



**Workforce**

## **Bullying and Harassment Policy**

# Aim

The Bullying and Harassment Policy aims to provide:

- A supportive environment to seek an Early Resolution to bullying or harassment concerns, or both.
- A formal mechanism to address unresolved or significant and/or persistent bullying and/or harassment.

# Scope

This policy applies to all employees. In addition, it applies to workers such as bank, agency, and sessional workers. References to employees should be taken to apply to workers unless otherwise stated. This policy also applies to volunteers.

It covers bullying and harassing behaviours from other employees and employees of other organisations, where these impact the working environment. The behaviour can be by an individual or a group, also known as mobbing. It can be face-to-face, verbal, written or via electronic methods, including cyber-bullying and cyber-harassment.

Read the following documents for more information about bullying and harassing behaviours:

- [examples of bullying](#)
- [examples of harassment](#)

This policy complies with current legislation and meets the aims of the [Public Sector Equality Duty](#) of the [Equality Act 2010](#).

# Definitions

**Bullying** may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient (Acas definition).

**Harassment** is unwanted conduct related to a relevant protected characteristic. It has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

Protected characteristics are:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

It may also relate to other personal characteristics such as weight, social status, or trans identities, including non-binary.

**Mediation** is a voluntary, confidential method in which the parties come together in a neutral setting. They aim 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. [Find out more about supported conversations and mediation.](#)

**Significant and/or persistent bullying and/or harassment** is a single, serious incident and/or an ongoing pattern of bullying which may be considered gross misconduct. Such cases have the potential to result in dismissal.

A **supported conversation** is an informal discussion between 2 or more employees facilitated by a manager or other third party. This is conducted in a fair and consistent manner to facilitate equal participation with a view to seeking resolution. [Find out more about supported conversations and mediation.](#)

## Roles and responsibilities

There is a range of standard expectations which underpin all policies. [Read more about standard roles and responsibilities.](#) In addition, the following specific responsibilities apply to this policy.

# Manager

The manager should:

- Create an environment where employees are clear that bullying or harassment, or both is unacceptable.
- Respond constructively and supportively where an employee raises a concern regarding bullying and harassing behaviours or is accused of such behaviours.
- Assess the seriousness of the complaint and determine whether the matter should be addressed under Early Resolution.
- Assess the risks arising from the parties continuing to work together while the concern is being addressed and consider alterations to working arrangements that would support this.
- Identify suitable alternative placement(s) and appropriate support mechanisms to prevent isolation where it is not possible to keep the parties together.
- Consider referring to any support mechanisms to maintain health and wellbeing during the process.

# Employee

The employee should:

- Contribute to a dignified working environment in which bullying and harassment are unacceptable and consider personal behaviours that might be seen as such.
- Take time to consider whether the behaviours they have experienced are bullying and/or harassing in nature and if so, what outcome they would seek to achieve.
- Raise awareness of issues at the earliest opportunity.
- Respond constructively where they are accused of bullying and harassing behaviours.
- Where an employee is subject to, witnesses, or demonstrates problematic behaviours that they are unable to manage on their own, they should raise the issue with a manager.
- Actively participate in the process in an attempt to manage the issue without delay.
- Consider accessing any support mechanisms to maintain health and wellbeing during the process.

Anyone involved in the process is required to maintain confidentiality throughout the process.

## **Procedure**

### **Procedure in cases involving other employees**

The procedure for bullying and/or harassment cases involving other employees is shown in the [Bullying and Harassment Policy flowchart](#). Resources are also available to support employees to consider whether their experiences fall within bullying and harassment, including the following tools:

- [bullying self-reflection tool](#)
- [harassment self-reflection tool](#)

[Find out about other supports available to assist in the employee support section.](#)

### **Early Resolution**

Addressing bullying and/or harassing behaviours is challenging. The best way to resolve the issue at the earliest opportunity is by ensuring the other party is aware of the impact of their behaviour. The following approaches are recognised ways of achieving Early Resolution.

#### **Ways of achieving Early Resolution**

##### **Speaking to the other party directly**

The complainant approaches the other party to tell them that they find their behaviour offensive, why this is the case, and to ask them to stop.

##### **Writing to the other party**

The complainant writes to the other party to tell them that they find their behaviour offensive, why this is the case, and to ask them to stop.

##### **Supported approach**

If the complainant finds speaking to the other party too difficult but still wishes to seek Early Resolution, they can ask a manager to relay their concerns to the individual.

