Dealing with Bullying and Harassment 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 of NHS Grampian except where specific exclusions have been identified.
This document is also available in large print and other formats and languages, upon request. Please call NHS Grampian Corporate Communications on Aberdeen (01224) 551116 or (01224) 552245.

This Policy has undergone Equality and Diversity Impact Assessment.

Revision History:

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## NHS Grampian
### Dealing with Bullying and Harassment Policy

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1. Introduction

NHS Grampian aspires to create dignified workplaces in every area we operate, however we recognise that this aspiration will not always be met. This policy and procedure has been developed for situations where negative behaviours have been displayed. It is a distinct procedure to deal with alleged bullying and harassment incidents that arise in the workplace.

Positive behaviour is central to creating a positive workplace culture. Positive interactions between people, openness, and supportiveness are the hallmarks of a workplace where dignity and respect has been embedded in the culture and embraced by all. 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 values of NHS Grampian are Caring, Listening and Improving and these align with the values of NHS Scotland which are:

Care and Compassion.
Dignity and Respect.
Openness, Honesty and Responsibility.
Quality and Teamwork.

Our values and behaviours are there to remind us of how we should be treated and how we, as employees of NHS Grampian should treat others – our patients and their families, carers, our colleagues, communities, and other non-NHS partners.

We show that we care by:

- treating everyone with dignity and respect;
- behaving with integrity, consistency and compassion;
- respecting individual needs and preferences.

We demonstrate our willingness to listen by:

- communicating clearly;
- being open, honest and fair;
- engaging others and respecting their views.

We continuously look to improve by:

- learning and improving ourselves and others;
- being environmentally responsible;
- collaboratively working with colleagues, patients, families, carers, communities and other non-NHS partners;
- making best use of our resources;
- encouraging innovation and building on success.
This policy must be used in conjunction with the relevant NHS Grampian’s employee policies including NHS Grampian Employee Conduct Policy or Framework for Support – Suite of Related Policies and Procedures for Medical and Dental Employees (referred to as relevant NHS Grampian employee policies throughout this document) where it has been determined, following a thorough investigation, that bullying or harassment has taken place.

Employees, either on their own or as a group, at any level in the organisation, need to be aware that they can be held to account for inappropriate behaviour. This behaviour could be towards work colleagues or managers, both inside and outside the workplace, including 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, and while using social networking sites etc.

This policy provides for local early resolution, the procedure to be adopted when matters need to be addressed in a more formal manner; and a process for review taking cognisance of the current legislative framework for dealing with employee grievances. NHS Grampian recognises however that it is sometimes difficult to fully determine which policy is most appropriate at the beginning of a process and for this reason a number of flowcharts have been developed:

- Managers Overview Flowchart for Addressing Allegations of Bullying and Harassment (Appendix 1).
- Bullying and Harassment Process Guidelines (Appendix 2) have been developed.

Before embarking on the use of any policy, employees and managers are strongly advised to consult these flowcharts first and seek appropriate support and guidance, when required.

2. **Impact of Bullying and Harassment**

It is crucial that NHS Grampian treat seriously any form of intimidating behaviour. Failure to do so may encourage a working environment which is unpleasant to work in, since staff may be unable to perform to the best of their ability if they are in fear of bullying or harassment or vexatious allegations of such behaviour.

The health and morale of staff may suffer and levels of stress, anxiety and sickness may increase. A working environment free from bullying and harassment can enable staff to contribute more effectively and achieve higher levels of job satisfaction. It will also help to reduce staff turnover and retain staff with valuable skills and experience.
3. Definitions

There are no universally agreed definitions of workplace bullying, harassment and mobbing, NHS Grampian has therefore adopted the NHS Scotland definitions found in Appendix 3.

A Glossary of Terms can be found in Appendix 4.

4. Scope of Policy

The provision of this policy applies to all NHS Grampian staff including:

Bullying and harassment of staff by colleagues and affiliated colleagues.

Bullying and harassment of staff by patients, clients, carers, relatives, visitors or advocates.

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

5. Legal Framework

The UK's legal framework, as it relates to bullying and harassment, is the cornerstone for setting policies and procedures to tackle them in the workplace. A list of relevant statutes/regulations can be found in Appendix 3.

6. Procedure for Dealing with Bullying and Harassment by Colleagues and Affiliated Colleagues

Whilst it is necessary for a formal procedure to exist, informal resolution of these issues is often more successful and is resolved more quickly. NHS Grampian requires employees to consider using informal resolution methods in all cases before proceeding to more formal processes. Resolving an issue locally and informally, the complainant is still in control of the process, whereas in formal processes the control is passed to a third party, which is normally NHS Grampian. It is in the interests of all parties to resolve matters as informally as possible.

The policy recognises that there will be instances where the circumstances of a situation are such that they require to be dealt with formally from the outset given their level of gravity and seriousness.

Where a line manager becomes aware of an issue regarding employee behaviour they should refer to Appendix 1 of this document. Following consultation with a member of the Operational HR Team, they should meet with the employee to
discuss the issues and explore possible solutions and decide the most appropriate support to address the situation e.g. NHS Grampian policies, OHS, supported dialogue or other appropriate support as identified.

Where the complaint is against the line manager or supervisor, the line manager of the complaint respondent (the line manager of the manager complained against) or the Operational HR Team should be contacted by the complainant.

Affiliated colleagues may be those from partnership organisations such as a local authority. This policy would apply when an employee of NHS Grampian is the respondent. If the respondent is not an NHS Grampian employee, please contact the NHS Grampian Operational HR Team for further advice.

