

Dignity at Work Policy: Eliminating Bullying and Harassment in the Workplace

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Section 1 – Introduction

1.1 Policy Statement

NES recognises that all employees have the right to work in an environment which is free from the threat of bullying and/or harassment. The organisation is committed to providing employees with a workplace which is safe and respectful, and actively encourages a culture of Dignity at Work and respect for all.

All members of staff have a responsibility to treat colleagues with dignity and respect irrespective of characteristics such as gender, race/ethnicity/national origin, marital/civil partnership status, age, disability, religion or belief, gender re-assignment, pregnancy/maternity (aforementioned are protected characteristics under the Equality Act 2010); and in addition political conviction, membership or non-membership of a trade union/professional organisation and a real or suspected health status.

Bullying and harassment can have very serious consequences for individuals making the allegation, for the alleged perpetrator and for the organisation.

Behaviour involving the bullying, harassment or intimidation of any employees for any reason is unacceptable and will not be tolerated or condoned by the organisation. If, following investigation, it is found that bullying or harassment has taken place this will be considered a disciplinary offence.

1.2. Policy Purpose

The purpose of this policy is to provide a clear framework and procedures for the reporting and management of Dignity at Work issues in the workplace.

The main focus of this policy is 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. The policy is designed to encourage a formal process only where there is no other alternative.

This policy should be read in conjunction with the organisation's policy on Equal Opportunities.

1.3 Scope

This policy applies to all NES employees, contractors and staff from other agencies (including host organisations). Appendix 3 provides separate arrangements in the event of bullying and harassment by patients, carers, relatives, visitors, advocates and 3rd Parties. This appendix has been included in recognition that some Regional Offices are based within medical premises.

Section 2 - Definitions

2.1 Dignity at Work

'Dignity at Work' has been used as a term to describe a working environment free from bullying and harassment. For the purpose of this policy, we are defining dignity at work as a combination of factors leading to Dignified Workers. These factors are:

Dignified Work – interesting and meaningful work with a degree of responsible autonomy and recognised social status: and

Dignified Workplace – a workplace with structures and practices that offer equality of opportunity, collective and individual voice, safe and healthy working conditions, acceptable terms of employment and just rewards.

2.2 Bullying

Bullying has been defined as "persistent, offensive, abusive, intimidating, malicious or insulting behaviour, abuse of power or unfair penal sanctions, which makes the recipient feel upset, threatened, humiliated or vulnerable, which undermines their self-confidence and which may cause them to suffer stress." As with harassment, it is the impact on the individual and not the intention of the perpetrator which determines whether bullying has occurred.

Bullying is most commonly associated with an abuse of power most typically by a line manager or supervisor over subordinate employees. However, other power relationships may equally lead to bullying by colleagues or a group of people who may target one individual.

It must also be recognised that, albeit less common, managers may find themselves bullied by subordinate employees who use the threat of higher powers or formal procedures to make unreasonable demands.

The list of possible examples of bullying behaviour can include threatening behaviour, persistently setting impossible deadlines/objectives, excluding/isolating colleagues and undervaluing their contribution as contained within Appendix 1. This list should not be read as exhaustive.

2.3 Harassment

Harassment is defined as, "unwanted behaviour which a person finds intimidating, upsetting, embarrassing, humiliating or offensive". 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 individual which determines whether harassment has taken place. Harassment is legally defined in the Equality Act 2010, and harassment on the grounds of the protected characteristics is unlawful.

Harassment tends to be directed towards individuals on account of characteristics, for example: race or ethnic origin; gender or gender reassignment, sex, or sexual orientation; trade union/professional organisation membership (or non-membership); disability; ex-offender status; age; health status; physical characteristics; personal beliefs, religion.

A list of possible examples of harassment is contained in Appendix 1. This list should not be read as exhaustive

2.4 Firm, Fair Management

It is important to differentiate between firm, fair management and bullying or harassing behaviour. Line managers are responsible for ensuring that employees who report to them perform to an acceptable standard within a performance management framework. Legitimate, justifiable, appropriately conducted monitoring of an employee's behaviour or job performance does not, therefore, constitute bullying.

