



DIGNITY AT WORK POLICY

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The provisions of this policy, which was developed by a partnership group on behalf of Grampian Area Partnership Forum, apply equally to all employees who hold a current contract of employment with NHS Grampian.

**NHS GRAMPIAN
DIGNITY AT WORK POLICY**

If you have difficulty understanding the English language, this policy can be made available to you in a language of your choice.

This policy can also be made available, on request, in other formats e.g. in large print or on a computer disk.

For all requests for copies of this policy in another language, or in an alternative format, please call the Corporate Communications Team on 01224 554400.

NHS GRAMPIAN DIGNITY AT WORK POLICY

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NHS GRAMPIAN DIGNITY AT WORK

SECTION 1 POLICY STATEMENT

Aims

NHS Grampian recognises its duty of care to staff and patients and is committed to promoting a culture of dignity and respect in all of its workplaces. To this end, the Dignity at Work Policy sets out the conditions to ensure safe and effective working practice as well as fair and consistent treatment for all employees in NHS Grampian by:

- stating the values and principles that underpin Dignity at Work
- focusing on the promotion of positive relationships at work
- defining appropriate and inappropriate behaviour
- providing guidance on informal methods for promoting Dignity at Work
- including procedures for dealing with less positive behaviour when this arises

Contractors, relatives and visitors to NHS Grampian will be asked to observe the values contained in this Policy while on NHS Grampian premises.

Values and Principles

The responsibility for creating a culture of dignity and respect is shared by all.

Everyone has a role to play by:

- being proactive and intervening early when problems are noticed or raised
- understanding and adhering to acceptable standards of conduct
- taking responsibility for their own behaviour
- acting at all times in a way that promotes good and avoids harm to others

And by observing the following core principle:

In NHS Grampian there is a positive duty upon **ALL** parties to try to resolve a dispute whenever it is reasonable to do so.

Therefore, whenever reasonable the use of informal resolution of a Dignity at Work issue will be offered and encouraged as a way forward. This policy includes options that are available.

SECTION 2 PROMOTING DIGNITY AT WORK IN NHS GRAMPIAN

Roles, Responsibilities and Standards

2.1 All employees have a duty to adhere to this policy and to:

- act as a positive role model for others
- ensure that everyone is valued and treated with dignity and respect
- understand and observe the expected standards and to seek clarity about standards when unsure
- monitor their own behaviour and consider how it might affect others, refraining from acting in ways which could cause offence or harm
- take positive action to resolve misunderstanding and voice concerns

2.2 Teams have a responsibility for fulfilling all of the above duties and, in addition, share responsibility for ensuring that all team members are:

- valued
- supported
- included

2.3 Managers and Supervisors have, in addition to all of the above, a duty to apply the Staff Governance Standards (APPENDIX B) and maintain a positive and safe work environment that is free from inappropriate behaviour by:

- ensuring that all employees are informed about the Dignity at Work Policy and the standards that are expected
- being consistent and fair – see APPENDIX B
- encouraging positive behaviour and involving staff in creating a culture of dignity and respect
- listening to and looking into the concerns of employees and involving all parties in developing solutions to problems and disputes – see APPENDIX A
- intervening promptly to address unacceptable behaviour when it is noticed – see APPENDIX A
- taking complaints seriously, treating them confidentially, and following the correct procedure – see APPENDIX F.

Definition of Behaviours for Dignity at Work in NHS Grampian

2.4 Positive and appropriate behaviours that support Dignity at Work

Positive behaviour is central to creating a positive workplace culture. When appropriate behaviour is the norm, dignity and respect can prevail and positive working relationships can be nurtured and maintained. Productivity and services to patients will also be enhanced

The minimum Standards to be observed are set out in Section 2.1.

Positive interactions between people, openness, and supportiveness are the hallmarks of a workplace where Dignity at Work has been embedded in the culture and embraced by all.

2.5 Inappropriate behaviours that undermine Dignity at Work

Behaviours that undermine Dignity at Work include harassment, bullying and mobbing. These are defined in sections 2.5.1- 2.5.3. They involve an extreme absence of Dignity at Work and in some situations can constitute gross misconduct. They must be addressed and cannot be condoned.

The guidance in Section 3 indicates early and informal approaches that should always be encouraged.

Section 4 describes the procedures available when informal routes are not reasonable or possible or have been attempted without success.

Employees also need to be aware that they can be held to account for inappropriate behaviour towards work colleagues outside the workplace and outside working hours if this behaviour adversely affects working relationships or someone's ability to perform their work role. This could include, for example, behaviour on departmental social outings, while using social networking sites etc.

2.5.1 Harassment

In everyday language the words harassment and bullying are often used interchangeably. However, in this policy the word 'harassment' is used in the following specific way and is defined as:

“unwanted behaviour directed towards individuals on account of their personal characteristics e.g. race or ethnic origin; gender or sexual orientation; trade union membership (or non-membership); disability; ex-offender status; age; AIDS/HIV; health; physical characteristics; personal beliefs etc; which the individual finds intimidating, upsetting, embarrassing, humiliating or offensive”

Harassment involves one or more persons directing unwanted behaviour against one or more other persons on account of a personal characteristic of the targeted person(s). The behaviour only needs to occur once for harassment to have taken place.