6.1 Reflection Test

Within organisations, it is necessary and appropriate for managers to be able to manage their staff. This will involve:

- Issuing reasonable instructions and expecting them to be carried out;
- Setting and publicising expected standards of performance supported by a relevant appraisal framework;
- Invoking the relevant employee policies where appropriate;
- Implementing action in respect of the management of sickness absence in line with the local policy.

It is reasonable to expect a manager to perform these functions fairly, firmly and consistently. Performing them does not constitute an act of bullying or harassment, although some staff may feel stressed or anxious while the procedures are ongoing. However, abusing these procedures may constitute bullying or harassing behaviour.

It is important to differentiate between firm, fair management and bullying and harassment. It is in the interests of the organisation that managers should be able to execute their duties without threat of malicious or vexatious complaints, which in themselves could be deemed to be a form of bullying and/or harassment.

It must also be recognised that where it is found that complaints of a malicious or vexatious nature have been made that these will be dealt with appropriately, and this may involve the relevant NHS Grampian employee policies.

Because of differences in perception, it is not always easy to differentiate between firm, fair management and bullying and harassment. As such here are a few comparisons to help distinguish between the two:
## Appropriate Behaviour | Inappropriate Behaviour
---|---
Consistent | Inconsistent
Shares information | Withholds selectively
Fair | Has favourites
Truthful | Distorts, fabricates
Delegates | Abdicates
Builds team spirit | Creates fear, divides
Leads by example | Sets a poor example
Listens | Talks over
Admits mistakes | Blames others
Challenges constructively | Creates conflict
Empowers others | Curtails others

It is accepted that these descriptions represent extremes of behaviour, although in practice things may not be so clear and individuals may display characteristics which fall somewhere in the middle.

### 6.2 Local Resolutions

This policy seeks to emphasise and support employing informal procedures, whenever possible, in order to maintain working relationships. This has implications for all parties involved in a bullying and/or harassment scenario; namely, the responsibility to seek a resolution to grievances through informal means. The policy recognises that there will be instances where the circumstances of a situation are such that they require to be dealt with formally from the outset given their level of gravity and seriousness.

Where the complaint is against the line manager or supervisor, the line manager of the complaint respondent (the line manager of the manager complained against) or the Operational HR Team should be contacted by the complainant.

Any local resolution should be undertaken as close to events as possible and ideally the process should commence within 3 months, where practical.

### 6.2.1 Raising the Issue

When an employee feels negative or inappropriate behaviours have been displayed towards them, they should in the first instance approach the individual displaying those behaviours, in order to tell them that their behaviour is found to be offensive, why this is the case, and to ask them to stop.
At every stage of this procedure, all employees are entitled to be represented by one of the following:

- a Trade Union or Professional Organisation representative (including full-time Trade Union Officers),
- a fellow member of staff, or
- a friend or relative not acting in a legal capacity.

Due regard should also be given to supporting the individual alleged to have displayed inappropriate behaviours through this process.

If the individual raising the concern finds it too difficult to confront the person concerned, but still wishes to pursue the matter informally, they can ask their line manager, a member of the Workforce Directorate, or the above mentioned representatives to support them when speaking to the person concerned.

Alternatively, they can write directly to the person concerned detailing the negative or inappropriate behaviour and confirming the requirement to stop any further similar behaviour. The individual raising the issue should keep a record of how they have raised the issue, along with a note of the date and what was said by those involved. This is necessary should evidence be required at a later date, if the negative behaviour continues or subsequently recurs.

6.3 Confidential Contact

NHS Grampian is aware that employees who feel they are experiencing issues under this policy may need support to help them through the process. To this end NHS Grampian has identified and trained individuals, Confidential Contacts, independent of the formal structures within the organisation, are available for staff to contact independently and confidentially in order to discuss their situation and seek support in making a decision about how they would like to handle the incident. These trained individuals are also able to provide the complainant with support and assistance during a potentially stressful period before and during an informal complaint being made to line management.

A Confidential Contact may also be sought to provide support and advice to a respondent to a complaint. In such cases, an alternative Confidential Contact from the one providing support to the complainant would be arranged.

It is important to emphasise that a Confidential Contact will have no formal role within the organisation’s disciplinary process and they are neither expected nor trained to fulfil a professional counselling role. It is not the role of the Confidential Contact to make decisions for the complainant, but merely to provide them with the information they need so that they can decide how to proceed. Complainants may access a Confidential Contact from a different area of the organisation from that in which they are employed if they would find this more helpful.
There are three possible outcomes from this contact:

- Take no further action;
- Resolve locally and informally;
- Use of the formal stages of this procedure.

A complainant does not have to access a Confidential Contact, as part of the procedure, if they do not feel it is necessary.

The details of how to make contact with a Confidential Contact are available from the HR Policies & Procedures intranet page or by contacting the Operational HR Team.

### 6.4 Supported Dialogue

NHS Grampian actively encourages dialogue as the main tool in dispute resolution. Where resolving the issue locally has been unsuccessful, parties involved may feel the need to pursue a more structured informal process.

Supported dialogue between parties through facilitated meetings or mediation can be an effective way for parties to resolve issues and maintain their working relationship. Both facilitated meetings and mediation are a voluntary process for all parties involved. This does not remove the right of the parties to pursue the matter through the formal procedure. This policy recognises that there will be instances where the circumstances of a situation are such that they require to be dealt with formally from the outset given their level of gravity and seriousness.

#### 6.4.1 Facilitated Meetings

To facilitate means to make things easier. Facilitation skills are particularly useful when parties are finding it difficult to communicate, negotiate, or move forward. The purpose of a particular facilitated meeting, as well as ground rules for the meeting, will be stated at the outset, but facilitated meetings can involve a broad range of issues and methods. For example, negotiation and/or compromise. At a Facilitated meeting employees are entitled to be represented by one of the following:

- a Trade Union or Professional Organisation representative (including full-time Trade Union Officers),
- a fellow member of staff, or
- a friend or relative not acting in a legal capacity.