It is in the interests of the organisation that managers should be able to carry out their duties without threat of ill-intentioned, malicious or vexatious complaints. NHS Scotland takes formal complaints very seriously. Whenever someone makes a malicious or vexatious complaint, consideration will need to be given to whether disciplinary action against the complainant is required.

Although managers must be permitted to carry out the management function in a fair, firm manner, it is recognised that, in some cases, employees may feel stressed or anxious by robust management. Differences in perception mean that it is not always easy to differentiate between firm, fair management and bullying and harassment. Some useful comparisons can be found below:

<u>Firm/Fair Manager</u>	<u>Bullying/Harassing Manager</u>
Consistent and fair	Aggressive, inconsistent and unfair
Determined to achieve the best results, but reasonable and flexible	Unreasonable and inflexible
Knows their own mind and is clear about own ideas, but willing to consult with colleagues and employees before drawing up proposals	Believes that they are always right, has fixed opinions, believes they know best and is not prepared to value other people's opinion
Insists upon high standards of service in quality of and behaviour within the team. 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	Insists on high standards of service and behaviour but blames others if things go wrong. Loses temper regularly, degrades people in front of others, threatens official warnings without listening to any explanation

Asks for people's views, listens and assimilates feedback	Tells people what will be happening, does not listen
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It is accepted that these descriptions represent extremes of behaviour. In practice things will not be so clear and perpetrators may display characteristics which fall somewhere in the middle.

Section 3 – Bullying & Harassment in the Workplace: Procedures

It is important to remember that different people find different things acceptable and everyone has the right to decide what behaviour is acceptable to him/her and to have his/her feelings respected by others.

Where an individual believes that they have been bullied or harassed there are a number of options available to them, depending upon the circumstances of their own particular situation. These options are available to both the employee making the allegation and the alleged perpetrator.

The first of these options is to access support from a confidential contact.

It would not be appropriate for a confidential contact to provide support and advice to an alleged perpetrator as well as to the individual who is alleging that bullying or harassment has taken place.

3.1 Accessing support from a confidential contact

NES employees can contact the following sources of support to discuss their situation on a confidential basis and to seek support in making a decision about how they wish matters to be dealt with. These sources will also be able to provide support and assistance to the individual during a potentially stressful period before and during an informal complaint being made to line management.

3.1.1 Independent Counselling & Advisor Services AXA-ICAS

AXA-ICAS is a free and confidential service available to employees and their immediate family members 24 hours a day, 365 days a year.

AXA-ICAS will provide counselling over the phone or in person, depending on the needs of the individual. NES encourage all employees to utilise this service for support, to help relieve pressures and/or to assist with personal problems.

AXA-ICAS can be accessed by telephone or on-line as follows:

Freephone 24 hours a day, 365 days a year **0800 072 7 072**

Minicom users should call: **0800 731 0302**

You can log in using the following details:

Website: **www.axabesupported.co.uk**

Username: **educationscotland**

Password: **supported**

3.1.2 Human Resources (HR)

The HR & OD Directorate can provide advice and support, helping to clarify employee expectations and discuss possible options for going forward with a claim under the Dignity at Work Policy. Depending on whether a claim is progressed, a representative from the HR & OD Directorate will also undertake other roles such as facilitating meetings, taking part in hearings etc.

The alleged perpetrator may also contact human resources for advice. However, the hr person dealing with the allegations should not deal with this person. Support should instead be provided by another member of the HR & OD directorate.

3.1.3 Occupational Health Service (OHS)

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 also available.

3.1.4 Trade Union/Professional Organisation representatives

Trade Union/Professional Organisation representatives are available to 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.

3.1.5 Additional resources/guidance: 'Give Respect, Get Respect' Toolkit

The 'Give Respect, Get Respect' toolkit is a useful resource to help build a dignified workplace that sees mutual respect for each other and behaviours that establish positive relationships. The toolkit promotes the 'Give Respect, Get Respect' message that is central to Dignity at Work.

