

Equality, Fairness and Dealing with Concerns	
Preventing and Dealing with Bullying and Harassment Policy	
Summary	<p>NHS Health Scotland is committed to having a working environment that is free of bullying and harassment and a workforce that respects and supports colleagues and will ensure that equality, diversity and human rights is always at the heart of NHS HS and in everything that it does.</p> <p>The shared set of NHS Scotland values underpinning this policy are care and compassion, dignity and respect, openness, honesty and responsibility, and quality and teamwork.</p> <p>This policy and procedure is designed to be used in conjunction with HS Management of Employee Conduct Policy, when it has been determined that an allegation of bullying and harassment, including sexual harassment, has been founded following a thorough investigation.</p> <p>This policy and procedure provides for an informal stage, a formal stage and a review stage which takes cognisance of the current legislative framework. Therefore, this procedure should be used and there is no requirement to use NHS HS' Dealing with Employee Grievances policy to deal with incidents of alleged bullying and harassment.</p>
Status	Issued
Alternative format	This policy is available in Microsoft Word and other formats upon request. Please contact the Policy team for more details.
Impact Assessment Date	11 April 2018
Partnership Forum Sign Off	04/10/2018
SGC Approval	19/10/2018
OPS Date	15/08/2018
Review	August 2018
Review Date	August 2020 or earlier if there are any material changes in either PIN guidelines or legislation.
Contact	Ann Sweeney, Senior HR Officer

Contents

1. Introduction	3
2. Definitions	3
3. Legal Framework	3
4. Impact of Bullying and Harassment.....	3
5. Roles and Responsibilities	4
5.1 The Role of all Employees	4
5.2 The Responsibilities for all Employees.....	4
5.3 The Role of the Investigating Officer	5
5.4 The Role of Human Resources (HR)	5
5.5 The Role of Occupational Health Services.....	5
5.6 The Role of Trade Union/Professional Body Representatives	5
6. Procedure.....	6
6.1 Informal Stage.....	6
6.2 Formal Stage.....	6
6.3 Investigation	7
6.4 Formal Hearing	7
6.5 No formal action	8
6.6 Formal action	8
7. Reviews.....	8
8. Confidential counselling	9
9. Bullying and harassment by contractors and staff from other agencies	9
10. Policy monitoring and review	10
Appendix 1 – Examples of Bullying and Harassment Behaviour	11
Appendix 2.....	14
Appendix 3.....	17
Frequently Asked Questions.....	18
Flowchart NHS HS Dealing and Preventing with Bullying and Harassment	21

Preventing & Dealing with Bullying and Harassment Policy	Version: 4.1	Last Updated: August 2018	Updated by: Ann Sweeney/Karen Donnelly
Policy Owner: Ann Sweeney		Page 2	

1. Introduction

NHS Health Scotland is committed to having a working environment that is free of bullying and harassment and a workforce that respects and supports colleagues. The policy and procedure must be used in conjunction with HS Management of Employee Conduct Policy where it has been determined that an allegation of bullying and harassment has been founded following a thorough investigation.

This policy and procedure provides for an informal stage, a formal stage and a review stage which takes cognisance of the current legislative framework. Therefore, this procedure should be used and there is *no requirement* to use NHS HS' Dealing with Employee Grievances policy to deal with incidents of alleged bullying and harassment.

2. Definitions

Whilst there may be no universally agreed definitions of workplace bullying and harassment and many definitions include bullying as a form of harassment. The terms are differently defined by ACAS as:

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

Bullying or harassment may be by an individual against an individual (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. Appendix 1 contains a list of further definitions of bullying and harassment.

3. Legal Framework

It should be noted that there is no one specific piece of legislation that deals with bullying or harassment within the work place; however, in the UK there is a legal framework that relates to bullying and harassment and this forms the cornerstone for setting policies and procedures to tackle these issues in the workplace. Appendix 2 gives further advice on the legal framework and relevant legislation.

4. Impact of Bullying and Harassment

This policy applies to all employees of NHS HS, including Board Members and Non-Executive Board Members. Also included are agency staff, visiting workers, work experience placements, volunteers, contractors and visitors.

Preventing & Dealing with Bullying and Harassment Policy	Version: 4.1	Last Updated: August 2018	Updated by: Ann Sweeney/Karen Donnelly
Policy Owner: Ann Sweeney		Page 3	

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

5. Roles and Responsibilities

NHS HS has a duty of care to all their employees and must ensure a working environment that visibly demonstrates its commitment to and support of all staff, including agency and contracted staff. Senior staff in NHS HS must show a visible commitment and support for the policy in order that it is genuinely adopted within the organisation.