2.5.2 Bullying

The formal definition of bullying has **four elements** all of which **must be present for there to be bullying**: negative behaviours against a person, persistence, imbalance of power and harmful effects. See page 9.

Bullying is defined as:

“any **persistent**, offensive, abusive, intimidating, malicious or insulting **behaviour**, abuse of **power** or unfair penal sanctions, which make the recipient **feel** upset, threatened, humiliated or vulnerable and thereby **undermines** an individual's self-confidence.”

The four elements which must be present are:

1. Negative behaviours against a person

Negative behaviours involving various types of hostile acts – see APPENDIX C - that can be either obvious or covert, which are directed against a person by one or more people

2. Persistence

Negative behaviours happen on more than one occasion, occurring at different points in time

3. Imbalance of power

The targeted person will be unable to defend themselves against the person using the negative behaviours and cannot stop the other person. There is a perceived imbalance of power between them.

4. Harmful effects

The targeted person sees the situation as harmful to them and experiences harmful effects e.g. lowered self-confidence, or self-esteem, reduced wellbeing etc., because of the negative acts directed against them.

A one-off occurrence of a negative/ hostile behaviour, though potentially very distressing, would **not** be considered bullying. However, negative/ hostile behaviour should be tackled once it has been observed and **before** it re-occurs or escalates - see Section 3 and APPENDIX A.

Bullying also needs to be distinguished from reciprocal conflict that occurs between equals i.e. each is targeting the other and each is equally able to defend themselves. Such behaviours need resolution but would not be viewed as bullying.

2.5.3 Mobbing

Sometimes the term 'mobbing' is used to mean the same thing as the word bullying. However, in NHS Grampian 'bullying' is used when the situation involves two people, one of whom is targeted by the other. The term 'mobbing' is used when the situation meets the definition of bullying (see 2.4) but involves a **group** of people who direct the negative/hostile behaviours against a target person or persons.

SECTION 3 GUIDANCE ON EARLY ACTION AND INFORMAL INTERVENTIONS

Key Principle:

In NHS Grampian there is a positive duty upon ALL parties to try to resolve a dispute or disagreement, whenever it is reasonable to do so.

Whenever reasonable the use of informal resolution of a Dignity at Work issue will be offered and encouraged as a way forward.

Early Action

3.1 Early action by Management

NHS Grampian has a duty of care to all its employees. Managers have a duty to act promptly and to intervene early when behaviours that could indicate bullying or harassment are noticed or suspected. See APPENDIX A

3.2 Early action by an employee

If an employee perceives that behaviour towards them is hostile, they may choose to try personal action by **appropriately challenging that behaviour**, either by speaking or writing to the person(s) concerned.

It may be that the other person is not fully aware of their own behaviour and its impact. By appropriately challenging the behaviour you create the possibility of mutual understanding and change. You also show that you are acting with dignity and that you are respecting the dignity of the other person.

When to use: Appropriate challenging is an option available to individuals as a form of personal action. However, it may not be possible to use it in all situations e.g. if there are safety issues or other risks.

When appropriately challenging behaviour it is important to remain calm and:

Describe the behaviour in neutral terms e.g. “there have been occasions like the one this afternoon and last Tuesday when your voice was raised/very loud when you spoke to me in front of the others”

Describe the effect on your performance e.g. “this makes it difficult to concentrate on what’s being said/ difficult to take part in things/ difficult to do my job” etc

Describe how you would like the behaviour to be different e.g. “I would like/ prefer to hear about feedback / have problems highlighted in a less public setting/ in a less forceful way/ in a quieter tone”

Dignity at Work Standard: In this situation, you are acting in a respectful way and looking for the other person to respectfully listen to and consider what you are saying. The **desired outcome** is that you both agree how things will be different in the future and put this into practice

3.3 Early Action – Seeking Support

An employee who believes that they are experiencing inappropriate behaviour towards them can seek support from a Confidential Contact who will listen to their concerns and describe the options available to them without making any judgements about the issues - see APPENDIX D

Structured informal approaches

3.4 Mediation

Mediation is available through NHS Grampian’s internal Workplace Mediation Scheme and can be used early in a dispute or later on i.e. before or after, but **not during**, a formal process.

Mediation is a confidential, off-the-record method in which the parties are brought together in a neutral setting for up to a day to try to achieve a mutually acceptable outcome with the help of trained mediators who are independent and have no involvement in a case either before or after the mediation. Mediation is helpful where conflict involves relationship issues and/or misunderstandings between people.

Mediation follows a set of practices and values that include impartiality, independence, neutrality, equality, collaboration and respect for the ability of the parties to make decisions. It is always a voluntary process. What is said in mediation is privileged and cannot be disclosed or used in any subsequent procedure. Mediation is **not** arbitration or conciliation and mediators do not make any judgements about the issues i.e. a Facilitative Model is used.

See **APPENDIX E** and also the **Mediation Code of Practice** and **Workplace Mediation in NHS Grampian: Guide to How it Works**. Copies of the latter two documents can be obtained from nhsq.dignityatwork@nhs.net

Requests for Mediation are made to the Dignity at Work (DaW) Officer who will assess each request to determine its suitability for mediation and signpost alternatives if it is not. Normally requests for mediation are made by the manager of the parties concerned or by a Human Resources (HR) Professional who is connected to the case. Any party to a dispute or issue can say that they wish to have mediation.