It is important to note that a facilitated meeting 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.
Notes will normally be taken within a facilitated meeting to aid recall of what was discussed and a record will be produced of any decisions reached and actions agreed. This is shared with participants and, if agreed as part of the outcome, may be shared with persons not actually present at the meeting (e.g. service manager or Operational HR Team). 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.

Meetings may be facilitated by a member of the Workforce Directorate, or a third party. In some circumstances, the member of the Workforce Directorate, who is facilitating the meeting, will not be directly involved in the issue but will report back to whoever is engaged on the case within the Operation HR Team. In other situations, the member of the Operational HR Team who is dealing with the matter, as part of their own caseload, will facilitate such meetings.

Sometimes a manager, or other third party, may be called in to facilitate an informal discussion between two or more individuals. Any party involved may invite a third party to facilitate. A third party must not have any stake in the issue, or have any relationship to the situation, as this could cause any of the parties to feel disadvantaged.

Requests for facilitation can be made to your manager, grandparent manager or the Workforce Directorate.

6.4.2 Mediation

Mediation can be used during the informal stage or after a formal process has been concluded.

Mediation is a voluntary and confidential process where the complainant and respondent try to work out an agreement, with the help of trained mediators, who are independent and have no involvement with the matter before or after the mediation. What is said in mediation is privileged and cannot be disclosed or used in any subsequent procedure. Mediators do not make any judgments about the issues discussed or raised. Mediation is an effective way of resolving conflict whilst maintaining working relationships.

NHS Grampian has a Workplace Mediation Service, the service is provided by trained internal mediators. This service has a Mediation Code of Practice and further information is available from General HR Policies & Procedures intranet page or from the Operational HR Team.

A request for mediation can be made by either party at any time during the informal stage. Mediation can be requested or recommended by the line manager of the parties involved, or by the member of the Operational HR Team involved with the case, or other involved parties such as Occupational Health or Trade Union, Staff Organisation and Professional Organisation Representatives. However for mediation to be progressed both parties must be willing and able to freely agree to attempt mediation.
Requests for mediation can be made to NHS Grampian Workplace Mediation Service by emailing nhsg.workplacemediationservice@nhs.net.

The key differences between facilitation and mediation are outlined below:

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<td>Can involve more than two parties i.e. managers to allow process changes to be agreed.</td>
<td>Involves two parties only.</td>
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<tr>
<td>Parties can be accompanied, but not represented.</td>
<td>Parties are not accompanied.</td>
</tr>
<tr>
<td>May be facilitated by individual known to the parties, but not always.</td>
<td>Is always undertaken independent trained mediator, with no professional, working or social relationship with the parties.</td>
</tr>
<tr>
<td>A formal record of outcomes will be kept.</td>
<td>Confidential, discussion/information cannot be used in formal processes. However parties can agree to share information/agreements out with.</td>
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Should the informal approach prove unsuccessful, the following arrangements will apply.

### 6.5 Formal Stage

A formal complaint should be made to the complainant’s line manager or supervisor. Where the complaint is against the line manager or supervisor, the line manager of the complaint respondent (the line manager of the manager complained against) or the Operational HR Team should be contacted by the complainant.

Any formal complaint should be made in writing by the complainant detailing the basis upon which the alleged inappropriate behaviour has taken place. The guidance notes and form in Appendix 5 should be read and completed at this stage, as it is imperative that as much information as possible is gathered at this time so that an informed decision can be made on how the case will be progressed. The responsibilities of the individual who receives the form are outlined in Appendix 5. As stated above, a complainant may access a Confidential Contact; see section 6.3 for support and assistance prior to lodging a formal complaint.

At every stage of the formal procedure, all employees are entitled to be represented by one of the following:

- a Trade Union or Professional Organisation representative (including full-time Trade Union Officers),
- a fellow member of staff, or
- a friend or relative not acting in a legal capacity.
### 6.5.1 Investigation

The line manager who receives the formal complaint shall ensure that informal resolution has been considered. If, in consultation with the NHS Grampian Operational HR Team, it is agreed that formal processes should commence it is that manager’s responsibility to commission an investigation into the case and they will become the Commissioning Manager.

The Commissioning Manager, in consultation with the Operational HR Team, will appoint fully trained investigators, with no previous knowledge of the complaint, to investigate the allegation and to come to a conclusion regarding whether or not there are grounds to believe that bullying and/or harassment took place. The complainant and their representative (see Section 6.5 for approved representatives), if they have chosen to be represented, should be informed of the process. The respondent should be notified of the complaint as outlined in Appendix 5 and should be informed of the investigation process.

All parties involved will be guaranteed a fair, confidential and impartial investigation. Strictest confidentiality should be ensured throughout the investigation process and, as formal disciplinary action is a possible outcome following an investigation, it should be conducted with reference to the provisions in line with relevant NHS Grampian’s employee policies. This will prevent the need for a further disciplinary investigation if the matter goes to a formal hearing and the decision is that disciplinary action is required.

All parties must make every effort to proceed with and complete the investigation as swiftly as possible, recognising that lengthy and drawn-out processes only add stress and make a satisfactory outcome less likely. Although it is not practical to stipulate, within this procedure, timescales to suit every situation, the complainant, their representative, the respondent and their representative should be advised of the estimated starting timescale, in writing, by the commissioning manager, as soon as possible. Once the investigation has commenced the investigators will advise all parties, including the commissioning manager of likely timescales. Any significant changes to the timescale must also be advised in writing, citing reasons for these changes. All parties are expected to make reasonable efforts to comply with timescales, in order that the process is not unduly protracted.