Managers have a duty to act promptly and to intervene early when behaviours that could indicate bullying or harassment are spotted or suspected. Managers should also take time to reflect on the behaviours identified and question whether the behaviour is indeed bullying or harassment, or rather a personality clash, performance management or an inappropriate management style, as an employee may perceive any of these situations as bullying or harassment. It should be made clear that team managers, line managers and supervisors have a responsibility to manage staff and that this in itself does not constitute bullying or harassment, but equally if this management is carried out in an inappropriate manner and proves to be bullying or harassment then this will be dealt with appropriately, Appendix 3 shows a useful comparison.

5.1 The Role of all Employees

All NHS HS employees should be provided with clear examples of the types of behaviour that could constitute bullying or harassment and made aware that bullying and harassment will be treated as a serious disciplinary offence.

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

- Is safe;
- Promotes dignity at work;
- Encourages individuals to treat each other with respect;
- Promotes speaking politely, openly and honestly with others;
- Is open, transparent and fair; and
- Encourages staff to take responsibility for each other.

5.2 The Responsibilities for all Employees

All employees have a responsibility to:

- Ensure their own behaviour within the organisation helps create a culture free from bullying and harassment.

Preventing & Dealing with Bullying and Harassment Policy	Version: 4.1	Last Updated: August 2018	Updated by: Ann Sweeney/Karen Donnelly
Policy Owner: Ann Sweeney		Page 4	

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

In order to avoid a complaint being judged as misconceived or unreasonable, employees should reflect on the nature of the complaint before making a formal allegation. For example, was the behaviour simply performance management, a clash of personalities or a disagreement? Whilst NHS HS takes all complaints of bullying and harassment seriously, if a complaint is found to be malicious or vexatious, consideration will be given to whether disciplinary action against the complainant is required.

5.3 The Role of the Investigating Officer

The role of the Investigating Officer is to fully investigate the complaint, interview all relevant parties and provide a written report to the Commissioning Manager indicating whether there is evidence to support the claim of bullying and harassment.

In complex cases dealing with several incidents or a continuing course of offensive conduct, the Investigating Officer's report will include a chronology of incidents alleged by the complainant, the witness evidence relevant to each complaint and a reasonable conclusion on each, together with a summary of their overall findings. The grounds of the conclusion and summary should be made clear, as well as the reasons for accepting or rejecting the evidence of each side and a conclusion regarding the action to be taken.

5.4 The Role of Human Resources (HR)

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

5.5 The Role of Occupational Health Services

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

5.6 The Role of Trade Union/Professional Body Representatives

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

All parties involved should remember that the alleged perpetrator also has rights and that premature conclusions should not be made until the due process has been completed.

Preventing & Dealing with Bullying and Harassment Policy	Version: 4.1	Last Updated: August 2018	Updated by: Ann Sweeney/Karen Donnelly
Policy Owner: Ann Sweeney		Page 5	

Timely action is essential to ensure the impact for both alleged victim and alleged perpetrator is minimised.

6. Procedure

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

Where a complainant believes that they have been bullied or harassed there are a number of options available to them, however, there will be instances where the circumstances of a situation are such that they require to be dealt with formally from the outset given their level of gravity and seriousness.

6.1 Informal Stage

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

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

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

The ACAS Code actively encourages all organisations to utilise dialogue as the main tool in dispute resolution. This may involve facilitated discussion between the parties involved. Even so, this does not remove the right of the complainant to pursue the matter under the formal procedure.

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

6.2 Formal Stage

A formal complaint should be made to the complainant's line manager or supervisor, HR, or with the line manager of the alleged bully/harasser. Any formal complaint should be made in writing detailing the basis upon which the alleged bullying or harassment has taken place.

Preventing & Dealing with Bullying and Harassment Policy	Version: 4.1	Last Updated: August 2018	Updated by: Ann Sweeney/Karen Donnelly
Policy Owner: Ann Sweeney		Page 6	

6.3 Investigation

It is the responsibility of fully trained internal investigators, with no previous knowledge of the complaint, to investigate the allegation and to come to a conclusion regarding the action to be taken.

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 of NHS HS Management of Employee Conduct Policy. This will prevent the need for a further disciplinary investigation if any formal 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, this is normally 21 working days. The complainant, their representative and the alleged bully/harasser must be advised of the estimated timescale in writing by the investigating manager before the investigation begins. Any significant changes to the timescale must also be advised in writing, citing reasons for these changes.

