Eliminating Bullying & Harassment

Date: December 2013
Version number: 4
Author: Emilie Gray, Senior HR Advisor
Review Date: December 2016

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## NHS SHETLAND DOCUMENT DEVELOPMENT COVERSHEET

<table>
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<tr>
<th>Name of document</th>
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<tbody>
<tr>
<td>Registration Reference Number</td>
<td>HR POL 010</td>
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<tr>
<td>Author</td>
<td>Emilie Gray, Senior HR Advisor</td>
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<td>Executive Lead</td>
<td>Lorraine Hall, Director HR &amp; Support Services</td>
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### Proposed groups to present document to:
- Senior Management Team (SMT)
- Staff Governance Committee (SGC)
- Area Partnership Forum (APF)
- All staff

<table>
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<tr>
<th>Date</th>
<th>Version</th>
<th>Group</th>
<th>Reason</th>
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<tr>
<td>28/08/2013</td>
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<td>12/12/2013</td>
<td>4</td>
<td>SGC</td>
<td>Approval</td>
<td>PRO</td>
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### Examples of reasons for presenting to the group
- Professional input required re: content (PI)
- Professional opinion on content (PO)
- General comments/suggestions (C/S)
- For information only (FIO)

### Examples of outcomes following meeting
- Significant changes to content required – refer to Executive Lead for guidance (SC)
- To amend content & re-submit to group (AC&R)
- For minor revisions (e.g. format/layout) – no need to re-submit to group (MR)
- Recommend proceeding to next stage (PRO)

Please record details of any changes made to the document on the back of this form.

*To be attached to the document under development/review and presented to the relevant group.
<table>
<thead>
<tr>
<th>DATE</th>
<th>CHANGES MADE TO DOCUMENT</th>
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| August 2013 | Policy statement updated.                                                                                           
Types of Bullying section 1.2.2 added. 
Identity Based Bullying section 1.2.3 added. 
Hidden Workplace Bullying section 1.2.4 added 
Examples of derogatory nicknames added to racial, disability, age, sexual orientation and religious harassment. 
Confidential supporters replace confidential contacts. 
Duty of secrecy added to 2.1 a). 
2.1 c) section added. 
2.1 e) section expanded. 
2.1 h) section added. 
2.3.1 d) section expanded for additional support. 
2.3.5 e) section added. 
7.0 New rapid impact assessment carried out. |
| 26/11/2013 | Revisions detailed above.                                                                                           |
| 16/12/2013 | Correction of typing errors                                                                                         |
Policy Statement 2013

It has been two years since the publication of NHS Shetland’s renewed policy designed to tackle workplace bullying and harassment. We are satisfied to note that there continue to be very few formal complaints relating to bullying and harassment. However, feedback from formal and informal staff surveys indicate an ongoing problem that is not reaching our formal procedures.

In 2011 we set out NHS Shetland’s commitment to providing a working environment which is free from harassment, bullying or intimidation of any nature. Through the review and re-publication of this policy we wish to reemphasise that 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, job role or grade.

Equally it is the responsibility of every employee to foster a culture of open conversation to ensure that 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 the NHS Shetland premises.

In the Equality and Human Rights Commission 2010 Triennial Review ‘How Fair is Britain,’ reducing incidences of homophobic, transphobic, disability-related and religiously motivated bullying in workplaces was identified as one of the most significant challenges for society to address. People with a disability or long-term illness are over twice as likely to report bullying or harassment in the workplace as non-disabled people. LGB people are twice as likely to be report discrimination and nearly twice as likely to report unfair treatment as heterosexuals. Transgender people highlight transitioning at work as one of the most significant triggers for discrimination. In our ongoing work with Stonewall Scotland, this has also been highlighted as an area of concern through national evidence as well as locally gathered feedback.

So what are we going to do about it? Over the next few years, you can expect to have the opportunity to be involved in various activities to promote awareness of this policy and to pro-actively address the issue of workplace bullying and harassment. These activities will include:
• Confidential Supporters (previously Confidential Contacts) refresh – recruitment and ongoing development, meetings, peer support.
• Promotion & awareness campaign – posters, leaflets, online campaign.
• Community-wide anti-homophobia campaign.
• Scenario-based campaign, telling stories of the impact on workplace bullying & harassment.
• Joint piece of work with Occupational Health to identify and address instances of unreported bullying against employees with a disability.