Mediation can also be recommended to the parties by others e.g. Management, HR, Occupational Health, Trade Union and Professional Organisation Representatives. However, for mediation to be offered both parties must be willing and able to freely agree to attempt mediation.

3.5 Meetings facilitated by Human Resources (HR)

Facilitated meetings can be offered by Human Resources and provide an opportunity to explore options and develop a way forward towards achieving resolution of an issue.

The purpose of a particular facilitated meeting, as well as ground rules for the meeting, will be stated at the outset but within these parameters a facilitated meeting can involve a broad range of issues and methods. For example, negotiation and/or compromise can be used and representatives can participate i.e. Trade Union or Professional Organisation Representative including a full time Trade Union Officer, fellow employee or friend or relative not acting in a legal capacity.

Special attention should be paid to communications with employees who have limited experience of working life, employees with learning difficulties, employees with physical disabilities or mental health issues which may impact on their ability to understand or express themselves and employees whose first language is not English. Where required a translator will be provided, when requested.

However, 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 also different from Mediation.

A facilitated meeting can be requested by the parties or their representatives. Alternatively it can be recommended by management or HR. For a meeting to occur, the participants must be willing to take part.

In some circumstances the HR Professional who is facilitating the meeting will not be directly involved in the issue but will report back to whoever is engaged on the case in the HR team. In other situations, the HR Professional who is dealing with the matter as part of their own case load will facilitate such a meeting.

Notes will normally be taken to aid recall of what was discussed and a record will be produced of any decisions reached and actions agreed. This is shared with the participants and, if agreed as part of the outcome, may be shared with persons not actually present at the meeting e.g. Service Manager, HR etc. It may also be referred to in the future by anyone involved. If required, there can be a review meeting after a period of time to monitor progress and follow-up on any issues.

Facilitated meetings can last for up to several hours and, if wished, may be part of a series of meetings spread over weeks or months.

3.6 Meetings facilitated by other third parties

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

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

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

3.7 Sources of Support

3.7.1 Confidential Contacts (CCs) provide independent, confidential support to employees who may be affected by or accused of bullying, mobbing and/or harassment. They will meet to listen to an employee's concerns and help them explore the options available - see APPENDIX D.

3.7.2 Human Resources (HR) provide advice and support, help to clarify expectations and discuss possible options. Depending on how things develop, HR Professionals will take up other roles e.g. facilitating meetings, taking part in Hearings etc.

- 3.7.3 **Occupational Health Service (OHS)** can provide confidential advice on health issues which may cause difficulties within the workplace either following management or self referral. Additional support services such as counselling are available.
- 3.7.4 **Trade Union and Professional Organisation 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

SECTION 4 PROCEDURES

4.1 Process to be followed

Whenever possible informal resolution will be offered and encouraged - see Section 3 which outlines early action and informal methods for addressing Dignity at Work issues.

However, while there is a positive duty upon ALL parties in NHS Grampian to try to resolve a dispute or disagreement whenever it is reasonable to do so, it is also recognised that it may not always be possible to resolve a matter through an informal route.

Therefore, employees who believe that they have been harmed by inappropriate behaviours such as harassment, bullying or mobbing - see Section 2 and APPENDIX C for definitions - may decide to complete the *Pro Forma and raise a complaint formally under the grievance procedure i.e. First Formal Stage. See APPENDIX F for details. A fair, independent and impartial investigation to establish the facts will then be conducted.

*The Pro Forma is also available to download as a word document from the intranet

4.2 Investigations

The investigators will be independent having no stake or interest in the case or the parties i.e. the person making the complaint and the person against whom the complaint is made and will be from a different area from the one(s) where the alleged situation has occurred. Given the highly sensitive nature of the issues involved, such investigations will be conducted by specially trained investigators. These trained investigators will be available from 1st November, 2009 and interim guidance on investigations will apply until then

APPENDIX F describes the principles and processes to be followed in Dignity at Work Investigations.

It is essential that principles of Natural Justice are followed.

The investigators will gather and test evidence upon which a **reasonable belief** can be formed as to whether or not the alleged events occurred. Based on the evidence, an objective report will be written which can offer one of two recommendations:

- a) that there is evidence to support a reasonable belief that bullying/mobbing or harassment has occurred or
- b) that the evidence does not support a reasonable belief that the alleged events occurred - see Definitions in Section 2 and APPENDIX C.

It is then for the deciding officer i.e. the manager who commissioned the investigation, to determine what action is to be taken having considered the report and, in the interests of consistency, taken due account of past decisions about similar cases. Action may involve Disciplinary proceedings when merited and if serious enough could lead to dismissal.

So that it can be investigated, a complaint must be made in writing. This should be done by using the special pro forma – see APPENDIX F - or by letter.

Anyone considering making a complaint is encouraged to read the leaflet 'Thinking of Complaining: Ways to resolve a Dignity at Work Issue, which provides details about all the options available for resolving disputes. A copy of this leaflet can be downloaded from the NHS Grampian intranet site or by email from nhsg.dignityatwork@nhs.net Employees can also request a copy from their manager, their HR Team or their Staff Side representative.

4.3 Misconceived or unreasonable complaints

In the event that a complaint is discovered to be misconceived i.e. an unreasonable complaint made with ill intent, a decision will be taken about Disciplinary Action against the person making the complaint.