In the event of suspensions/relocations of individuals involved, these processes will be carried out taking into account all of the circumstances, but should not be considered as part of the formal disciplinary process. When it is considered that suspension is the only option, the employee will be designated a Contact Officer (a member of staff with no involvement in the case). In all cases, however, consideration should be given to alternatives to suspension, including temporarily moving the employee to another work area or considering other duties.

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 body representative.

The final report will be provided to the manager who commissioned the investigation. A full copy of the report and witness statements will be shared with the alleged perpetrator and their representative. Witnesses will only be entitled to see their own statements. All parties involved must be made aware that any statements or notes will be shared with the alleged perpetrator, in the form of the written report regardless of whether any disciplinary hearing is convened.

6.4 Formal Hearing

NHS Scotland PIN Policy guidelines refer to a formal hearing conducted according in line with the Preventing and Dealing with Bullying and Harassment Policy. However, at this stage of the process the aim of this hearing is to provide the complainant with an outcome of the investigation. There are four potential outcomes following the investigation and these are:

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

Preventing & Dealing with Bullying and Harassment Policy	Version: 4.1	Last Updated: August 2018	Updated by: Ann Sweeney/Karen Donnelly
Policy Owner: Ann Sweeney		Page 7	

- The evidence justifies formal disciplinary action.

6.5 No formal action

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

6.6 Formal action

If a complaint is upheld following the investigation, appropriate formal action will be taken. Where this involves potential disciplinary action, which in serious cases may lead to dismissal, a disciplinary hearing will be convened.

For the avoidance of doubt, the investigation conducted when the complaint was submitted can be used as the basis of a disciplinary hearing.

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

7. Reviews

There is no right of appeal in this process, however, if the complainant remains aggrieved following the outcome of the formal hearing, they or their representative may request a review. The designated senior manager to whom a request for a review should be addressed will be identified within the letter confirming the outcome of the investigation.

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

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

Preventing & Dealing with Bullying and Harassment Policy	Version: 4.1	Last Updated: August 2018	Updated by: Ann Sweeney/Karen Donnelly
Policy Owner: Ann Sweeney		Page 8	

8. Confidential counselling

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

9. Bullying and harassment by contractors and staff from other agencies

In cases where the bullying or harassment involves contractors or staff from other agencies, the stages as detailed at Sections 6.2 and 6.3 should be applied. However, due to the specific nature of the relationship between NHS HS and these individuals/organisations, the following additional steps should be included at the informal stage:

- If the harasser is a contractor or staff member from another agency, the manager will contact the appropriate senior person within the company/organisation concerned to advise them that this type of behaviour is unacceptable and that, if it is repeated, the individual concerned may be refused entry to the organisation's premises.
- This action is predicated on the basis that all contractors are advised that the provisions of the policy apply to them before entering into the contract for services under which they are operate. It is also predicated on the basis that partnership organisations are aware that whilst their representatives are on NHS premises and/or dealing with staff employed by the NHS organisation, such individuals will be expected to behave acceptably at all times.
- Should the matter not be resolved informally, the formal stage would require the appropriate senior manager to write to the appropriate senior person within the company/organisation concerned to advise them again that this type of behaviour is unacceptable and that if it is repeated then the individual concerned may be refused entry to the NHS HS's premises or refused continued contact with staff NHS HS.
- If the employee who made the complaint is dissatisfied with the management action taken, he or she may lodge a formal grievance in accordance with the organisation's Grievance Procedure.

Preventing & Dealing with Bullying and Harassment Policy	Version: 4.1	Last Updated: August 2018	Updated by: Ann Sweeney/Karen Donnelly
Policy Owner: Ann Sweeney		Page 9	

10. Policy monitoring and review

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

Date Policy approved.....

Approved by

Agreed by**Chief Executive**

Agreed by**Staff Side Chair**
Partnership Forum

Preventing & Dealing with Bullying and Harassment Policy	Version: 4.1	Last Updated: August 2018	Updated by: Ann Sweeney/Karen Donnelly
Policy Owner: Ann Sweeney		Page 10	

Appendix 1 – Examples of Bullying and Harassment Behaviour

1. Bullying/harassing behaviours 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, displaying of offensive materials, asking for sexual favours, making decisions on the basis of sexual advances being accepted or rejected.
- Making threats or comments about job security without foundation.
- Deliberately undermining a competent worker by overloading and constant criticism.
- Preventing individuals progressing by intentionally blocking promotion or training opportunities.