Further information on the toolkit can be found at:

www.staffgovernance.scot.gov.uk

3.1.6 Outcome of discussions with confidential contacts

The three possible outcomes after discussing with a confidential contact are:

- ❖ A decision to proceed using the **informal** stages of this procedure;
- ❖ A decision to proceed using the **formal** stages of this procedure;
- ❖ A decision that **no further action** will be taken.

3.2 Timescales

In cases where formal or informal action is to be progressed, defined timescales are necessary to ensure issues are dealt with quickly and without unreasonable delay. Timescales will often depend upon the nature, breadth and gravity of the allegation(s) and may therefore be different for every instance. Parties involved should agree timescales on a case-by-case basis on the presumption of no unreasonable delay.

The individual, their representative and the alleged perpetrator must be advised in writing of the envisaged timescale prior to the commencement of any investigation.

3.3 Informal Stage

This will involve the individual approaching the alleged perpetrator in order to tell them that their behaviour is found to be offensive and why and to ask them to stop using such behaviours. The individual may ask a colleague or Trade Union/Professional Organisation representative to be present for moral support. If the individual would find confronting the alleged perpetrator too difficult but still wishes to pursue the matter informally they can ask either the line manager, HR Business Partner/Associate Business Partner or Trade Union/Professional Organisation representative, to speak to the person concerned.

If an individual is approached informally about their behaviour they should not dismiss the complaint or think the complainant is being too sensitive. They may have offended someone without intending to. In these circumstances, the employee concerned may accept an apology with an assurance that there will be no repeat of the behaviour.

Another option may be for the individual to write directly to the alleged perpetrator detailing the offensive behaviour and confirming the requirement to stop any further bullying or harassment.

The individual 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 or harassment continue or subsequently recur.

It has to be emphasised that in order to maintain working relationships matters should be dealt with by informal intervention wherever possible. This may involve facilitated discussion between the parties involved. However, this does not remove the inherent right of the individual to deal with the matter formally.

3.3.1 Structured Informal Meetings

Where early action has been unsuccessful, employees and other stakeholders may feel the need to pursue a more structured informal process. There are a number of options for structured informal approaches:

3.3.2 Facilitated meetings/mediation

Managers and employees should always seek to resolve issues in the workplace. Where this is not possible informally, both parties should consider the use of an independent third party to help resolve the issue.

The third party need not come from outside the organisation. NES has a pool of trained staff mediators, who can be called in to assist with these issues. However, the need for use of external mediators in the most complex of cases may be agreed between the parties.

Should the parties concerned agree that they wish to proceed with mediation, this should be notified to the NES Mediation Co-ordinator who will be responsible for progressing any request for mediation. Information regarding the Mediation process, including contact details for the Mediation Co-ordinator can be found on the Mediation Intranet Page <http://intranet.nes.scot.nhs.uk/Mediation/>

3.3.3 Meetings facilitated by Human Resources (HR)

If stakeholders agree that a resolution can be reached through a structured informal discussion rather than through mediation, they may decide to conduct a meeting facilitated by HR.

The meeting would provide an opportunity to explore options and develop a way forward towards resolving an issue.

It is important to note that a meeting facilitated by HR is not a form of arbitration and should not be confused with conciliation, although the outcome of a facilitated meeting might be binding (e.g. if it has to do with fulfilling an employment contract or complying with the law).

Facilitated meetings are different from mediation and can be requested by the parties or their representatives, management or HR. For a meeting to occur, the participants must be willing to take part.

There is no need to have a facilitated meeting before mediation and a case may need both interventions.

3.3.4 Meetings facilitated by other Third Parties

A manager or other third party may be asked to facilitate an informal discussion between two or more individuals. It is essential that this is conducted in a fair and consistent manner to facilitate equal participation by the parties making decisions.

The third party must not have any stake in the issue or any relationship to the situation that could cause any of the parties to feel disadvantaged.