This policy, procedure and guidelines are endorsed by the Board, senior management and the recognised trade unions/professional organisations.

Ralph Roberts, Chief Executive
Lorraine Hall, Director of HR & Support Services
Ian Sandilands, Employee Director
Drew Ratter, Chair of Staff Governance Committee
1.0 Introduction

1.1 Impact of bullying and/or harassment

It is crucial that organisations treat seriously any form of intimidating behaviour. Failure to do so may encourage a working environment which is unpleasant to work in, since staff are unable to perform to the best of their ability if 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 and harassment enables staff to contribute more effectively and achieve higher levels of job satisfaction. And it will also help to reduce staff turnover and retain staff with valuable skills and experience.

Good people management enables staff to participate in the work of the Board in a supported way. Being valued, being listened to and being treated with respect are just some of the things that contribute to a dignified workplace.

Doing work of social value, i.e. work that is recognised as ‘good work’ is what researchers call dignified work, and we believe that every role in NHS Shetland fits the bill as every one of us contributes to the health and wellbeing of Shetland’s population.

Research tells us that if we combine dignified work with a dignified workplace then we will have dignified workers. We believe that by focusing on the actions that support us to build a dignified workplace we will be successful in tackling bullying and harassment and making sure people do feel valued, listened to and treated with respect as they go about their work in NHS Shetland.
1.2 Definitions

1.2.1 Definition of bullying

There is no single agreed definition of workplace bullying. ACAS (Advisory, Conciliation and Arbitration Service) define bullying 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 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. An abuse of power is not always related to hierarchy or an individual’s position in the organisation, but can also be related to the power that someone holds over another person by the behaviour that they display making them appear stronger or more in control.

Managers may also 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 and harassment claims in situations where the manager may be managing them in line with normal NHS policies and procedures.

1.2.2 Types of Bullying

Bullying can encompass a variety of behaviours. These can be categorised in the following ways:

1. **Verbal**, such as name-calling, teasing, threatening.

2. **Physical**, such as hitting, punching, kicking, inappropriate touching.
3. **Relational**, such as ignoring, leaving out, spreading rumours.

4. **Indirect**, such as stealing, damaging belongings, targeted graffiti.

5. **Cyberbullying**, that is victimisation or harassment carried out through electronic forms of communication e.g. social networking sites, email, text messages etc.

   EHRC (2010)

   (This is not an exhaustive list and new types of incidents regularly emerge).

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 other staff by:

- inaccurate accusations on the quality of work
- undue and persistent criticism
- creating extra work or disrupting an employee’s ability to work by over-evaluation of work, by setting impossible deadlines and/or withholding information
- isolating staff by treating them as non-existent and preventing them accessing opportunities
- shouting at a colleague, persistently negative and inaccurate attacks on a colleague’s personal or professional performance, or criticising them in front of others
- spreading malicious rumours/making malicious allegations
- threatening behaviour, both verbal and physical
- persistently setting objectives with unachievable timescales or tasks
- removing and replacing areas of responsibility with menial or trivial tasks and taking credit for work achieved
- undervaluing a colleague’s contribution, placing unreasonable demands on and/or over-monitoring their performance
- withholding information with the intent of deliberately affecting a colleague’s performance
- excluding colleagues by talking solely to third parties with the intention to isolate another
- rounding or ganging up on an individual through email correspondence
• mobbing: specific group behaviour, defined as “an impassioned, collective
campaign by co-workers to exclude, punish and humiliate a targeted
worker” (Dr. H. Leymann).

(NB: list not exhaustive.)

1.2.3 Identity Based Bullying

Identity-based bullying refers to any form of bullying related to the
characteristics considered unique to a person’s identity, such as their race,
religion, sexual orientation or physical appearance. These forms of bullying
are not only targeted at an individual, but reflect negative attitudes towards a
wider sub-community or group to whom that individual identifies with (or is
believed to identify with).

For all forms of identity-based bullying, preventative strategies that raise
awareness, such as this policy and understanding of why people differ,
accompanied with an environment or workplace which promotes diversity and
inclusion, are very importance in tackling prejudiced behaviours.