2. Examples of harassing behaviour

2.1 Sexual harassment

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

Preventing & Dealing with Bullying and Harassment Policy	Version: 4.1	Last Updated: August 2018	Updated by: Ann Sweeney/Karen Donnelly
Policy Owner: Ann Sweeney		Page 11	

2.3 Disability harassment

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

2.4 Age harassment

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

2.5 Sexual orientation harassment

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

2.6 Religious harassment

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

Preventing & Dealing with Bullying and Harassment Policy	Version: 4.1	Last Updated: August 2018	Updated by: Ann Sweeney/Karen Donnelly
Policy Owner: Ann Sweeney		Page 12	

Bullying and Harassment by 'Others'

1. 'Others' may include:
 - a) Patients, residents and clients.
 - b) Relatives, carers and advocates.
 - c) Contractors and agency workers.
 - d) Staff from other agencies.
 - e) Staff from partner organisations to NHS Scotland (such as local councils) or other NHS boards.
2. 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.
3. 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.

Preventing & Dealing with Bullying and Harassment Policy	Version: 4.1	Last Updated: August 2018	Updated by: Ann Sweeney/Karen Donnelly
Policy Owner: Ann Sweeney		Page 13	

Appendix 2

Legal Framework and Relevant Legislation

The general legislative framework that underpins workplace dispute resolution (which would include complaints of bullying and harassment) changed as a result of the [Employment Act 2008](#). 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.

Better Health Better Care (2008). This strategy will be delivered through the NHS workforce via its workforce strategy A Force for Improvement (2009), which sets out five key ambitions.

Victimisation

Victimisation broadly refers to bad treatment directed towards someone who has made or is believed to have made or supported a complaint under the Equality Act.

It includes situations where a complaint hasn't yet been made but someone is victimised because it's suspected they might make one.

If an individual gives false evidence or makes an allegation in bad faith, then they are not protected from victimisation under the Act. Further advice can be found at [Equality & Human Rights - What is Victimisation?](#)

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.

Preventing & Dealing with Bullying and Harassment Policy	Version: 4.1	Last Updated: August 2018	Updated by: Ann Sweeney/Karen Donnelly
Policy Owner: Ann Sweeney		Page 14	

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.

Sexual Harassment

The Human Rights and Equality Commission have published practical guidance on sexual harassment in the workplace. This guidance includes definitions and examples of what sexual harassment is, how to handle complaints and how sexual harassment is unlawful under the Equality Act 2019. The full guidance is [Sexual Harassment and the Law: Guidance for Employees](#)

ACAS has advice on how to deal with sexual harassment and advises this type of harassment is more than unwanted physical contact and touching and includes inappropriate comments and emails. Visit [ACAS - Sexual Harassment](#) for further advice and guidance.

Bullying

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

Breach of contract - usually breach of the implied term that an employer will provide reasonable support to employees to ensure that they can carry out their job without harassment and disruption by fellow workers.

The common law responsibility to take care of the safety of workers.

[Employment Rights Act 1996](#) - 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 whistle-blowers under the [Public Interest Disclosure Act 1998](#).

[Criminal Justice and Public Order Act 1994](#).

[Public Order Act 1986](#).

[Protection from Harassment Act 1997](#).

Preventing & Dealing with Bullying and Harassment Policy	Version: 4.1	Last Updated: August 2018	Updated by: Ann Sweeney/Karen Donnelly
Policy Owner: Ann Sweeney		Page 15	

[Human Rights Act 1998.](#)

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](#) - Considers detrimental treatment of employees with spent convictions as similar to a 'discriminatory treatment'.

[Part-Time Workers \(Prevention of Less Favourable Treatment\) Regulations 2000](#)

Makes 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.

Preventing & Dealing with Bullying and Harassment Policy	Version: 4.1	Last Updated: August 2018	Updated by: Ann Sweeney/Karen Donnelly
Policy Owner: Ann Sweeney		Page 16	

Appendix 3

Firm/Fair Management

Managers are responsible for ensuring that staff who report to them perform to an acceptable standard within the agreed performance management framework. Legitimate, justifiable and appropriately conducted monitoring of an employee's behaviour, performance or output, does not constitute bullying. Therefore, it is reasonable to expect a manager to carry out these functions in a fair, firm and consistent manner.