It is crucial that at all stages confidentiality is assured.

Those involved in carrying out the investigation must recognise the difficulty which some complainants and respondents will have talking to a third party about the incidents involved and that they may become distressed during the process. They may harbour feelings of embarrassment, a fear of being disbelieved or not being taken seriously, a fear of further damaging the working environment or a fear of management being biased against them.

Whilst recognising that talking and being questioned about the incident(s) may serve to add considerably to the stress already suffered as a result of the alleged bullying or harassment or complaint itself, we must also recognise that dialogue is the best way to resolve the problem.
It should not be necessary for any complainant or respondent to have to repeat their statements to different managers at different times; thereby potentially increasing the stress they may suffer. Therefore, full, written and signed statements from all involved should be taken at an early stage, and a written, agreed and dated record of all investigatory interviews should be made.

6.5.2 Suspension / Relocation

All circumstances, including skill set will be taken into account prior to any consideration of the suspension or relocation of individuals. In the event of the suspension or relocation of individuals, this will be carried out taking account of all circumstances, in line with NHS Grampian employee policies and based on skill set. Due consideration should be given to individual circumstances and with regard to the duty of care due to all employees, including instances of return to the workplace.

6.5.3 Decision

Once the investigation is completed a written report will be presented to a panel chaired by the Deciding Officer (see Glossary in Appendix 4), and a representative from the Workforce Directorate. The panel will decide what action, if any, to take. There are three potential outcomes following the investigation:

- The complaint is unfounded.
- The complaint is founded and further action is required.
- The complaint is vexatious.

6.5.3.1 Unfounded Complaint

If the complaint is not founded, no formal action will be taken following the investigation. Both parties will be notified of the outcome in writing (with due regard for their confidentiality) and receive a full copy of the investigation report (shared on a confidential basis only, a breach of this or any inappropriate use of the content of the report may result in the relevant NHS Grampian employee policies being invoked). Appendices will not be included. A meeting with the Deciding Officer and a member of the Operational HR Team will be offered to each party to explain the outcome of the investigation.

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

6.5.3.2 Founded Complaint

If a complaint is founded following an investigation appropriate action will be taken. Where this involves potential disciplinary processes, a disciplinary hearing will be
convened in line with the relevant NHS Grampian employee policies. The investigation conducted when the complaint was submitted can be used as the basis of the management case at a disciplinary hearing. In serious circumstances, if relocation proves necessary, every effort will be made to relocate the respondent and not the complainant, taking account of skill set and unless the complainant specifically asks to be moved.

It may be the case that whilst no disciplinary action is taken, some informal or supportive action may be appropriate, such as standard setting or provision of additional training for the respondent, mediation, or a facilitated discussion that attempts to bring resolution.

In all situations, both parties will be notified of the outcome in writing (with due regard for their confidentiality) and receive a full copy of the investigation report (shared on a confidential basis only, a breach of this or any inappropriate use of the content of the report may result in the relevant NHS Grampian employee policies). Appendices will not be included. A meeting with the Deciding Officer and a member of the Operational HR Team will be offered to each party to explain the outcome of the investigation.

In all cases where a bullying or harassment complaint is upheld, the organisation will seek to prevent the behaviour recurring.

6.5.3.3 Vexatious Complaint

If a claim is found to be malicious or vexatious (see Appendix 4) in nature, then the complainant may be subject to formal disciplinary processes under the relevant NHS Grampian employee policies.

6.5.4 Reviews

If the complainant remains aggrieved following the outcome of the formal investigation, they or their representative may request a review. The notification of investigation outcome will detail the individual to whom the request for review should be submitted. The request must be made in writing within 15 working days of being notified of the outcome of the investigation.

A review panel, chaired by the designated senior manager, will include Representatives from a Trade Union or Professional Organisation not previously involved and a representative from the Workforce Directorate will be convened. The panel will consider the grounds for review and the outcome of the investigation. It will be for the review panel to decide how the review will be structured, following consultation with the associated parties, taking into account the sensitivity of the issues involved and the need to protect the rights of all concerned.

Whilst it is not practical to stipulate, within this procedure, time scales to suit every review situation, the outcome of the review should be communicated to the complainant and respondent in writing within 5 working days of its conclusion. This
will be the final stage of the procedure and there will be no further right of review or progression through other relevant NHS Grampian employee policies. A meeting with the Deciding Officer and a member of the Operational HR Team will be offered to each party to explain the outcome of the review.

6.5.5 Confidential Counselling

Given the potential sensitivity of the issues involved and the stress present when dealing with bullying or harassment situations, the organisation may consider providing confidential counselling for the complainant and the respondent at any stage during this procedure. Confidential counselling can be accessed directly by the complainant or the respondent through Occupational Health Services on 01224 553663 or by requesting a management referral to Occupational Health Services.

7. Policy Monitoring and Review

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

8. Bullying and Harassment by Patients, Clients, Carers, Relatives, Visitors or Advocates

8.1 Background

Staff have the same rights as patients and other service users - that is, to be treated with respect and dignity at all times - and have the right to complain if bullied or harassed by a patient, client, service user, carer, relative, visitor or advocate. It may be appropriate to swap the bullied or harassed employee, with another employee, explaining to the complainant the reasons for this action. In all cases a Datix Incident Report Form should be completed.

DATIX Guidance in relation to Dealing with Bullying and Harassment 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 Bullying and Harassment Policy to raise issues and concerns about the bullying or harassment issues;
• However, if managers become aware of potential problems via DATIX they cannot ignore them

If a member of staff is bullied or harassed in the course of carrying out their duties, the following procedure should be adopted. It is a priority of the organisation to ensure that no staff are put in a situation of potential risk and the following procedures are put in place to protect staff whilst carrying out their duties.