In addition to preventative approaches, studies show that responsiv
strategies are also required to prevent the perpetrator from repeating their
behaviour, and to help the victim or target cope with their experience. Many
targets of identity-based bullying are reluctant to report incidents, either
because of perceived prejudiced beliefs, fear of being judged, or uncertainty
over whether their complaint will be believed or acted upon.

1.2.4 Hidden Workplace Bullying

A ‘skilled’ bully may disguise their true character by altering their behaviour to
conceal their bullying nature. These subtle but powerful tactics are dangerous
because they tend to remain unrecognized. Targets of hidden bullying often
describe bullies as charming, distorting truth and reality, evasive, playing the
victim, self-righteous, hypocritical, two-faced, rumor-spreading, passive-
aggressive, pretending to care.

For example, a bully may speak publicly about mutual trust, but betray your
trust in them. They may talk about teamwork at the same time as they
undermine you. Hidden or covert bullying in the workplace can cause
significant harm to both individual targets and the organisation as a whole.
Hidden bullying is difficult to identify specifically due to the use of subtle
manipulation of people and facts, particularly when someone has an unknown or hidden agenda.

Examples of hidden bullying:

- A colleague or manager misleads people by omitting information that would explain a situation. When you challenge this, they misquote you and belittle your point of view.

- A colleague or manager quotes hearsay with importance and authority, misquoting others, or misrepresenting their meaning. They may manipulate a colleague into making a critical remark about you, then quote that remark as "evidence."

- An evasive bully is unlikely to consider making an effort to fix a relationship by changing their behavior. If there is an obvious conflict with you, they may try to prevent it from being resolved openly, preferring to undermine you behind your back.

- A self-righteous bully would probably describe themselves having the highest moral, ethical and intellectual qualities, whilst making off-hand remarks in order to suggest that others have shaky ethics or morals.

- A colleague or manager criticizes the quality of your work, without any factual basis, by giving examples of your mistakes or misquoting you, or tells stories that mark you as lazy, incompetent, dishonest, destructive or misguided. They may even suggest to others you have personal or emotional problems.

- A passive-aggressive bully keeps you in the dark about new strategies, projects or changes in the workplace, perhaps by excluding you from communication (email, meetings, informal conversations, lunches).

### 1.2.5 Definition of harassment

Once again, there is no single and accepted definition of harassment. However ACAS define harassment as:

"*Unwanted conduct affecting the dignity of men and women in the workplace. It may be related to sex, race, disability, age, sexual orientation, religion, nationality or any personal characteristic of the individual, 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.”

It can take many forms, occur on a variety of grounds and may be directed at one person or a group of people. The intention of the perpetrator is irrelevant; it is the impact on the complainant which determines whether harassment has taken place.

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.

The following examples are not intended to be exhaustive but to provide some examples of unacceptable, harassing behaviour:

1.2.6 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 or circulating letters, texts, emails or other communications containing such materials.
• Leering, whistling or making sexually suggestive comments or gestures, innuendoes or lewd comments
• Conduct that denigrates or ridicules or is intimidatory or physically abusive of an employee because of his or her sex, such as derogatory or
degrading abuse or insults which are gender-related and offensive comments about appearance or dress.

1.2.7 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, texts, emails or publications: threatening behaviour
- Being ‘frozen out’ of conversations, jostling or assault, or other non-accidental physical contact
- Derogatory nicknames or racial name-calling, e.g. ‘paki’, ‘chinky’, ‘nigger’, ‘raghead’, ‘pikey’, ‘taff.’
- Calling a co-worker of Indian ethnic origin a ‘monkey’
- Nicknaming an Eastern European co-worker ‘Borat’
- Calling a black co-worker a ‘golliwog’
- A racist joke told to co-workers about professional football players

1.2.8 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, texts, emails 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 e.g. ‘retard’, ‘spaz, ‘cripple.’
- Touching a visually impaired person (to annoy).
1.2.9 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, emails, texts or publications; threatening behaviour
- Derogatory nicknames or name-calling based upon age, e.g. ‘old git’, ‘you youngsters’, ‘mutton dressed as lamb’, ‘over the hill’, ‘don’t be such a fuddy duddy.’ Jokes about the elderly are usually concerned with cognitive decline, death and sexual ability and interest.
- Being discounted from development opportunities.