4.4 DATIX Guidance in relation to Dignity at Work Processes

DATIX is an electronic information system, used in NHS Grampian, which staff can use for recording and archiving incidents so that trends can be monitored.

DATIX is NOT a communication system for raising or making complaints.

While employees may choose to log an incident on DATIX, with or without disclosing their name, they cannot expect a response or intervention as a result. Therefore they should use the methods described in the Dignity at Work Policy to raise issues and concerns about Dignity at Work issues.

However, if managers become aware of potential problems via DATIX they cannot ignore them

GUIDANCE FOR MANAGERS

KEY PRINCIPLES:

1. NHS Grampian recognises its duty of care to all its staff. Managers are responsible for assuring this and for applying the Staff Governance Standards.
2. A prompt response is essential when concerns are raised or when inappropriate behaviour is observed.
3. Each situation involving behaviours at work is different. It is therefore necessary to consider each on a case-by-case basis to gain a full understanding of the problem.
4. Managers should seek advice when this is needed. Support for managers is available from different sources including HR, and a manager's own line manager.
5. In NHS Grampian there is a positive duty upon ALL parties to try to resolve a dispute or disagreement, whenever it is reasonable to do so. Therefore, whenever reasonable methods of informal resolution of Dignity at Work issues will be offered and encouraged as a way forward.
6. The core standards to be observed for roles, responsibilities and behaviours are set out in Section 2.
7. Use the "Three Es" when dealing with difficult situations – see Section A3.

Day to day performance management.

NHS Grampian has a duty of care towards all its employees and effective performance management involves acting promptly when any signs of inappropriate behaviour are noticed - see Section 2 and APPENDIX C.

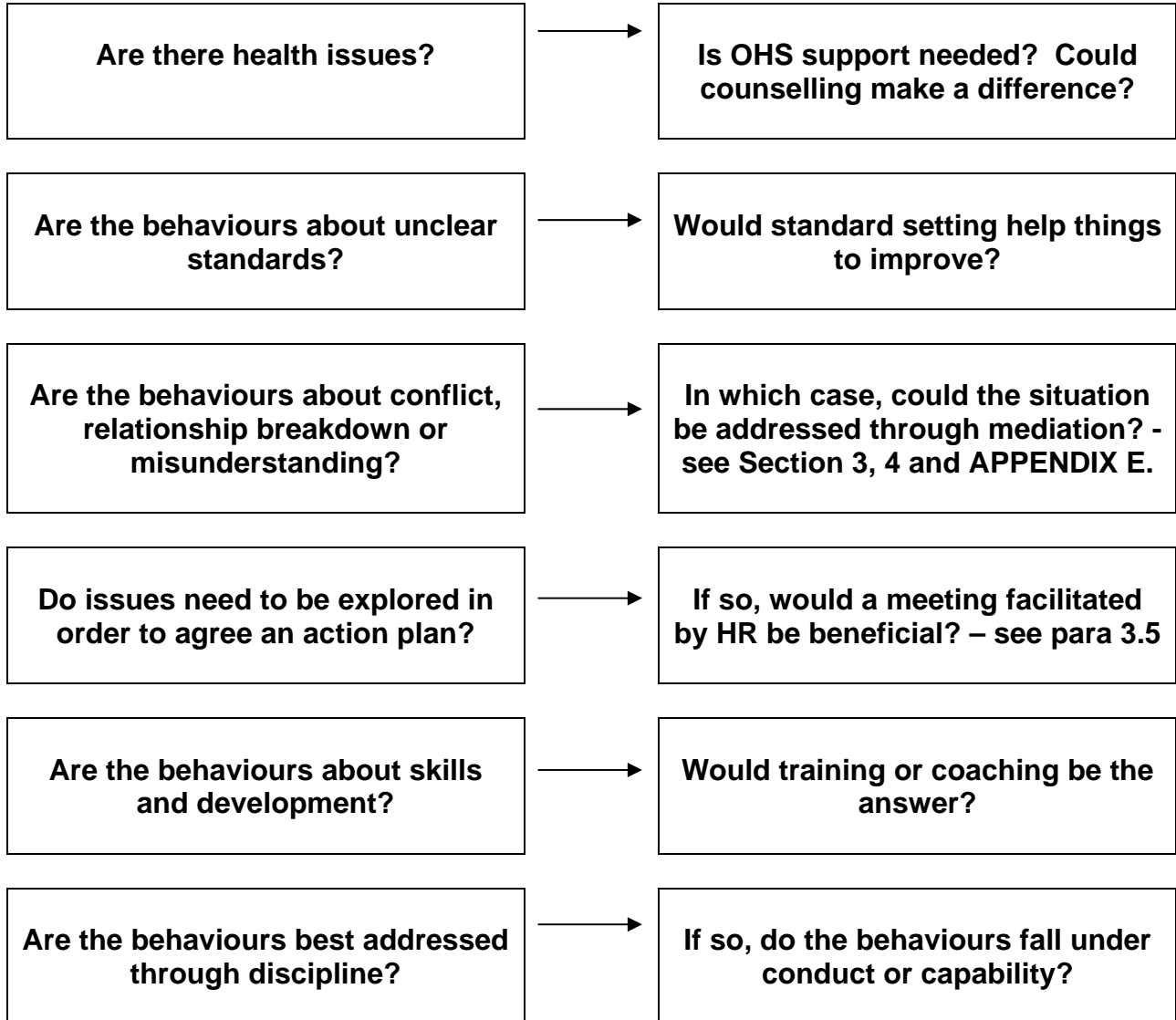
It also means encouraging and recognising positive behaviours.