Research shows a perception of a fine line between hands-on management and bullying, however, bullying is a personal and emotional attack against an individual, whereas strong management is objective and supportive both to the individual and the whole team.

It is accepted that these descriptions below represent extremes of behaviour. In practice things may not be so clear and perpetrators may display characteristics which fall somewhere in the middle. It is also important to highlight that just because an employee is unhappy with being managed or management decisions: this does not automatically constitute bullying and harassment.

It is within the interests of HS that team managers/line managers/supervisors are able to carry out their duties without threat of ill-intentioned, malicious or vexatious complaints.

Firm/Fair Manager	Bullying/Harassing Manager
<ul style="list-style-type: none">• Consistent and fair.	<ul style="list-style-type: none">• Aggressive, inconsistent and unfair.
<ul style="list-style-type: none">• Determined to achieve the best results, but reasonable and flexible.	<ul style="list-style-type: none">• Unreasonable and inflexible.
<ul style="list-style-type: none">• Knows their own mind and is clear about their own ideas, but willing to consult with colleagues and staff before drawing up proposals.	<ul style="list-style-type: none">• Believes that they are always right, has fixed opinions, believes they know best and is not prepared to value other people's opinions.
<ul style="list-style-type: none">• Insists upon high standards of service in quality of and behaviour within the team.	<ul style="list-style-type: none">• Insists on high standards of service and behaviour but blames others if things go wrong.
<ul style="list-style-type: none">• Will discuss, in private, any perceived deterioration before forming any views or taking action and does not apportion blame on others when things go wrong.	<ul style="list-style-type: none">• Loses temper regularly, degrades people in front of others, and threatens official warnings without listening to any explanation.
<ul style="list-style-type: none">• Asks for people's views, listens and assimilates feedback.	<ul style="list-style-type: none">• Tells people what will be happening, does not listen.

Frequently Asked Questions

Q. What is workplace bullying and harassment?

A. Whilst there are no universally agreed definitions of workplace bullying and harassment, harassment is defined as “any conduct based on age, gender, pregnancy, maternity, marriage or civil partnership, sexual orientation, gender reassignment, disability, HIV status, race, religion or belief, political, trade union or other opinion, national or social origin, association with a minority, domestic circumstances, property, birth or other status which is unreciprocated or unwanted and which affects the dignity of men and women in the workplace”.

Bullying is defined as “the unwanted behaviour, one to another, which is based upon the unwarranted use of power or authority”.

Q. A member of staff was spoken to about their work performance, they have now made an allegation that they have been bullied.

A. As part of the ‘everyday management process’ Health Scotland managers are required to provide staff with feedback concerning their performance, conduct, time keeping and so forth and if any of these areas have been unsatisfactory the feedback may be critical of the worker concerned. If criticism is delivered in a constructive manner it can be beneficial to the member of staff, providing them with the opportunity to reflect on their behaviour and make any necessary improvements. Destructive criticism, on the other hand, can have detrimental effects on staff morale and damage the psychological contract between manager and employee.

Constructive criticism will focus upon:

- Actions and behaviour, focusing on what the employee has done or not done.
- Facts, with specific examples of behaviour that has been inappropriate and an explanation of why it was inappropriate.
- Future improvement, for example requiring the employee to do something differently or make changes.

Destructive criticism, on the other hand, may involve:

- Aggressive behaviour, such as shouting.
- Personal insults or put-downs.
- Allocating blame rather than responsibility.
- Focusing on how awful the situation is, rather than on future improvement or rectification of the problem.

Q. At a team meeting, a number of staff joined in the teasing of a colleague. The colleague stated that they felt bullied and humiliated, however, the team maintained it was just “work banter”.

A. Unfortunately, there is a very fine line between banter and bullying, the main criteria of banter is that all parties involved are enjoying the interaction. If there is just one person giving or receiving criticism, this could indicate an element of bullying. If everyone is getting an equal turn, this then lends itself to camaraderie.

The advice is the employee should speak to their line manager, a simple conversation may be all that is needed to resolve this issue. If the line manager does not take the issue

Preventing & Dealing with Bullying and Harassment Policy	Version: 4.1	Last Updated: August 2018	Updated by: Ann Sweeney/Karen Donnelly
Policy Owner: Ann Sweeney		Page 18	

seriously, the next step would be to speak to the next line of management. The fact that a staff member has complained indicates they are not “not enjoying the banter” and on this basis, it must be stopped.