1.2.10 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, emails, texts 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, e.g. ‘poof’, ’lezzer’, ‘gay boy’, ‘batty boy’, ‘you’re so gay.’

1.2.11 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, emails, texts 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, e.g. ‘heathen,’ ‘towel-head,’ ‘bible-basher.’

1.3 Firm and fair management vs. bullying and harassment

Within organisations, it is necessary and appropriate for managers to be able to manage their staff. Firm and fair management 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 local policy.

The word ‘firm’ relates to managers demonstrating strong leadership in terms of their application of appropriate policies and procedures.

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. Area Partnership Forum are supportive of appropriate management action and staff-side colleagues will, at the point of contact with staff, advise if they feel that this is firm fair management rather than taking on a case.

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.

Because of differences in perception, it is not always easy to differentiate between firm, fair management and bullying/harassment. So here are a few comparisons to help discern between the two:
<table>
<thead>
<tr>
<th>Appropriate Behaviour</th>
<th>Inappropriate Behaviour</th>
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<tr>
<td>Consistent</td>
<td>Inconsistent</td>
</tr>
<tr>
<td>Shares information</td>
<td>Withholds selectively</td>
</tr>
<tr>
<td>Fair</td>
<td>Has favourites</td>
</tr>
<tr>
<td>Truthful</td>
<td>Distorts, fabricates</td>
</tr>
<tr>
<td>Delegates</td>
<td>Abdicates</td>
</tr>
<tr>
<td>Builds Team Spirit</td>
<td>Creates fear, divides</td>
</tr>
<tr>
<td>Leads by example</td>
<td>Sets a poor example</td>
</tr>
<tr>
<td>Listens</td>
<td>Snaps</td>
</tr>
<tr>
<td>Admits mistakes</td>
<td>Blames others</td>
</tr>
<tr>
<td>Challenges constructively</td>
<td>Avoids conflict</td>
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It is accepted that these descriptions represent extremes of behaviour, although in practice things may not be so clear and individuals may display characteristics which fall somewhere in the middle.

1.4 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 to the NHS such as local councils 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 NHS Scotland 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. Organisations must ensure that when awarding contracts, the appropriate documentation includes provision for this eventuality. A suggested procedure for dealing with bullying/harassment by others is given in Appendix D, Model policy and procedure. In this situation staff that feel that they have suffered an incident need to raise a Datix incident report.

1.5 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.

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.

2.0 Procedure - Bullying & Harassment by managers and colleagues

Where a complainant believes that they have been bullied or harassed, there are a number of options available to them dependent upon the circumstances of their own particular situation. Wherever possible, any incident should initially be dealt with informally.

2.1 Accessing a Confidential Supporter

a) The organisation has identified and trained individuals who are fully knowledgeable about the Eliminating 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 would like an incident to be handled. The confidential supporter has a duty of secrecy, unless they are concerned about a legal matter such as child protection.

b) 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 is not feasible for the Board to put in place trained confidential supporters to meet every eventuality, but it is recognised that 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. If this is the case, the confidential supporter will work together with the human resources department to try to identify a suitable means of support.

c) The role of the Confidential Supporter is primarily to listen and to accept the individual’s version of events, providing acknowledgement and support, but not judgment. The supporter does not need to state whether or not they believe the individual and they are not there to solve the matter or allocate blame. They give the complainant an opportunity to express their feelings in a safe and confidential setting at an early stage.

d) A Confidential Supporter 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.

e) Note: It is also important to emphasise that a Confidential Supporter should have no formal role within the organisation’s disciplinary process and is not expected or trained to fulfill a professional counselling role. It is not the role of the Confidential Supporter 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 Supporter from a different area of the organisation from that in which they are employed if they would find this more helpful. Whilst a supervisor could be a confidential supporter for people outside their own teams, this would not be possible for people in their own team, as the manager or supervisor needs to be independent to be able to listen to the story of the employee at face value.
f) There are three possible outcomes from this contact: use of the (i) informal or (ii) formal stages of this procedure or (iii) A complainant does not have to access a Confidential Supporter as part of the procedure. If they prefer, they may access the informal and formal stages of the procedure to begin with.

g) You can find out who NHS Shetland Confidential Supporters are and how to get in touch with them in the associated document ‘Bullying and Harassment - Guidelines for Employees and Workers.’

h) Alternatively you may wish to consider accessing the Employee Assistance Service. This is a free, independent and confidential service. General advice and support is available 24 hours a day, 7 days a week. Helpline Advisors and Counsellors are specially trained to help you with a range of issues including bullying and harassment.