A 1. When inappropriate behaviours are OBSERVED or DETECTED

An early response by a manager or supervisor could involve an informal chat to find out what is going on and to resolve the issue early before it escalates into a major problem or complaint. In some situations a person displaying inappropriate behaviour may not be fully aware of their actions or may themselves be experiencing difficulties and need support. However, in some situations they may realise and even intend what they are doing.

The type of action to take depends on the problem. Therefore the first step will always be to understand the problem. For example, one type of intervention would be used for wilful and malicious behaviour (which has to do with conduct) and a different type of intervention would be used if the behaviour was because of lack of skill (which has to do with capability). Alternatively a non-disciplinary intervention e.g. mediation, education, facilitated meeting etc., may offer the way forward.

Understanding the problem will help answer the following TYPES of questions:



A2. When a concern is raised or complaint made about inappropriate behaviours

When an employee highlights what they believe is inappropriate behaviour towards them, a manager or supervisor will respond in one of the following ways:

- A2.1** If the employee highlights the issue verbally the manager will initially explore the issue with them following the guidance in Sections A1 and A3 of this Appendix to determine what to do next.
- A2.2** If the employee raises the issue in the form of a written grievance – see Section 4 - then the Grievance Procedure will apply and an investigation will occur - see APPENDIX F.
- A2.3** If the employee initially raises a written grievance and then on reflection wishes to explore an informal route e.g. mediation, they must state in writing that they wish to pause their complaint while resolution is attempted and they must state what the method being used would be e.g. mediation.

A3. Dealing with sensitive issues and the effects on individuals

Situations involving inappropriate interpersonal behaviours are complex and will often be challenging as well as distressing. In these circumstances feelings and concerns are extremely important and need to be listened to, respected and acknowledged in a non-judgmental way.

Operational definitions of bullying, mobbing or harassment - see Section 2 - provide a standard to use when trying to establish if bullying has occurred. However, sometimes individuals may believe that that they are experiencing these types of issues without being able to furnish proof, for whatever reason.

Whether or not a case is likely to meet all the criteria of a formal definition, a response is necessary to address the needs of the individual(s) and the situation. Part of Dignity at Work involves keeping an open mind and listening to what is being said, thereby respecting the dignity of the other person, and offering or signposting support when it is needed.

This should be the basis of a first level response and can be remembered easily as the '**Three Es**':

- **Explore** the issue by listening to what the person has to say in order to understand as best you can without inserting your own view or interpretation
- **Encourage** them to think about what could make a difference in order to find a way forward, engaging in this if you can
- **Explain** how you see things but always listen first so that you understand what you need to explain

FAIR AND CONSISTENT MANAGEMENT**Key Principles:**

1. Workplaces where Dignity at Work prevails are characterised by openness, support and trust
2. Everyone has expectations about justice and fairness. If these are met, trust can exist.
3. Therefore a fair and consistent approach is **essential** at all levels and at all times as this will promote trust, dignity and respect.
4. Observing the Staff Governance Standards will enable management practices to be consistent with Dignity at Work

Staff Governance Standard for NHS Scotland Employees

All employees are to be:

- Well informed
- Appropriately Trained
- Involved in decisions that affect them
- Treated fairly and consistently
- Provided with an improved and safe working environment

The Staff Governance Standard for NHS Scotland Employees 2007 can be downloaded from <http://www.scotland.gov.uk/Resource/Doc/179320/0051009.pdf>

Using a Fair and Consistent Approach**A fair and consistent approach should be apparent at all times**

- Recognise and praise good performance.
- Address difficult issues e.g. poor performance by being fair, using good listening skills and by setting a good example. This is key aspect of being a manager so you must ensure that you know which skills to use and know how to use them effectively.

- Always use effective listening.
- Respond positively to problems and avoid reacting in less positive ways. Be constructive and supportive. **Use the Three E's in APPENDIX A**
- Monitor and manage how you feel.
- Be inclusive.
- Give credit where credit is due. Make sure that the employee who does the work is given credit rather than someone else.
- Accept and learn from mistakes when these happen.

Behaviours for Fair and Consistent Management

Suitable	Unsuitable
Consistent	Inconsistent
Shares Information	Withholds Selectively
Treats everyone equally	Has favourites
Truthful	Distorts, fabricates
Delegates	Dumps
Builds team spirit	Creates fear, divides
Leads by example	Sets a poor example

BEHAVIOURS

Always read this Appendix in conjunction with the definitions provided in Section 2 of this policy.

INTRODUCTION

The display of negative/ hostile behaviours against a person or persons indicates an absence of Dignity at Work.

Such behaviours may constitute harassment, bullying or mobbing.

Negative/hostile behaviours can take different forms and can be overt i.e. visible or obvious to others, or covert i.e. more subtle, less easy to detect.

The examples listed in this Appendix are not exhaustive. The aim is to provide illustrative examples of negative/hostile behaviour which NHS Grampian deems to be unacceptable.