They must outline their role, agree ground rules for the discussion and establish that the parties are both willing to continue before proceeding. They must use good listening and conflict management skills, and refrain from taking sides or bringing their own opinions, issues and concerns into the discussion.

The main focus of this policy is 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.

However, in cases where the informal approach is unsuccessful or the individual has chosen to go straight to the next stage of the procedure the formal arrangements will apply.

3.4 Formal Stage

A formal complaint should be made to the individual's line manager or supervisor, HR Business Partner/Associate Business Partner or to the line manager of the alleged perpetrator. Any formal complaint should be made in writing detailing the basis upon which the alleged bullying and harassment has taken place. As stated previously an individual may access a Confidential Contact for support and assistance prior to lodging a formal complaint.

Employees will be advised if a formal complaint has been received about them. Complaints will be fully investigated under the NES Disciplinary policy and procedure. No decision will be made to progress to the formal stages of the procedures until a full investigation has been carried out and it has been identified that there is a case to answer.

3.4.1 Investigation

It will be the responsibility of the manager (to whom the complaint has been made) along with an independent representative from Human Resources, with no previous involvement in the complaint, if possible, to investigate timeously the allegation and to come to a conclusion regarding the action to be taken. It may be necessary for the organisation to consider (based upon the circumstances of each case) whether it may be more appropriate for a manager from another area to carry out the investigation. This should be discussed in partnership with the individual and their Trade Union/Professional Organisation representative, if they have chosen to be represented, or work colleague.

All parties involved will be guaranteed a fair and impartial hearing.

As formal disciplinary action is a possible outcome from this investigation it should be conducted in accordance with the provisions of the Disciplinary Policy and Procedures. Any significant changes to the timescale must also be advised in writing prior to the commencement of the investigation. Any significant changes to the timescale, along with the reasons for these changes, must also be advised in writing with the reasons for these changes.

At all stages of the process the individual and the alleged perpetrator will have the opportunity to be accompanied by a colleague or trade union/professional organisation representative and it is crucial that at all stages confidentiality is assured. Those involved in carrying out the investigation must recognise the difficulty which some individuals will have in talking about the incidents involved to a third party and that they may become distressed during the process.

It should not be necessary for the individual or the alleged perpetrator to have to repeat their statements to different managers at different times thereby increasing the stress they may suffer. Full, written and signed statements from all involved should be taken at an early stage. A written and dated record of all investigatory interviews should be made.

It is important that an individual is not questioned in a way which implies that they have either consciously or unconsciously invited the bullying or harassment. That in its own way can be a form of bullying and harassment which will add to the stress being experienced by the individual.

3.4.2 Formal Hearing

Any formal disciplinary hearing should be conducted in accordance with the Disciplinary Policy and Procedures.

It will be for the chair of the panel, who will be nominated by Senior Management, to determine how the hearing will be structured, following consultation with those involved, taking into account the sensitivity of the issues involved and the need to protect the rights of all involved.

3.4.3 Decision

There are four potential outcomes following an investigation.

These are:

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

3.4.4 Formal Action

If following an investigation and formal disciplinary hearing a complaint is held to be valid, appropriate formal action will be taken, which in serious cases may include dismissal.

Both the individual and alleged perpetrator will be notified of the outcome in writing with due regard for confidentiality of both parties.

If a claim is found to be malicious in nature then the individual may find themselves subject to formal disciplinary action.

3.4.5 No Formal Action

It may be the case that whilst no formal action is taken some informal action may be appropriate such as counselling of the alleged perpetrator or facilitated discussion to attempt to resolve the situation. Both the individual and alleged perpetrator will be notified of the outcome in writing with due regard for the confidentiality of both parties.

3.4.6 Formal Review

If a decision to take no further action is made an employee or their representative may request a formal review. This request should be made to the next senior management level or named individual as indicated in the written outcome. It will be for this individual to decide once they have reviewed the investigative material as to whether further interviews or hearings are required.