### 8.2 Informal Stage

Wherever possible, any incident should initially be dealt with informally. If the employee feels able to do so, they should inform the respondent, at the time if possible, that they find their actions and/or remarks and behaviour to be unacceptable. They should state that they wish the unwelcome behaviour to stop.

If the situation warrants the need for a witness, the complainant is advised to approach a colleague to accompany them when approaching the complaint respondent. The employee should then report the matter to their manager, as soon as possible.

If the employee does not feel able to speak to the complaint respondent personally, they can ask their manager to do so on their behalf. It will be the responsibility of the manager involved to discuss the action taken to date and what should be done if any further incidents occur.

At any stage, if the employee who made the complaint is dissatisfied with the action taken by management, he or she may lodge a grievance.

If the respondent is a patient, client or service user, it may be appropriate to discuss the matter with a carer or relative at the earliest opportunity. It may be that a carer or relative could be more successful in addressing the unwanted behaviour with the patient or service user.

If the complaint respondent is a carer, relative, member of the public or advocate, it may be appropriate to discuss the matter with the patient, client or service user. In these circumstances, care and consideration should be taken regarding the duty of confidentiality to the patient, client or service user.

The manager must inform the complaint respondent of the consequences of further incidents. Where it appears that the respondent (patient, client, carer, relative visitor or advocate alleged to have displayed inappropriate behaviours) is refusing services on potentially discriminatory grounds, they should be advised that this is the case. They should also be advised 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 organisation’s 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/harassment, then management reserves the right to take further formal action. In serious cases, it may be appropriate to move directly to this next stage.

8.3 Formal action

The manager must consider the following prior to making their decision and taking any action:

- The degree to which the incident undermines the relationship between parties;
- If any previous incidents have occurred and, if so, how severe they were;
- The health problem of the patient or service user; and
- The effects of the incident on the employee.

If the incident is serious, or a repetition of a previous incident(s) which resulted in informal action being taken, then the respondent should be written to officially by the relevant senior manager informing them:

- That their comments, actions or behaviours are not acceptable (and, if appropriate, that it is potentially discriminatory);
- That further incidents will not be tolerated; and
- That further incidents may result in the withdrawal of services.

Where the incident is sufficiently serious, the senior manager will meet with the complainant prior to putting the matter in writing, as above. A copy of any such letters should be sent to other relevant senior managers, as appropriate.

In cases of physical violence or serious threats of violence, the senior manager may wish to consider involving the police, considering the perceived or actual threat. Notwithstanding this, a member of staff may at any time involve the police as they wish.

If the employee who made the complaint is dissatisfied with management action taken, he or she may lodge a formal grievance in accordance with NHS Grampian’s Grievance policy.

9. Bullying and Harassment by Contractors and Staff from Other Agencies

In cases where the bullying or harassment involves contractors or staff from other agencies, the stages as detailed at Sections 6.2, 6.3 and 6.4 should be applied. However, due to the specific nature of the relationship between the organisation and these individuals or organisations, the following additional step should be included at the informal stage:

- If the respondent is a contractor or staff member from another agency, the manager will contact the appropriate senior person within the company or
organisation concerned to advise them that this type of behaviour is unacceptable
and that, if it is repeated, the individual concerned may be refused entry to the
relevant premises.

This action is predicated on the basis that all contractors are advised that the
provisions of this policy apply to them before entering into the contract for services
under which they are to operate. It is also predicated on the basis that partnership
organisations are aware that whilst their representatives are on NHS premises,
and/or dealing with staff employed by the NHS organisation, such individuals will be
expected to behave acceptably at all times.

Should the matter not be resolved informally, the formal stage would require the
appropriate senior manager to write to the appropriate senior person within the
company or 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 organisation's premises or refused continued contact with staff of
the organisation.

If the employee who made the complaint is dissatisfied with management action
taken, he or she may lodge a formal grievance in accordance with NHS Grampian's
Grievance policy.
Appendix 1
Managers Overview Flowchart for Addressing allegation Bullying and Harassment

Alleged respondent’s line manager becomes aware of an alleged issue regarding an employee’s behaviour.

Before acting, the line manager consults HR

Line manager meets with employee to discuss the issues and explore possible solutions

- No Issue
- Agreement to follow Grievance Process
- Further information required
- Agreement to follow this policy Process

Line manager seeks further information

Line manager makes an informed decision on how to progress if agreement cannot be reached

- No Issue
- Other Support
- Bullying and Harassment
- Grievance
  - Bullying and Harassment Process
  - Grievance Process

Consider Workplace Mediation Service/Facilitation
Dealing with Bullying and Harassment
by Patients, Carers, Relatives, Visitors or Advocates Flow Chart

Member of staff experiences incident from patient, carer, relative, visitor or advocate

Informal Action
If able complainant speaks to the respondent directly (complainant should consider if they need a witness see section 8.2)

Complainant informs their manager of the incident at the earliest opportunity

Manager informs the respondent of the consequences of further incidents or refusing services on discriminatory grounds

Manager makes file note of incident and action taken

Formal Action
If the matter is serious or is a repetition of previous incident(s) which resulted in the above informal action, formal action should be considered by the complainant’s line manager (see section 8.3)

Senior Manager writes to respondent. If the matter is sufficiently serious the manager should meet the complainant prior to putting the matter in writing

In case of physical violence or serious threats of violence the senior manager may wish to consider involving police as appropriate.

If at any stage in the above the employee who is the complainant is dissatisfied with the action taken by management a grievance may be lodged.
Bullying and Harassment by Contractors and Staff from other Agencies.