In reading this appendix, employees should be aware that they may also be accountable for their actions outside work e.g. on social networking sites, at works nights out, if this affects working relationships or work performance - see Section 2.5 in this policy.

Part C1 - Starts with a summary definition of Harassment and then gives examples

Part C2 - Starts with summary definitions for Bullying and Mobbing and then gives examples.

PART C1

Summary definition
<p>Harassment - see section 2.5.1</p> <p>“unwanted behaviour directed towards individuals on account of their personal characteristics e.g. race or ethnic origin; gender or sexual orientation; trade union membership (or non-membership); disability; ex-offender status; age; AIDS/HIV; health; physical characteristics; personal beliefs etc; which the individual finds intimidating, upsetting, embarrassing, humiliating or offensive”</p> <p>Frequency: For a behaviour to count as harassment, it needs only to occur once.</p>

Harassment: Examples of unacceptable behaviours.

The following examples are provided with the aim of showing the types of behaviours that NHS Grampian deems to be unacceptable. **The examples in C1.1- C1.4 are NOT exhaustive**

C1.1 General

- The display or sending of offensive letters or publications: threatening behaviour and language
- Being 'frozen out' of conversations; jostling or assault, or other non accidental physical contact
- Derogatory nicknames or name-calling
- Ostracising, ignoring and staring
- Belittling or patronising comments/nicknames
- Practical jokes
- Comments about race, creed or dress

C1.2 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 materials
- Leering, whistling or making sexually suggestive comments or gestures, innuendoes or lewd comments

- Conduct that denigrates or ridicules or is intimidating or physically abusive of an employee because of their sex, such as derogatory or degrading abuse or insults which are gender-related and offensive comments about appearance or dress.

C1.3 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 or publications: threatening behaviour and language
- Being 'frozen out' of conversations; jostling or assault, or other non accidental physical contact
- Derogatory nicknames or name-calling

C1.4 Disability Harassment

- Mimicking the effect of a disability or speech impairment
- Ostracising, ignoring and staring
- Making fun of a disability
- Use of inappropriate terms e.g. cripple, spastic
- Inappropriate personal questions/comments about a disability
- Belittling or patronising comments/nicknames
- Moving a wheelchair without the user's agreement
- Practical jokes e.g. hiding a disability aid
- Touching a visibly impaired person (to annoy)
- Examples of all types of harassment have not been given, for example sexual orientation or HIV/AIDS

PART C2

Bullying - see Section 2.5.2

The formal definition of bullying has four elements all of which must be present for there to be bullying:

- 1) negative behaviours against a person,
- 2) persistence i.e. occurs more than once, at different time points,
- 3) imbalance of power i.e. the targeted person cannot defend themselves and
- 4) harmful effects i.e. the targeted person experiences harm such as lowered self-esteem, reduced wellbeing etc).

Bullying is defined as

“any **persistent**, offensive, abusive, intimidating, malicious or insulting **behaviour**, abuse of **power** or unfair penal sanctions, which make the recipient **feel** upset, threatened, humiliated or vulnerable and thereby **undermines** an individual's self-confidence.”

Frequency: One-off incidents are not regarded as bullying but can be very distressing and must not be condoned.

Bullying is different from reciprocal conflict between two equals who are equally able to defend themselves. Reciprocal conflict must, however, be resolved

Mobbing - see Section 2.5.3

Sometimes the term ‘mobbing’ is used to mean the same thing as the word bullying. However, in NHS Grampian ‘bullying’ is used when the situation involves two people, one of whom is targeted by the other. The term ‘mobbing’ is used when the situation meets the definition of bullying - see 2.5.2 - but involves a **group** of people who direct the negative/hostile behaviours against a target person or persons.

C2.1 Bullying and Mobbing: The following examples are provided with the aim of showing the types of behaviours that NHS Grampian deems to be unacceptable. **The list is not exhaustive.**

- name-calling, insults, shouting at a colleague
- intimidation, threatening behaviour (verbal or physical)
- spreading malicious rumours; making malicious allegations
- undervaluing a colleague's contribution
- persistently negative and inaccurate attacks on a colleague's personal or professional performance: criticising a colleague in front of others (public humiliation)
- attacking a person's performance
- withholding information with the intent of deliberately affecting a colleague's performance;
- isolating staff by treating them as non-existent and preventing them accessing opportunities.
- physical or social isolation e.g. excluding colleagues by talking solely to third parties to isolate another
- persistently setting impossible deadlines or objectives
- removing and replacing areas of responsibility with menial or trivial tasks and taking credit for work achieved
- repeated reminders of mistakes, setting up to fail

ROLE OF THE CONFIDENTIAL CONTACT

Confidential Contacts (CCs) provide independent, confidential support and information to NHS Grampian employees who believe they are experiencing bullying, mobbing and/or harassment or who are accused of bullying, mobbing and/or harassment.

Confidential Contacts will

1. Meet with employees to listen to their concerns about behaviour they are experiencing or an allegation that has been made against them.
2. Explain NHS Grampian's policy, resolution options and procedures with respect to bullying, harassment and mobbing
3. Enable employees to explore and consider their options for resolution of their concerns in order that they can reach their own, informed decision about any steps that they might take

Values

They will maintain an impartial, non-judgmental view in relation to the employee, what the employee has to say and any decisions that the employee reaches.