It is recommended that further interviews or hearings are kept to a minimum to protect those involved.

3.4.7 After the Procedure

Given the potential sensitivity of the issues involved and the stress present when dealing with bullying and harassment situations the organisation may consider providing confidential counselling for the individual and the alleged perpetrator at any stage of the application of this procedure.

4. BULLYING AND HARASSMENT BY PATIENTS, CARERS, RELATIVES, VISITORS, ADVOCATES and 3rd Parties

In cases where the bullying or harassment involves contractors or staff from other agencies (including host organisations) the stages as detailed in Section 3

'Accessing support from a Confidential Contact' and the 'Informal Stage, should be applied. However, due to the specific nature of the relationship between NES and these individuals/organisations the following additional step should be included in the informal stage.

If the alleged perpetrator 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 then the individual concerned may be refused entry to the premises.

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 that this type of behaviour is unacceptable and that if it is repeated then the individual concerned may be refused entry to the premises or continued contact with employees of NES.

Advice should be sought in advance from the HR Business Partner /Associate Business Partner.

5. Formal Review

If a decision to take no further action is made an employee or their representative may request a formal review. This request should be made to the next senior management level within 10 working days of receiving written notification of the decision. It will be for this individual to decide once they have reviewed the investigative material as to whether further interviews or hearings are required.

It is recommended that further interviews or hearings are kept to a minimum to protect those involved.

6. Equality and Diversity

NES is committed to 'equality and diversity' in respect of the 'protected characteristics' covered by the Equality Act 2010. NES has taken steps to ensure that it does not discriminate on the grounds of allegations of bullying and harassment.

7. Monitoring and Review of Policy

Monitoring the application and uptake of this policy will be undertaken by the Partnership Forum and overseen by the Staff Governance Committee. This will include monitoring number and types of concerns raised; how they were handled; and outcomes (including any amendment to policy or procedure).

Indicators of success can include:

- Awareness by employees that a Policy/Procedure exists and an understanding of how it works;
- Management and employees using the Policy/Procedure to raise genuine concerns;
- Management and employees believing in the Policy/Procedure and feeling comfortable when using it;
- Improvements in the reporting and handling of such incidents;
- Open discussion at Local Consultative Group level on the effectiveness of the Policy/Procedure.

This policy will be reviewed two years from its effective date to ensure that the arrangements put in place are appropriate for NES.

Ratified by NES
Board on 18 November 2003

Reviewed and ratified by Staff Governance Committee on 31 January 2013

DEFINITIONS OF BULLYING AND HARASSMENT

Bullying

The following list is not intended to be exhaustive but to provide some examples of bullying behaviour which the organisation deems to be unacceptable:

- Shouting at a colleague; persistently negative and inaccurate attacks on a colleague's personal or professional performance; criticising a colleague in front of others;
- Spreading malicious rumours/making malicious allegations;
- Threatening behaviour, both verbal and physical;
- Persistently setting objectives with impossible deadlines or unachievable 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 a colleague's performance.
- Withholding information with the intent of deliberately affecting a colleague's performance;
- Excluding colleagues by talking solely to third parties to isolate an individual;
- Isolating colleagues by treating them as non-existent and preventing them accessing opportunities.

Harassment

The following list is not intended to be exhaustive but to provide some examples of harassing behaviour which the organisation deems to be unacceptable:

Sexual Harassment

- Unwanted non-accidental physical contact ranging from unnecessary touching, patting, pinching or brushing against a colleague's body, to assault and coercing sexual relations;

- Unwelcome sexual advances, propositions or pressure for sexual activity: continued suggestions for social activity within or outside the workplace, after it has been made clear that such suggestions are unwelcome; offensive flirting;
- Suggestions that sexual favours may further a colleague's career or refusal may hinder it e.g. promotions, salary increases etc;
- The display of pornographic or sexually suggestive pictures, objects or written material;
- Leering, whistling or making sexually suggestive comments or gestures, innuendoes or lewd comments;
- Conduct that denigrates or ridicules a colleague 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.
- The display or sending of offensive letters, publications, or emails: threatening behaviour;

Racial Harassment

Conduct that denigrates or ridicules a colleague because of his or her race, such as derogatory remarks, graffiti, jokes. Such conduct can be verbal or physical;

- The display or sending of offensive letters, emails or publications: threatening behaviour;
- Being "frozen out", ignoring and staring
- Derogatory nicknames or racial name calling.