The helpline staff will also act as a gateway into the structured telephone based counselling service or sign post to other professional help as appropriate. Occupational Health may also refer individuals, when deemed appropriate into the structured telephone based counselling service.

The helpline number is 0800 389 7851

2.2 Informal stage

a) This involves the complainant approaching the alleged bully/harasser in order to tell them that their behaviour is found to be offensive, why it is, and to ask them to stop. The complainant may ask a colleague or a staff representative to be present for moral support. It is recognised that NHS Shetland is a small organisation and that as such staff may find it difficult to approach the alleged bully/harasser directly. If this is the case, then step b) below would be advised.

b) If the complainant would find approaching 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, Employee Director, Confidential Supporter or HR to speak 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. In this situation it is best to be able to give specific examples of the behaviours that have caused concern or offence.

c) 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.

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

e) 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.

### 2.3 Formal stage

A formal complaint should be made to the complainant’s line manager, 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 Supporter for support and assistance prior to lodging a formal complaint and should be supported by their line manager or an appropriate manager to attempt informal resolution where possible.

### 2.3.1 Investigation

a) It is the responsibility of internal investigators, with no previous knowledge of the complaint, to investigate the allegation and to come to a conclusion regarding the action to be taken. This process should be discussed in partnership with the complainant and their staff-side/professional organisation representative if they have chosen to be represented.
b) 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 the NHS Shetland’s Disciplinary Procedures.

c) 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. Six weeks is a reasonable timescale in which to expect an investigation to be completed, though very complex cases may take up to 12 weeks. 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.

d) 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. Some attendees may need additional support in formal meetings, for example an interpreter, support worker or mental health advocate. They may also need some assistance in understanding written information.

e) 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.

f) 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.

g) 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.

h) 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.

2.3.2 Formal hearing

Any formal grievance hearing should be conducted according to natural justice provisions contained within NHS Shetland’s Voicing Concerns Policy and Procedure. After consulting both parties, it will be for the panel’s chairperson to determine how the hearing will be structured, taking into account the sensitivity of the issues involved and the need to protect the rights of all concerned. This may include accepting a written statement from the complainant in the event that they felt unable to attend a hearing in person.

2.3.3 Decision

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

• The complaint is not founded
• There is insufficient evidence
• The evidence and/or nature of complaint justifies counselling/ advice only, or mediation, facilitated discussion, additional training.
• The evidence justifies formal disciplinary action.

2.3.4 No formal action

a) 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). Equally the individual who raised the concerns will be notified of this outcome and the contributing factors. If a claim is found to be malicious in nature, then the complainant may find themselves subject to formal disciplinary action.
b) It may be the case that whilst no formal action is taken, some informal action may be appropriate, such as counselling of the alleged 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.

2.3.5 Formal action

a) If a complaint is upheld following an investigation and grievance hearing, 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.

b) 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 and makes a satisfactory outcome less likely.

c) In serious circumstances, if relocation proves necessary, every effort will be made to move the bully/harasser and not the complainant, unless the complainant specifically asks to be moved. Additionally, in all cases where a bullying/harassment complaint is upheld, the organisation will make every effort to prevent the behaviour recurring.

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

e) If a disciplinary sanction is applied, the severity of this will remain confidential; though the complainant may be informed that a sanction has been applied. The right of appeal against any sanction will be communicated in line with the policy on Managing Conduct.