Training

They receive training and undertake this role voluntarily in addition to their substantive posts.

Scope

- They will listen empathically and provide support but they are not counsellors.
- They will provide information about available options but will not take decisions for the employee or tell the employee what to do.
- In some situations they may attend a meeting if requested by an employee in order to provide support for that employee. However, when doing so they are not acting in a Trade Union or Staff Side capacity and will ensure that the employee understands this.

A role profile is available for Confidential Contacts.

WORKPLACE MEDIATION IN NHS GRAMPIAN

Mediation is a confidential process by which an impartial third party helps people in a dispute to work out an agreement. The disputant, not the mediator, decides on the terms of this agreement.

Mediation usually focuses on future rather than past behaviour. It provides a structured, informal way of resolving complaints, grievances and disputes.

NHS Grampian's Workplace Mediation Scheme has trained workplace mediators who are able to conduct mediations in the following circumstances:

- When both parties are willing to work together to resolve the issue
- When there is a workplace complaint, dispute or allegation
- When the problem has to do with something that the parties themselves can change

However, mediation is not possible if:

- either party is unwilling
- the law has been broken or legal processes are involved
- formal processes e.g. disciplinary, are underway
- violence or aggression may have taken place
- there is an unbridgeable imbalance of power
- the parties do not have the power to agree a solution
- health issues prevent full participation

Mediation follows a set of values that are stated in the **Mediation Code of Practice**. (available on request from nhsg.dignityatwork@nhs.net or to download from the intranet). Participation is voluntary and the ability of the parties to make decisions is respected. Mediation is also impartial, neutral, independent and confidential.

Requests for mediation should be made to the Dignity at Work Officer who will assess each case to determine its suitability for mediation and refer suitable cases to mediators. In some situations a case may not be suitable for mediation, in which event the manager making the request will be advised of alternatives.

INVESTIGATIONS: PRINCIPLES AND PROCESSES**1. Raising a complaint**

Employees who believe that they have been harmed by inappropriate behaviours such as harassment, bullying or mobbing - see Section 2 for definitions - may decide to raise a complaint formally under the Grievance Procedure i.e. at the first Formal Stage.

For a complaint to be investigated, it must be put in writing. This can be done by using the Pro Forma at the end of this Appendix, or by letter.

2. Acknowledging a Complaint

The complaint will be acknowledged within **5** working days.

3. Timescales

Timescales must be reasonable allowing a competent investigation to be completed without undue delays. The investigation will be completed within a maximum of **6 weeks** of the complaint being raised. If the investigation is to take longer than 6 weeks, this will be discussed fully with the complainant and their representative where appropriate.

4. Investigators

Because of the highly sensitive nature of the issues, complaints that relate to harassment, bullying and/or mobbing will be investigated by trained investigators from 1 November 2009. Until then, interim guidance for Dignity at Work Investigations will apply.

Investigators will be independent and have no connection with or interest in the parties involved or the services to which they belong.

5. Natural Justice

The party against whom the complaint is made will have the nature of the complaint explained to them in writing in advance, and be told who made the complaint. They will also have the right to be interviewed. However, this does not mean that they can be shown the original letter or pro forma of complaint at this point unless the complainant agrees in writing for it to be shown to them - see also paragraph 8 below.

In addition, they have the right to question any evidence that is used against them in any proceeding that might follow after an investigation.

6. Carrying out investigations

Investigations will gather and test evidence upon which a reasonable belief can be formed as to whether the alleged events did or did not occur. It is important to understand that the standard of proof is reasonable belief.

Investigations must be carried out in a consistent way. This means account will be taken of decisions made in conducting similar investigations in NHS Grampian.

A decision log must be maintained by the investigators throughout the investigation

Investigators may draw upon a range of evidence including documents e.g. emails, letters, time sheets etc., and witness statements, provided that they relate to the case. Witness statements are based on investigatory interviews in which investigators will ask questions and a statement is drawn up. A note-taker should always be present so that a detailed contemporaneous note can be taken.

Only signed witness statements can be used. Those that are not signed must be set aside.

In exceptional circumstances i.e. those involving genuine and serious danger to the witness, the Law allows for anonymous witness statements to be used.

However, advice from NHS Scotland's Central Legal Office (CLO) must always be obtained before deciding whether taking such a statement could be appropriate.

7. Investigation Report

The investigators will produce an objective report for the Deciding Officer ie the manager who commissioned the investigation. The report will include an introduction briefly describing the background and summarising the steps taken by the investigators. The main body of the report will summarise and weigh the evidence. The report will provide clear reasons explaining how decisions were made and any conclusions reached. The report will offer one of two possible recommendations:

- a) that there is evidence to support a reasonable belief that bullying/mobbing or harassment has occurred **or**
- b) that the evidence does not support a reasonable belief that the alleged events occurred - see Definitions in Section 2 and APPENDIX C.

In the event that there is a reasonable belief that bullying/mobbing or harassment has occurred, the report may also state that the severity of the circumstances could merit disciplinary action. However, the decision about taking such action will always be made by the Deciding Officer rather than the investigator producing the report.

The full report for the Deciding Officer will include the following as appendices:

- the letter of complaint
- all the signed witness statements and
- any documentary evidence cited

8. Action following Investigation Report

The full report is for the Deciding Officer i.e. the manager who commissioned the investigation who will consider the report and determine what action will occur. This could involve proceeding to a Disciplinary Hearing.