Member of staff experiences incident from contractor or staff from another agency

Complainant informs manager at the earliest opportunity

Raise the issue

Complainant speaks with confidential contact

Complainant raises the issue with the respondent directly. Complainant may wish support when for this, consideration should also be given to support required by respondent (see section 6.2)

Complainant writes to the respondent detailing inappropriate behaviours.

Supported Dialogue

Facilitated Meeting

Mediation

Formal Procedure

Manager writes to appropriate senior person within company/organisation

If at any stage in the above the employee who is the complainant is dissatisfied with the action taken by management a grievance may be lodged.
Appendix 3
Definitions, Legal framework and Relevant Legislation

The general legislative framework that underpins workplace dispute resolution (which would include complaints of bullying and harassment) changed as a result of the Employment Act 2008. The act moves the focus for employers away from adherence to the strict former three-stage process towards the new ACAS Code (2015):

The Code emphasises the importance of fairness from both employer and employee and encourages resolution of disputes via informal means wherever possible. As the Code is implemented, organisations will be identifying and utilising informal means of dispute resolution, such as mediation, far more frequently. A report into the role and effectiveness of mediation is available on the NHS Scotland Staff Governance website.

The relevant legislation which may apply in cases of bullying/harassment is detailed below. It should be noted that there is no one specific piece of legislation that deals with bullying/harassment at work.

1. Bullying

Any 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 behaviour only needs to occur once for bullying to have taken place.

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

- Breach of contract - usually breach of the implied term that an employer will provide reasonable support to employees to ensure that they can carry out their job without harassment and disruption by fellow workers;
- The common law responsibility to take care of the safety of workers;
- Employment Rights Act 1996 - for example, constructive unfair dismissal;
- Personal injury protection involving the duty to take care of workers arising out of the law of tort;
- Health and Safety at Work etc. Act 1974;
- Trade Union and Labour Relations (Consolidation) Act 1992 - dealing with special types of intimidation etc.;
- Protection for whistleblowers under the Public Interest Disclosure Act 1998;23
- Criminal Justice and Public Order Act 1994;
- Public Order Act 1986;
- Protection from Harassment Act 1997;
2 Harassment

Harassment is defined as unwanted conduct related to a protected characteristic, which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliation or offensive environment for that individual. The protected characteristics are age; disability; gender re-assignment; race; religion or belief; sex; sexual orientation; pregnancy and maternity; marriage and civil partnership. The behaviour only needs to occur once for harassment to have taken place.

- **Equality Act 2010** - Harassment on the basis of age; disability; gender re-assignment; race; religion or belief; sex; sexual orientation; pregnancy and maternity; marriage and civil partnership is covered under the Act. Individuals are protected from harassment both while applying for a job, during it, and in some cases after the working relationship ends (for example in terms of the provision of a reference). Harassment does not have to be directed at the individual who complains, if it creates an environment that the individual finds intimidating, hostile, degrading, humiliating or offensive. The *Employment Statutory Code of Practice* has been developed, and is designed to provide detailed explanations of the provisions in the Act and to apply legal concepts in the Act to everyday situations.

- **Trade Union & Labour Relations (Consolidation) Act 1992** - There is also protection for people against harassment on the basis of their membership or non-membership of a trade union.

3 Mobbing

The term mobbing is used when the situation meets the definition of bullying as indicated above, but involves a group of people who direct negative/hostile behaviour against a target person or persons.

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 1 above) but involves a group of people who direct the negative/hostile behaviours against a target person or persons.

4. Other Forms of Discrimination

There are other areas of employment legislation where discrimination based on the specified characteristic is unlawful, albeit such legislation does not make specific reference to bullying or harassment.

- **Rehabilitation of Offenders Act 1974**
  
  Essentially considers detrimental treatment of employees with spent convictions as similar to a ‘discriminatory treatment’.

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

  Make it unlawful for part-time workers to be treated less favourably than full-time workers.

- **Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002**
Fixed-term employees now have the right not to be treated less favourably than full-time employees.
Appendix 4
Glossary of terms

Complainant:
The member of staff who makes an allegation of being subject to bullying or harassment.

Commissioning Officer:
The Commissioning Officer will, having consulted with a member of the Operational HR Team, commission the investigation into allegations of bullying and harassment outlined within a submitted ‘Raising a Complaint Form’ (Appendix 5). The Commissioning Officer may often be the line manager of the complainant or a more senior manager to whom the respondent has submitted their complaint form.

Confidential Contact:
These are individuals trained to be independent of the formal structures within the Organisation who are available for staff to contact independently and confidentially in order to discuss their situation and to seek support in making a decision about how they would like to handle the incident. They are contactable directly, details can be found on the HR General Policies and Procedures.

Deciding Officer:
The Deciding Officer is the individual who will receive the investigation report, and thereafter, taking account of the contents of the report decide what course of action if any is required. The Deciding Officer may be the Commissioning Officer and in most instances will be the line manager of the respondent, or an appropriate more senior manager.

Grandparent Manager:
Your direct line manager’s, line manager.

Respondent:
The individual or group of individuals whom an allegation of bullying or harassment has been made against.

Vexatious or Malicious Complaint:
The need to consider every complaint on its merits cannot be over-emphasised. However, a complaint may be regarded as vexatious or malicious where the complainant:

• persists in pursuing an allegation or situation which has already been investigated and provides no new and material information;
And/or
• fails to clearly identify the substance of a complaint or the precise issues which may need to be investigated, despite reasonable efforts to assist the complainant to do so;
Or
• complains solely about trivial matters to an extent which is out of proportion to their significance.

Every complaint must be considered on its merits and, even if someone has made a vexatious complaint in the past, it must not be assumed that any other complaint they make will also be vexatious.
Appendix 5
Raising a Complaint Form

Guidance to read before completing this form

This form must be used when an employee wishes to lodge a complaint in writing about bullying and/or harassment. The form gathers the information needed by NHS Grampian for addressing this type of complaint.

