



Bullying and Harassment: Achieving dignity at work for all our members

Responsible person: Ian Cloke

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Summary

Everyone has the right to be treated with dignity and respect at work, but too often this is not the case. If you are being bullied or harassed, or if you are a SoR rep who has encountered this problem in the workplace, it can be difficult to know what to do about it - this guide intends to fill that gap. This society publication has been updated to ensure that both SoR reps and members have a resource that will provide practical information and advice on how to deal with this growing problem, how to stop it and how to prevent it happening in the future.

Message from the Chief Executive Officer

There are few workplace problems that are as sensitive as bullying and harassment. Team working can be completely destroyed, trust undermined and careers ruined. Swift, effective action is necessary but must also be sensitive, measured and skilfully handled.

Sadly, there are many examples every year that show that some employers are poorly equipped to deal effectively with instances of workplace bullying. This is why it is vital that our members and in particular our accredited representatives and department managers have the very best guidance and advice.

Handling allegations, investigations and any necessary action within a close-knit imaging or radiotherapy team can be a tough test for reps and managers alike. I know that dealing with tensions between members of the same profession is particularly difficult and SoR members may be on both sides in a case.

I also know that where representatives, SoR officers and managers work together, swift and effective action can have great results. I hope that the guidance in this important SoR publication will help to lead the way to better team working, happier workplaces and better patient services.

Richard Evans
CEO

Chapter 1: Introduction

Bullying and harassment is a major problem that exists within workplaces today and every day.

With various sources of research indicating that this is a major issue of concern for members not just of the Society of Radiographers but other trade unions.

Everyone has the right to be treated with dignity and respect at work, but too often this is not the case. One-in-four adults have been subjected to bullying within the last five years.

Bullying is the leading cause of stress-related illness and is the most frequent complaint made by employees.

Bullying and harassment can be devastating and should not be tolerated in the workplace. Employers, unions and each of us as individuals have a responsibility to generate a working environment free from bullying.

If you are being bullied or harassed, or if you are a SoR rep who has encountered this problem in the workplace, it can be difficult to know what to do about it – this guide intends to fill that gap.

In order to stamp out workplace bullying it is important that members, managers and trade unions all stand together to erase this problem from our members' daily lives. It is often difficult for a bullied person to do this on their own. It takes a great amount of courage for someone to say that it is happening to him or her, so it is important that they are supported by colleagues and their union representative.

This society publication has been updated to ensure that both SoR reps and members have a resource that will provide practical information and advice on how to deal with this growing problem, how to stop it and how to prevent it happening in the future.

We hope that you will find this a valuable publication.

Lyn Wigley
Health and Safety Officer

Chapter 2: The extent and cost of the problem?

Bullying and harassment does not just happen in our own workplace, but in different workplaces around the world. When a person is being bullied or harassed, they feel that **'they are the only one in the world being bullied'** but statistics demonstrate that there are hundreds of workers all over the world who suffer from bullying and harassment in the course of their jobs, making their lives unbearable.

Various pieces of legislation have been in place for a number of years (The Sex and Race Discrimination Act were both introduced in 1976) but members still continue to suffer from bullying and harassment not only on these grounds but many others.

The Labour Research Department (LRD) carries out a biennial survey of safety reps on behalf of the Trades Union Congress (TUC), which has found that over one in four safety reps (27%) identified bullying as a problem, particularly the public sector. Bullying becomes more of a problem as the size of the workplace increases. Workplaces with over 1000 workers, a third of safety reps (34%) identified bullying as an issue linked with stress, whilst smaller workplaces with less than 50 workers only identified 18%.

Another health service union, Unison has identified a major issue with bullying across the NHS – where a large number of SoR members work.

Unison's staff survey in 2003, which was published by the Government's Healthcare Commission,

stated that 37% of NHS staff reported being bullied, harassed or abused at work in the previous 12 months (including by patients and members of the public). 20% reported being harassed by managers and other workers in ambulance trusts, whilst 13% in primary care trusts.