The parties to the investigation i.e. the person raising the complaint and the person against whom the complaint is made will be advised in writing by the Deciding Officer about what action, if any, is being taken. This letter should include an executive summary about the investigation and the decision. The Parties should also be offered the opportunity to meet with the Deciding Officer for feedback.

Only if the investigation is followed by Disciplinary Proceedings would the full report containing the original complaint and witness statements be shared with the person against whom the complaint is made.

9. Appeal

The procedure for making an appeal is set out in the Grievance Policy which would apply in the case of an employee raising a complaint and the Conduct Policy which apply in the case of an employee undergoing Disciplinary procedures.

10. Key principles

a) Investigations are not hearings or disciplinary hearings.

b) Confidentiality

Investigations will be confidential and all parties to the investigation will observe confidentiality.

c) Employees may be accompanied

Employees who are invited to an investigatory interview may ask to bring a Trade Union or Professional Organisation representative (including fulltime Trade Union Officers), fellow employee, or friend or relative not acting in a legal capacity.

Special attention should be paid to communications with employees who have limited experience of working life, employees with learning difficulties, employees with physical disabilities or mental health issues which may impact on their ability to understand or express themselves and employees whose first language is not English. Where required a translator will be provided, when requested

It is important to note that it is the witness who will be asked questions and who makes the statement rather than the person they bring with them. Requests to be accompanied should be made in advance and will normally be agreed unless the presence of a proposed companion could compromise the investigation. If this is the case, the witness will be asked to nominate someone else.

11. Learning from experience

Following the conclusion of the full process from complaint through to final outcome it is helpful for key stakeholders to meet and hold a critical review to distil any lessons that could help the service in terms of future practice. For example this type of analysis can focus on systems, culture, policy, practices, training needs etc that may have been significant.

12. Monitoring of Investigations and Quality Assurance

- Mechanisms for quality control will be in place
- Progress of complaints from receipt to completion of the investigation and reporting will be monitored in a way that respects confidentiality
- A data set of anonymised case decisions will be maintained
- A selection of anonymised investigation reports will be reviewed annually by an independent panel to assure consistent and fair practice

PRO FORMA

PART A		
Dignity at Work		
Complaint in respect of alleged bullying, mobbing and/or harassment		
Department		
Job Title		
Address for correspondence	e-mail	telephone
Name of Person TO WHOM complaint is made e.g. manager		
Name of Person AGAINST WHOM complaint is made		
Name of Person who will accompany to meetings (if known)		
List any steps taken so far to try to resolve the issue e.g. mediation, facilitated meetings etc and dates when these occurred		
Details/ nature of complaint. Please use additional sheets if necessary		
Signature		
Print name here:		Date signed:
Action can only be taken if the complaint is signed by the person making the complaint		

<p>PART B Dignity at Work Complaint in respect of alleged bullying, mobbing and/or harassment ACKNOWLEDGEMENT OF RECEIPT To be completed, signed and returned WITHIN 5 WORKING DAYS of receiving completed complaint PRO FORMA</p>
Name of Person making the complaint
Name person to whom complaint was made
Date PRO FORMA received

Date

Dear

This is to acknowledge receipt of your complaint PRO FORMA dated _____

I / we will write to you again in early course in order to progress the matter.

In the meantime should you wish to access confidential support and advice, details are provided in APPENDIX G of the Dignity at Work Policy (attached).

Yours sincerely

Signed

Print name and contact details of person acknowledging complaint in this space

SOURCES OF SUPPORT AND INFORMATION**CONTACT INFORMATION****INTERNAL Alphabetical listing****Confidential Contacts** (APPENDIX D)

A list of Confidential Contacts (CCs) is available from the NHS Grampian Intranet.

Alternatively you can request assistance in finding a CC, by sending an e-mail to nhsg.dignityatwork@nhs.net

(Please note that this is only to communicate your wish-to speak to a Confidential Contact - please do NOT include any details about the issue in your message. You can outline the issues when you meet a Confidential Contact.

Human Resources (Section 3.6 and 3.7)

Please check contact details for Operational HR Teams available from the Human Resources Page of the NHS Grampian Intranet or call switchboard.

Mediation Scheme (Section 3.4 and APPENDIX E)

e-mail: nhsg.dignityatwork@nhs.net

Telephone : 01224 551866; extension 51866 (voicemail)

Occupational Health Service (Section 3.7)

e-mail: grampianohs@nhs.net

Telephone: 01224 553663; extension 53663

Staff Advisor/Partnership Support Officer

Helps put employees in touch with their Trade Union and Professional Organisation Representatives. Check the Partnership Page on NHSG intranet [e-mail address to be inserted]

EXTERNAL

ACAS (Advisory, Conciliation and Arbitration Service) - <http://www.acas.org.uk/>

OTHER SOURCES

Talking to someone confidentially about the issues can help overcome feelings of isolation. Employees who are concerned that they may be affected by any of the issues described in this policy can also seek support from GPs and trusted parties of their own choice.

Resolving a Dignity at Work Issue: Finding Your Way Around the Policy

APPENDIX H

This map is designed to help users of the Policy to navigate through the options, guidance and processes in the Policy