## **Supported conversation**

If the individuals involved agree that Early Resolution is possible this can be supported through an informal discussion. Such meetings can be offered by a third party, for example, a manager or HR representative.

Employees are supported to have a face-to-face conversation to start rebuilding relationships. During this process, employees can also be supported by their trade union representative or a work colleague. A record of the agreed outcomes will be provided by the third party to all participants.

## **Mediation**

The manager may suggest this to the parties involved to actively support Early Resolution. Mediation is voluntary and has a clear structure. It offers a safe and constructive approach to enable the parties to problem-solve and develop a realistic agreement that meets all their needs.

The trained mediators are impartial. They do not take sides or offer solutions but promote and support good conversation. What is said in mediation is confidential and cannot be disclosed or used in any subsequent procedure.

Where the employee has attempted Early Resolution without support from a manager, they should keep a record of the following:

- behaviours causing concern
- dates and actions they have taken
- what was said or done by those involved

This will help if the bullying or harassment continues or happens again.

## **Formal Procedure**

If Early Resolution is unsuccessful or the bullying or harassing behaviour is significant or persistent in nature, the employee or manager may initiate the Formal Procedure.

In such cases, the manager will assess any risk. They will determine what supports can be put in place to allow the employees to continue working together during this period, such as alternate shift patterns.

Where this is inappropriate, the employee alleged to have demonstrated the bullying or harassing behaviours or both will be moved to an alternate placement unless:

- the complainant requests a move
- there is a legitimate service need which dictates that the other employee cannot be moved

To initiate the Formal Procedure, the employee should write to their manager. Where this is not possible, or appropriate, they should write to the next level of management. The communication should detail the employee or employees alleged to be demonstrating the behaviours and their nature. For more information, [read the guide for employee complainants](#).

The employee may access a confidential contact or HR for advice, or a trade union representative for support and assistance.

If the employee has chosen to go straight to the formal stage of the procedure, a manager will:

- discuss with the employee why they think Early Resolution is not appropriate
- offer every support to allow Early Resolution to take place

The manager who receives the complaint must acknowledge the complaint in writing within 7 calendar days. The Standard acknowledgement letter template is used. The letter outlines the process for either revisiting the possibility of Early Resolution or the process of investigation to be undertaken in line with the [NHSScotland Workforce Policies Investigation Process](#).

## **Outcomes from Investigation Process**

There are 3 potential outcomes following the investigation:

- Complaint is not upheld.
- Complaint is upheld and justifies learning outcomes.
- Complaint is upheld and justifies referral to a formal conduct hearing.

[Find out more about the Conduct Policy](#).

In serious circumstances after an investigation, if relocation is necessary, every effort will be made to relocate the employee alleged to

have demonstrated bullying and/or harassing behaviours and not the complainant unless the complainant specifically asks to be moved or legitimate service needs dictate the other employee cannot be moved.

## **Feedback**

### **To the complainant**

The manager or the investigation team, or both will meet with the employee who raised the concern to feedback the findings of the investigation. This will be undertaken with a view to clarifying the reasons for their decisions but with all due regard for the confidentiality of the employee alleged to have demonstrated the bullying and/or harassing behaviours and any witnesses. [Find out more about information sharing](#).

Where the complaint is not upheld, then unless there has been clear evidence to show the complaint has been raised in bad faith, the employee should be reassured of the appropriateness of raising concerns and that notwithstanding the findings it is acknowledged that is how the employee feels.

The outcome will be confirmed in writing, using the Standard outcome letter template to the employee within 7 calendar days of the feedback meeting. The letter will explain the process for requesting a review and the scope of any review.

### **To the employee under investigation**

The manager or the investigation team, or both will meet with the employee to feedback the findings of the investigation and any proposed action. This will be undertaken with a view to clarifying the reasons for their decisions but with all due regard for the confidentiality of the employee who raised the concerns and any witnesses. [Find out more about information sharing](#).

Where the complaint is not upheld, the employee should be reassured that their behaviour has not been deemed inappropriate. They should be supported to recognise that the complainant may still perceive behaviours were inappropriate and that therefore the complainant was not acting unreasonably in raising a concern unless there is evidence to suggest it was raised in bad faith.



Where the complaint is upheld, the employee should be advised of any learning outcomes and whether these will be managed under the [Capability Policy](#). Other relevant policies apply to medical and dental employees. If it is determined that the behaviours constituted misconduct, the employee should be advised that a hearing will be arranged in line with the [Conduct Policy](#).

The outcome will be confirmed in writing, using the standard letter template, to the employee within 7 calendar days of the feedback meeting.