The Incomes Data Co (IDS) released a report in October 2007 on bullying and harassment in the workplace, which concluded that it is an increasing problem in the workplace:

- 3.8% of employees had personally experienced bullying and harassment at work in the previous 2 years.
- More than one in ten employees surveyed said that they were aware of another person at work being bullied or harassed over the same period.
- Women (4.9%) were more likely to be bullied than men (2.8%)

Some 18 million working days are lost every year because of workplace bullying. Victims of bullying take an average of seven more days off sick each year than those workers who are not being subjected to bullying. Bullying affects morale, health and productivity.

These figures and surveys are alarming, as you can see, bullying is on the increase and we must work to ensure that we challenge this type of behaviour

Bullying and Harassment online survey 2008:

The SoR has conducted a survey amongst a random number of our members, from different regions and countries.

Bullying and harassment is one of the most sensitive issues that can face a member of staff, the bullying and harassment can take a number of forms but ultimately can destroy the persons confidence.

But whilst swift effective action is necessary, this must also be sensitive to the person's needs. Unfortunately many examples demonstrate every year just how ill equipped employers are to deal effectively with instances of workplace bullying.

Sadly this survey has highlighted again a number of issues, with little or no support being received. This is why it is vital that our members and in particular our accredited representatives and department managers have the very best guidance and advice.

Handling allegations, investigations and any necessary action within a close-knit imaging or radiotherapy team can be a tough test for reps and managers alike. The SoR know that dealing with tensions between members of the same profession is particularly difficult and SoR members may be on both sides in a case.

We also know that where representatives, SoR officers and managers work together, swift and effective action can have great results. The SoR hope that the guidance in this important update SoR publication will help to lead the way to better team working, happier workplaces and better patient services.

Below are some of the comments which were lifted from the survey: all were anonymous.

"I left the trust to avoid any more conflict. While I served my notice I avoided the particular person as much as possible, often to the extreme measure of hiding in the toilet!"

"In the end I was so unhappy in the department that I left. The bullying was not the only reason, but without it I may have stayed on. In fact the experience was so bad that I have left the radiography profession. And I'm currently training in a profession that I will have greater control over my work environment"

Bullying and Harassment: Achieving dignity at work for all our members

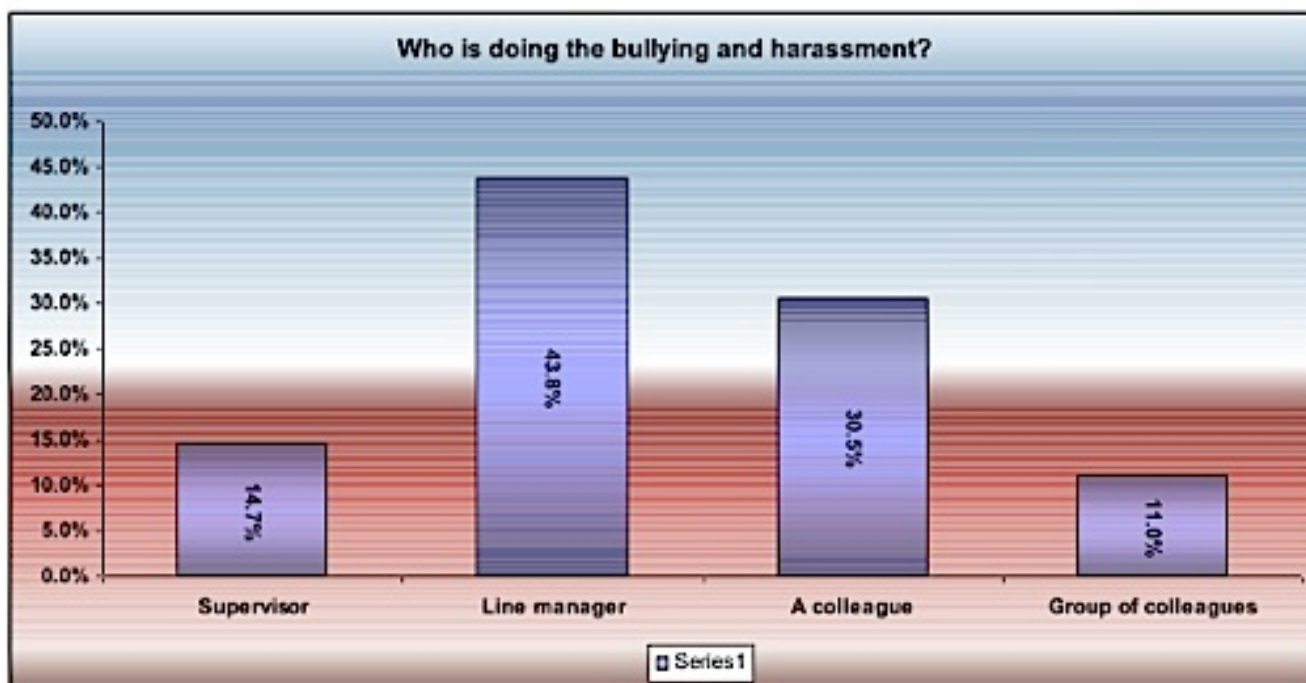
Published on Society of Radiographers (<https://www.sor.org>)