Disability Harassment

- Mimicking the effect of a disability or speech impairment;
- Ostracising, "freezing out", ignoring and staring;
- Making fun of a disability;
- Use of inappropriate terms;
- Inappropriate personal questions/comments about a disability;
- Belittling or patronising comments/nicknames;
- Moving a wheelchair without the user's agreement;
- Practical jokes (eg hiding a disability aid);

- Touching a visibly impaired person (to annoy)
- The display or sending of offensive letters, emails or publications; threatening behaviour;

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.
- Being 'frozen out' of conversations or excluded from social interaction
- The display or sending of offensive letters or publications; □ threatening behaviour;
- Derogatory nicknames or name-calling based upon age;
- Being discounted from development opportunities.

Sexual orientation harassment

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

Religious harassment

- Requiring or coercing an employee to abandon, alter, or adopt a religious practice as a condition of employment;
- Subjecting an employee to unwelcome statements or conduct (based on religion or sectarianism) which is so severe or pervasive that the individual being harassed reasonably finds the work environment to be hostile or abusive;
- Conduct that denigrates or ridicules a colleague because of his or her religion, such as derogatory remarks, graffiti or jokes.

- Displaying or sending offensive letters or publications; threatening behaviour (eg. Sectarian email jokes related to football matches).
- Being 'frozen out' of conversations, jostling, assault, or other non-accidental physical contact;
- Derogatory nicknames or name-calling based upon religion or sectarianism. (eg. football related)

LEGAL FRAMEWORK

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).

This Code sets out the principles employers should follow when dealing with disputes at work. The new Code has implications for all parties involved in a bullying/harassment scenario; namely, the responsibility to seek a resolution to grievances through informal means such as mediation, wherever possible.

The relevant statutes or regulations which can be used against either the alleged perpetrator, the organisation or both are detailed below.

Harassment

Equality Act 2010

Harassment on the basis of age, disability, gender reassignment, marriage/civil partnership, pregnancy/maternity, race, religion or belief, sex and sexual orientation is covered under the Act. 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). Employers will become legally responsible if they know that their worker has been harassed by someone who does not work for them on two previous occasions, but fails to take reasonable steps to protect the worker from further harassment. It does not have to be the same person harassing the worker on each occasion.

Employment Statutory Code of Practice

Provides detailed explanations of the provisions in the Act and applies legal concepts in the Act to everyday situations.

Bullying

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;

Employment Rights Act 1996

This legislation gives employees the right to access an employment tribunal where they believe they have been "constructively dismissed". This may apply, for example, where an organisation has failed to take appropriate action to deal with a complaint of bullying or harassment.

Health and safety at Work etc Act 1974 (Sections 2 and 3) and the Management of Health and Safety at Work Regulations 1992

This legislation places a duty of care on employers to ensure the Health and Safety of their employees and to take appropriate remedial action. This may extend to acts by people over whom the employer might have reasonably foreseen the potential for bullying or harassment eg contractors, staff from other agencies, patients, carers etc.

Trade Union and Labour Relations (Consolidation) Act 1992

This legislation protects employees from dismissal on the basis of trade union activities or membership, or of non trade union membership.

Public Interest Disclosure Act 1998

This legislation was developed to protect so-called "whistle-blowers". Where any employee is dismissed because he or she made a "protected disclosure", the dismissal will be deemed automatically unfair.

Criminal Justice and Public Order Act 1994

<http://www.legislation.gov.uk/ukpga/1994/33/contents>

Public Order Act 1986

<http://www.legislation.gov.uk/ukpga/1986/64/contents>

Protection from Harassment Act 1997

This legislation which was developed to cover "stalking" cases, enables employees to take a civil case where they believe a colleague's conduct amounts to harassment.