Q. Who do you speak to if it's your own manager who is the alleged bully?

A. You can speak to the manager and ask them to stop this behaviour, however, it is recognised this action may be very difficult for many employees. Therefore, the advice is to speak to their manager to raise your concerns or ask for help from HR/Staffside or Professional Body Representative. Alternatively, you can write directly to the alleged perpetrator asking them to stop.

Q. My manager is aware that bullying/harassment is taking place on their team but chooses to “turn a blind eye” as the team are adults and should be able to sort out their differences between them. What would be the next steps?

A. This policy clearly states that managers have a duty to act promptly and to intervene early if they suspect inappropriate behaviour in their team; ignoring the problem will not make it go away. The advice would be to speak to your manager and if he/she is unwilling to address the issues, then you must raise this with their manager. HR and Staffside can provide advice and guidance on the policy.

Q. I have witnessed a senior manager bullying a junior colleague, what should I do?

A. In the first instance speak to the colleague and ask how you can help. If you remain concerned you can raise the issue with your own line manager. Alternatively, you can e-mail HREnquiries@nhs.net and a HR Officer will contact you to discuss the matter. You may also wish to speak to your Staffside Representative or a Professional Body Representative.

Q. I have been accused of bullying a colleague but it appears that all the rights are with the complainant.

A. No, that isn't true. The policy advises that the matter is resolved (where possible) informally. This can be facilitated discussions or more formal mediation. You will get your chance to respond throughout the process. If the claim is found to be malicious or vexatious then the complainant may be subject to a disciplinary action.

Q. The policy refers to a Formal Hearing (6.4) what is the purpose of this?

A. PIN does refer to a Formal Hearing, this is where the Commissioning Manager will provide the complainant with one of the four outcomes detailed in the policy, the Investigating Manager and HR will also be in attendance. This hearing must be handled in a sensitive manner, particularly as the complainant may not receive the outcome that they hoped for.

Q. What right of appeal is there in this process?

A. The complainant has a right to ask for a review if they remain aggrieved following the outcome of the Formal Hearing. The alleged perpetrator will have the right of appeal if any formal disciplinary action is taken (refer to NHS HS Management of Employee Conduct Policy).

Preventing & Dealing with Bullying and Harassment Policy	Version: 4.1	Last Updated: August 2018	Updated by: Ann Sweeney/Karen Donnelly
Policy Owner: Ann Sweeney		Page 19	

Q. Following a review the complainant remains unhappy with the outcome and maintains they have been bullied. What next?

A. This is a difficult situation for all parties concerned. The next steps that may be considered could include counselling, mediation or team building.

Consideration may be given to redeployment to another role as a consequence of needing to separate parties due to a dignity at work issue and a breakdown in relationships (refer to NHS HS Redeployment Policy). This should not be viewed as a disciplinary sanction and is on a case by case basis, after all other alternatives have been explored and exhausted.

It is worth mentioning that the complainant must also remember that an investigation (potentially followed by an independent review) has not uncovered sufficient evidence to support their allegation. If they continue to accuse a colleague/manager of bullying or harassment this may be viewed as inappropriate behaviour on their behalf.

Q. The policy states that if the complainants' allegations are found to be malicious or vexatious then disciplinary action can be taken. Does this mean that if the complaint is not founded then disciplinary action will automatically be instigated against the complainant?

A. No, it doesn't. Below are some definitions of what would be considered to be either malicious or vexatious allegations:

- Vexatious – causing or tending to cause irritation or distress; not having sufficient grounds for action and seeking only to cause annoyance.
- Malicious – bearing active ill-will or spite; having wrongful intention toward any other.

Q. There are four potential outcomes, one of which is that the investigation finds there is insufficient evidence. Does this mean it did happen but just cannot be proved?

A. No, this means there is a lack of evidence and not enough facts uncovered during the investigation to substantiate the complainant's allegation, this can be from either a lack of evidence from the complainant or counter evidence from the alleged perpetrator.

Q. What format does the review take?

A. The format is decided by the designated senior manager. They may wish to speak to the alleged perpetrator/complainant again or key witnesses, or possibly they might review the statements and process. This is not a new investigation. Both alleged perpetrator/complainant will be given an outcome from this review.

Preventing & Dealing with Bullying and Harassment Policy	Version: 4.1	Last Updated: August 2018	Updated by: Ann Sweeney/Karen Donnelly
Policy Owner: Ann Sweeney		Page 20	

Flowchart NHS HS Dealing and Preventing with Bullying and Harassment