“The day I work in the department is the low point of the week. I have tried to alter work schedule because of this. Colleagues have reduced their working hour due to increased illness believed to be caused by stress from the situation”

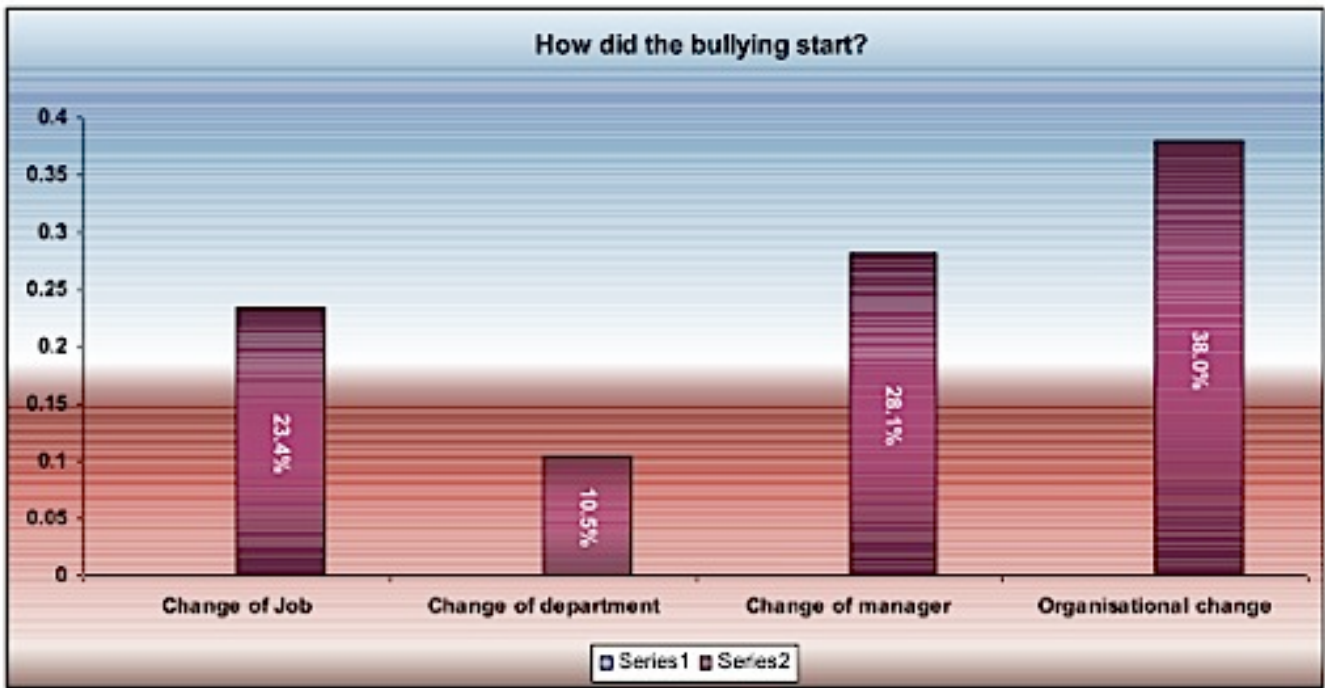
“Although most of the time I am not directly affected it still has an impact on my quality of life. It is deeply upsetting to witness, it is also impossible to deal with as it involves the line manager. When my colleague complained above the line manager before she left, the whole thing blew up, but amounted to nothing”

