</th>
<th>PACS</th>
<th>Mental Health</th>
<th>Learn.Dis.</th>
<th>Support Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff Category of individual:</td>
<td>Admin &amp; Clerical</td>
<td>Ancillary</td>
<td>Nursing &amp; Midwifery</td>
<td>Professional/Technical</td>
<td>Medical &amp; Dental</td>
<td>Caterers/Maintenance</td>
</tr>
</tbody>
</table>

| Nature of unacceptable behaviour: | | | | | | | |
|---------------------------------|-----------------|----------------|-----------------|----------------|----------------|-----------------|----------------|----------------|
| Professional/Technical | Medical & Dental | Caterers/Maintenance | FAM/AM | Other (Please state) |

| Source of unacceptable behaviour: | | | | | | | |
|---------------------------------|-----------------|----------------|-----------------|----------------|----------------|----------------|----------------|----------------|
| Professional/Technical | Medical & Dental | Caterers/Maintenance | FAM/AM | Other (Please state) |

In the individual’s view was the nature of behaviour believed to be related to their:

- Age
- Disability
- Sexual Orientation
- Other

- Race
- Religion
- Gender

Summary of individual’s decision:

Extra support/input recommended (If any):

Contact Information:

<table>
<thead>
<tr>
<th>Approximate number of contact hours</th>
<th>Data contact commenced</th>
<th>Data contact completed</th>
<th>Review Date</th>
</tr>
</thead>
</table>

Outcome:

- Resolved informally
- Unresolved
- Unknown

- Resolved formally
- Not ‘dignity’ issue

Contact Information:

- Confidential Contact
- HR Manager
- Staff Counsellor

- Staff side rep
- Initials of employee using service