Help in Completing this Form

If you would like assistance in completing this form please contact the Operational HR Team or a Trade Union or Professional Organisation representative (including full-time Trade Union Officers).

Completing the Form

It is important that you complete each part of the form fully so that:
• the best way of addressing your complaint can be found
• your concerns can be explained to the person about whom you wish to lodge a complaint so that they can give their perspective

In order for a form to be considered it must also be signed by you.

If you are lodging complaints about more than one person, you must use/complete a different form for each extra person that you wish to raise a complaint about. Your form will be scanned so please fill it in using a BLACK INK PEN or BLACK TYPE.

Please do not use any coloured ink or fonts as these do not scan well.

Confidentiality

This is a confidential process and you must maintain confidentiality in relation to this form, the information you enter on it and any processes that follow.

Submitting the Complaint Form

You should submit your completed form to your line manager or a more senior manager from the same management structure into which your manager reports.

Review of Complaint Forms

All forms which are received will be reviewed. The review will be done by an appropriate member of the management team called the Commissioning Officer supported by a member of the Operational HR Team called the HR Case Holder.

Forms which contain insufficient information or are unsigned will be returned. When this happens there will be 10 working days to re-submit the form. If a form is not re-submitted within this time period, the concern will be deemed to be withdrawn.
unless you apply for an extension and give valid reasons for the request before the deadline expires.

How We Will Store Your Form

Your form will be treated confidentially. It will be scanned and stored securely in accordance with NHS Grampian’s Information Governance Policies and Protocols. When the matter raised on your complaint form has been concluded, the form will be stored electronically for six years or longer in the event that there is a business case for doing so.

Disclosure of Your Form

Your completed form may be disclosed in any processes or procedures that result following its submission. It may be shared with any officer who has a direct involvement in these processes e.g. HR Case Holder, Commissioning/Deciding Officer, investigators, panel members. In addition, your name will be given on a confidential basis to the person against whom you have lodged the complaint along with Sections B, C and D of the Complaint Form.

Equality and Diversity Monitoring

An Equality and Diversity Monitoring Form accompanies this form. Completing the Equality and Diversity Form is voluntary and whether you decide to do so will not affect the way your compliant is addressed. The Equality and Diversity form will not be disclosed during any processes that may follow.

Roles and Responsibilities in Relation to this Form

The Person Raising the Complaint is Responsible For

- Adhering to the Dealing with Bullying and Harassment Policy and raising complaints in good faith
- Providing the required information
- Seeking and obtaining advice before submitting this form
- Meeting deadlines in relation to this form and any steps that follow once it is submitted, applying for a revised deadline before the original deadline expires stating valid reasons for seeking an extension.
- Being available at times which are set for meetings connected with addressing issues raised in this form unless there is a valid reason to request an alternative time.
- Participating in remedies that are recommended and agreed for resolving the issues raised
- Highlighting any needs or support required to enable participation in the process

The person receiving the concern form is responsible for

- Adhering to the Policy
• Acknowledging receipt of the form within 5 working days
• Notifying the Operational HR Team without delay that a Complaint Form has been submitted so that steps under the policy can be initiated to address the complaint.
**Check list**

Check that you have completed each task **before submitting the form** and place an X in either the YES or NO box for each task. Include the completed checklist with the form you submit.

<table>
<thead>
<tr>
<th>Black Ink/ Black type used throughout</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Part A</strong> Details fully completed in this section</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Part B</strong> Nature of complaint</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I have indicated the nature of my concern and said whether it is about bullying, harassment, and/or mobbing</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Part C</strong> Timescale</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I have indicated when the event(s) began</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Part D</strong> Event(s)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I have provided details of specific event(s) about which I am concerned</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Part E</strong> Witnesses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I have listed the names of people who directly observed the event(s)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Part F</strong> Impact</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I have included a brief personal statement describing the effects on me</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Part G</strong> Mediation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I have answered the questions about mediation</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Part H</strong> Meetings, training, team event(s)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I have described any steps used to try to improve the situation</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Part I</strong> Personal Statement</td>
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<tr>
<td>I have indicated the solution I am seeking and added any other points that are relevant</td>
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<tr>
<td>I have <strong>not</strong> included any original documents</td>
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<td></td>
</tr>
<tr>
<td>I have confirmed that I have <strong>read the Policy</strong></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>I have <strong>signed</strong> the Declaration (end of Appendix)</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I have included this completed <strong>checklist</strong> with my pro forma</td>
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<td></td>
</tr>
</tbody>
</table>

If you put an X in one or more ‘NO’ boxes this means that your form is not ready to submit. Please go back and complete any unfinished parts before submitting.
### Part A  Details
This page will **not** be shown to the person against whom you are making the complaint, but your name will be given to them.

#### 1.1 Employee raising the concerns

<table>
<thead>
<tr>
<th>Name</th>
<th>Job title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Work address</td>
<td>Work telephone number</td>
</tr>
</tbody>
</table>

nhs.net e-mail address

**I would prefer to be contacted at work**

- YES
- NO
- Either

#### 1.2 Home contact details

<table>
<thead>
<tr>
<th>Home address</th>
<th>Home telephone number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Home e-mail address</td>
<td>Mobile Number</td>
</tr>
</tbody>
</table>

**I would prefer to be contacted at home**

- YES
- NO
- Either

#### 2 Representative or named support person

At every stage of the formal procedure, all employees are entitled to be represented by one of the following:

- a Trade Union or Professional Organisation representative (including full-time Trade Union Officers),
- a fellow member of staff, or
- a friend or relative not acting in a legal capacity.

If you are being represented or accompanied by any of the above, please give details below:

**Name**

May we contact them directly about arranging meetings to address your concerns?