Human Rights Act 1998

The Human Rights Act 1998 places the following responsibilities on Boards to promote and protect individuals' human rights. This means treating people fairly, with dignity and respect while safeguarding the rights of the wider community and to apply core human rights values, such as equality, dignity, privacy, respect and involvement, to all organisational service planning and decision making.

Below are some other areas of employment legislation where discrimination based on the specified characteristic is unlawful:

Rehabilitation of Offenders Act 1974

This legislation essentially considers detrimental treatment of employees with spent convictions as similar to a "discrimination" provision.

Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000

Part-time workers should not be treated less favourably than full-time workers under this legislation.

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.

NES has a legal and ethical responsibility as a reasonable employer to ensure that employees are not subjected to inappropriate behaviour which may not only affect their performance but more importantly their health and well-being.

BULLYING AND HARASSMENT BY PATIENTS, CARERS, RELATIVES, VISITORS, ADVOCATES and 3rd Parties

Introduction

Employees have the same rights as patients and service users 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, advocate or 3rd Parties (ie staff member of a host organisation, such as a GP practice).

If an employee is bullied or harassed in the course of carrying out their duties the following procedure should be adopted. It is inappropriate to swap the employee with another employee without explaining to the individual the reasons for this action. It is a priority of NES or a host organisation to ensure that no employees are put in a situation of potential risk and the following procedures are put in place to protect employees whilst carrying out their duties.

Informal Stage

Where possible, incidents should be dealt with informally in the first instance.

If the employee feels able to do so they should inform the alleged perpetrator, at the time if possible, that they find their actions/remarks and behaviour to be unacceptable. They should state that they wish the unwanted behaviours to stop. If the situation warrants the need for a witness employees are advised to approach a colleague to accompany them when approaching the alleged perpetrator. The employee should then report the matter to their line manager as soon as possible.

If the employee does not feel able to speak to the alleged perpetrator personally they can ask their line manager to do this on their behalf.

It will be the responsibility of the line manager involved to discuss the action taken to date and what should be done in the future if any further incidents occur.

If the alleged perpetrator 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 they could be more successful in getting them to change their behaviour).

If the alleged perpetrator is a carer/relative/member of the public or advocate it may be appropriate to discuss the matter with the patient/service user.

The line manager must inform the alleged perpetrator of the consequences of further incidents. Where it appears the individual is refusing services on personal/racial grounds they should be advised that their action may be discriminatory. It should also be made clear to the individual 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 organisations premises.

A file note should be kept of the details of the incident, the action taken and by whom.

If informal action proves insufficient to deal with persistent acts of bullying and harassment then management reserves the right to take further formal action. (In serious cases it may be appropriate to move directly to this stage).

Formal Action

The line 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 the severity of these;
- The health problem of the patient/service user;
- The effects of the incident on the employee.

If the incident is serious, or a repetition of a previous incident (s) for which informal action has been taken then the alleged perpetrator should be written to officially by the relevant senior manager informing them:

- That their comments, actions, behaviour is not acceptable and is potentially discriminatory;
- That further incidents will not be tolerated.
- Further incidents may result in the withdrawal of services.

Where the incident is sufficiently serious the senior manager will meet with the individual prior to putting the matter in writing as above. Any letters should be copied to the appropriate senior management.

In cases of physical violence or serious threats of violence the senior manager should also involve the police as appropriate. Notwithstanding this, an employee may at any time involve the police as they wish.

Formal Review

If a decision to take no further action is made an employee or their representative may request a formal review. This request should be made to the next senior management level within 10 working days of receiving written notification of the decision. It will be for this individual to decide once they have reviewed the investigative material as to whether further interviews or hearings are required.

It is recommended that further interviews or hearings be kept to a minimum to protect those involved.

Flowchart of Bullying & Harassment Procedure