## Review

If the complainant or employee under investigation remains dissatisfied following the feedback from the formal investigation, they may request a review of the process. The request should be made in writing within 14 calendar days and should be sent to the designated manager as outlined in the feedback letter.

A hearing will be held to consider the process undertaken by the investigation team, and the employee's case that the process was flawed. [Find out more about the hearing format in our hearing guide](#).

The review panel will consist of a manager, according to the scheme of delegation, as Chair and an HR representative. To ensure impartiality all panel members must have had no prior involvement in the case.

Other persons in attendance will normally include:

- the employee who requested the review
- a trade union representative or work colleague
- the investigating manager
- the HR representative supporting the investigating manager

The Chair will write to all parties giving at least 14 calendar days' notice of the review hearing using the Standard letter template. They will also request written statements to be shared 7 calendar days before the hearing.

Statements of case should have sufficient information to demonstrate the process issues to be considered but with due regard for the confidentiality of the employee who was subject to the investigation and witnesses. Witnesses interviewed as part of the investigation would not

normally be called to the hearing unless they can give specific evidence regarding flaws in the process.

The outcome of the review will be communicated to the complainant in writing within 7 calendar days using the standard letter template. There is no further right of review.

## **Maintaining relationships**

In many cases where bullying or harassing behaviours, or both have been alleged, there is an ongoing need for the parties to work together. This could be due to:

- Successful Early Resolution.
- An ongoing investigation process.
- The outcome of the formal procedure where the employee complained against does not need to be moved.

It is important to recognise the potential impact on both parties of working together against this backdrop. On that basis, the manager who provides the feedback needs to take an active role to support both parties which can include the following:

- Consider access to any support mechanisms such as occupational health to maintain health and wellbeing.
- Individual meetings with both parties to discuss how they feel about the outcome and how they envisage working with the other employee going forward.
- Agreeing on a process for raising future concerns directly with each other or with a manager where this is not possible to ensure the employees feel safe.
- Further consideration of mediation to support ongoing working relationships.
- A joint meeting to ease the first contact on return, where one of the parties has been working out of the department.
- Consider the impact on other work colleagues particularly where they have given evidence and offer them support and details of any return date of the employees involved.
- Review any follow-up action to ensure this has been completed to make sure learning is embedded to minimise the potential for further conflict.

- Agree on a timescale for check-ins to ensure employees feel supported.

## **Formal complaints not concluded at the time of employment terminating**

If a complaint has been raised, but not concluded by the time the employment terminates, it will be concluded with a paper review of the position and a written response given to the former employee within 28 calendar days of the employee's termination date.

## **Post-employment bullying and harassment complaints**

Should a former employee raise a complaint within 28 calendar days of the employment ending, the matter will be investigated, and a response will be given in writing.

## **Procedure for cases involving contractors and staff from other organisations**

The procedure for bullying or harassment cases, or both by contractors or staff from other organisations, including other NHS Scotland employers is included in the [Bullying and Harassment Policy flowchart](#). Involvement in any process as part of a workforce policy can be difficult for all concerned. Recognising this, a range of support is available, in addition to that provided by managers. [Find out more about employee support](#).

## **Early Resolution**

In cases where the bullying or harassment involves contractors or staff from other organisations and the working relationship between the parties needs to be maintained, the employee should consider the same Early Resolution options as described under the section for other employees.

However, due to the specific nature of the relationship between the employer and these individuals / organisations, the following additional steps may be considered at the Early Resolution stage:

- The manager will contact the appropriate senior person within that company / organisation to advise them that this type of behaviour is unacceptable and that, if it is repeated, the individual concerned may be refused entry to the organisation's premises.

## **Formal Procedure**

If Early Resolution is unsuccessful, the behaviours start again, or the behaviours are of a serious nature, the manager should initiate the Formal Procedure. This would require the appropriate senior manager to write to the appropriate senior person within the organisation concerned to advise them again that this type of behaviour is unacceptable and that if it is repeated, then the individual concerned may be refused entry to the NHS organisation's premises or continued contact with the staff of the NHS organisation.

Where the individual has already been advised that any repetition of such behaviour may lead to such action, the organisation should be advised that the individual's access to the premises or working with NHS employees has been removed.

## **Grievances, bullying and harassment complaints, and counter-complaints**

Where an employee raises a grievance, bullying and harassment complaint, or counter-complaint during the investigation process, the investigation may be temporarily suspended in order to deal with the grievance or complaint. Where the grievance or complaint and matters under investigation are related, it may be appropriate to deal with both issues concurrently.