- YES
- NO

If yes, please provide contact details
3 Do you require a translator?
   YES    NO

   If yes for which language……………………..

<table>
<thead>
<tr>
<th>4 Person to whom this form is being sent.</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>This should be your line manager or the manager to whom they report.</td>
<td></td>
</tr>
<tr>
<td>Name</td>
<td></td>
</tr>
<tr>
<td>Job title and work address</td>
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</table>

<table>
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<tr>
<th>6 Person about whom you are raising the compliant</th>
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</thead>
<tbody>
<tr>
<td>Name</td>
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<tr>
<td>Job title and work address (if known)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
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<tr>
<th>Is this person an NHS Grampian employee?</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ YES</td>
</tr>
<tr>
<td>□ NO</td>
</tr>
</tbody>
</table>
Part B  Nature of Complaint

Please note that a copy of Part B will be given to the employee about whom you are raising the complaint.

Please ensure that you have read the definitions in Appendix 3 of the Policy and asked any questions you need to about what the definitions mean. Then put X in the box for any that apply:

- □ I have read the definition of bullying in Appendix 3 of the Policy and wish to raise a complaint about bullying under the terms of the policy

- □ I have read the definition of mobbing in Appendix 3 of the Policy and wish to raise a complaint about mobbing under the terms of the policy

- □ I have read the definition of harassment in Appendix 3 of the Policy and wish to raise a complaint about harassment on account of one of the following protected characteristics (please put an X in the one that applies):
  - □ age
  - □ disability
  - □ gender re-assignment
  - □ race
  - □ religion or belief
  - □ sex
  - □ sexual orientation
### Part C  Timescale

Please note that a copy of Part C will be given to the employee about whom you are raising the complaint.

When did the matter about which you are raising your complaint begin?

<table>
<thead>
<tr>
<th>Is it still happening?</th>
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</thead>
<tbody>
<tr>
<td>☐ Yes</td>
</tr>
<tr>
<td>☐ No</td>
</tr>
<tr>
<td>☐ Don’t know</td>
</tr>
</tbody>
</table>

If you said, ‘NO’, please say when it stopped.

---

### Part D  Event(s)

Please note that a copy of Part D will be given to the employee about whom you are raising the complaint.

It is important that you tell us about specific incident(s) which have led you to raise a complaint.

Number the incident(s) in column 1, then describe what happened in column 2, add the date in column 3, the location in column 4, and put X for either YES or NO in column 5. You may make additional copies of this page to complete and include with your completed form.

<table>
<thead>
<tr>
<th>Describe what happened</th>
<th>Date</th>
<th>Location</th>
<th>Were Witnesses present?</th>
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<tr>
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<td></td>
<td>Yes  No</td>
</tr>
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</tr>
<tr>
<td>Describe what happened</td>
<td>Date</td>
<td>Location</td>
<td>Were Witnesses present?</td>
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<td></td>
<td>Yes</td>
</tr>
</tbody>
</table>


Part E Witnesses
This page will not be shown to the person against whom you are making the complaint.

Please list the names of anyone who could have directly observed the incident(s) that you described in Part D. We may speak to them as witnesses of fact.

- Do list individuals who were actually present at the time.
- Please do not list character witnesses or people who heard about the event(s) later or second hand through the ‘grapevine’.
- In the column for Incident, enter the number you gave the incident in Section D to show which incident they observed.

You may make additional copies of this page to complete and include with your completed form.

<table>
<thead>
<tr>
<th>Name of witness</th>
<th>Job title/role (if known)</th>
<th>Work address</th>
<th>Incident</th>
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<td></td>
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</table>
Part F Impact
This page will not be shown to the person against whom you are making the complaint.

Please use this part to explain how you have been personally affected by these event(s). You may wish to mention any support that you are receiving.

Please do not attach copies of assessments, GP letters etc., although you may choose to mention if these are available.
Part G  Mediation
This page will not be shown to the person against whom you are making the complaint.

Has mediation been offered to date in order to try to resolve any aspect of your concerns and/or the issues involved?
☐ YES

If YES, please complete section a below a) & b) below

☐ NO

a) What happened? Please put X in the boxes that apply and add details as appropriate.
☐ mediation occurred. Please say when this happened_________
☐ mediation started but adjourned. Please say when this happened_________
☐ mediation started and planned to resume. Please say when this happened_________
☐ mediation is planned. Please say when this is going to happen, if known __________
☐ mediation not used. Please say why ___________________
☐ other. Please give details ____________

b) Who provided the mediation?

☐ NHS Grampian Workplace Mediation Scheme

☐ Other mediation provider –

  o please give details (name of mediator, agency or company etc) ___________________________________________________

  o Please say who in NHS Grampian organised it

___________________________________________________
Part H  Other activities that have been used to try to reach a resolution e.g., meetings, training, team events
This page will not be shown to the person against whom you are making the complaint.

Please use this section to tell us about any meetings, training, team etc that have been used in an effort to promote resolution of the issues in your complaint.
Part I  Personal Statement
This page will not be shown to the person against whom you are making the complaint.

Please use this space to say what type of solution you are seeking and to add anything you feel is relevant to your concerns which has not already been covered in this form.

Declaration

☐ I confirm that I have read the NHS Dealing with Bullying and Harassment Policy.

☐ I confirm that the information provided on this form is accurate to the best of my knowledge

☐ I wish to have the compliant outlined in this form addressed by NHS Grampian

☐ I will maintain confidentiality in relation to this form and the processes provided for resolving my complaint

Sign here:

Print name here:  Insert date here:

Remember to complete and enclose the check list on page 27, Appendix 5 and then send the form to your line manager or the more senior manager to whom they report.