2.3.6 Appeal

a) If the complainant remains aggrieved following the grievance hearing’s outcome, they or their representative may lodge an appeal. The designated senior manager to whom an appeal should be addressed will be identified within the letter confirming the grievance panel’s decision.
b) A meeting will be held to hear the grounds for appeal and the Grievance Panel’s views. To protect those involved, attendance of witnesses will be kept to a minimum. The complainant has the right to be accompanied by a colleague or staff-side/professional organisation member.

c) It will be for the Appeal Panel to decide how the Appeal Hearing will be structured, following consultation with the parties, taking into account the sensitivity of the issues involved and the need to protect the rights of all concerned. The outcome of the appeal will be communicated to the complainant in writing as soon as possible following the appeal hearing.

2.3.7 After the Procedure

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

3.0 Policy monitoring and review

Responsibility for monitoring the application of this policy will rest with the Area Partnership Forum. This policy will be reviewed on a three-yearly basis, with amendments being made as appropriate following consideration by staff, staff representatives and management and following release of any national guidance.

4.0 Procedure - Bullying/harassment by patients, carers, relatives, visitors and/or advocates

4.1 Background

a) 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.
b) It is inappropriate for a line manager to make the decision to swap the bullied or harassed employee with another employee without first explaining to the complainant the reasons for this action. In all cases an Incident Report Form should be completed.

c) 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.

4.2 Informal stage

a) 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.

b) If the situation warrants the need for a witness, the member of staff 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.

c) 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.

d) 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.

e) 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.

f) 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.

g) 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 the NHS Shetland’s premises.

h) 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.

i) In serious cases, it may be appropriate to move directly to this next stage.

4.3 Formal action

a) 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

b) 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.
c) Where the incident is sufficiently serious, the senior manager will meet with the member of staff prior to putting the matter in writing as above. Any letters should be copied to an appropriate more senior manager.

d) In cases of physical violence or serious threats of violence, the more senior manager should also involve the police as appropriate.

e) Notwithstanding this, a member of staff may at any time involve the police as they wish, having first escalated the matter to their line manager.

f) If the employee who made the complaint is dissatisfied with the action taken, he or she may lodge a formal grievance in accordance with the NHS Shetland’s Voicing Concerns procedure.

5.0 Procedure - Bullying/harassment by contractors and staff from other agencies

a) In cases where the bullying/harassment involves contractors or staff from other agencies, the stages as detailed in section 4.0 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:

b) 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 NHS Shetland’s premises.

c) 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.

d) 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 organisation premises or refused continued contact with staff of the organisation.

e) If the employee who made the complaint is dissatisfied with the action taken, he or she may lodge a formal grievance in accordance with the NHS Shetland’s Voicing Concerns procedure.

6.0 Guidelines

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

b) It is therefore recommended that guidelines for both managers and employees are prepared. These should be prepared in an inclusive manner in conjunction with staff-side/employee representatives, Area Partnership Forum and management.

7.0 Impact Assessment

This policy and its associated procedures and guidelines have been equality impact assessed using a rapid impact checklist process. The impact on groups with protected characteristics was felt to be largely positive, particularly the specific examples of racial, disability, age, sexual orientation and religious harassment.

The font used on the document control pages was size 11 in places and also there was some text with capital letters which some people with literacy issues or visual impairments may find difficult to read. However, this is a Board-wide format and not in the remit of this policy to amend.

Potential negative impacts in relation to employment, income and stress were identified, though are difficult to mitigate due to the nature of the policy in question.
There is significant reference to “written and letter” within the policy. If a disabled member of staff is unable to read or a member of staff does not have strong English language skills, a reasonable adjustment is required by the Equality Act. For individuals with literacy issues, some disability groups and English as second language, in terms of accessing the policy, understanding letters and being able to respond to allegations, the policy needs to outline in guidance the support available. As a result of the impact assessment it has been highlighted within policy and that people can bring support worker or interpreter in agreement with the Chair of the meeting or hearing and that support is available through the HR team in relation to understanding letters.

For individuals with mental health issues who may need additional support through the formal investigation, meetings and, if relevant, hearing, need to highlight within policy (in section about who attends the hearing) that people can bring support worker, advocate, etc. Reference has also been made to the employee assistance programme.

There was no mention of how an advocate or other person (BSL interpreter, guide etc) could be used to support a disabled person at a disciplinary hearing on top of the right to be accompanied. This has been amended.

By monitoring the protected characteristics of staff in relation to bullying & harassment complaints as part of the Board’s specific equality duties, any patterns or trends can be further investigated.