“The day before I am going to work with the bully, I am quite snappy to my partner, I get no sleep as it is on my mind, and I feel physically sick at the prospect of going into work. I can think of a lot of reasons not to go in, am I ill? No I am not! I have a single person making my life a living hell, and no one knows”

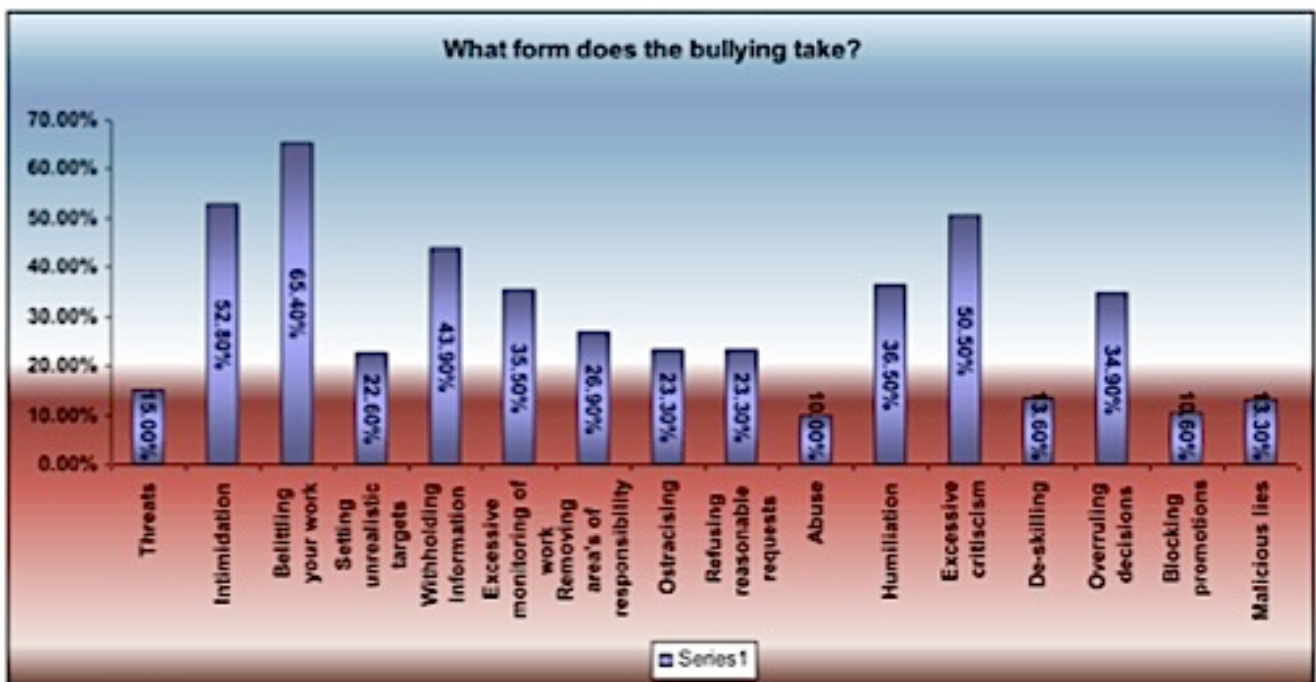
Q1: Who is doing the bullying?



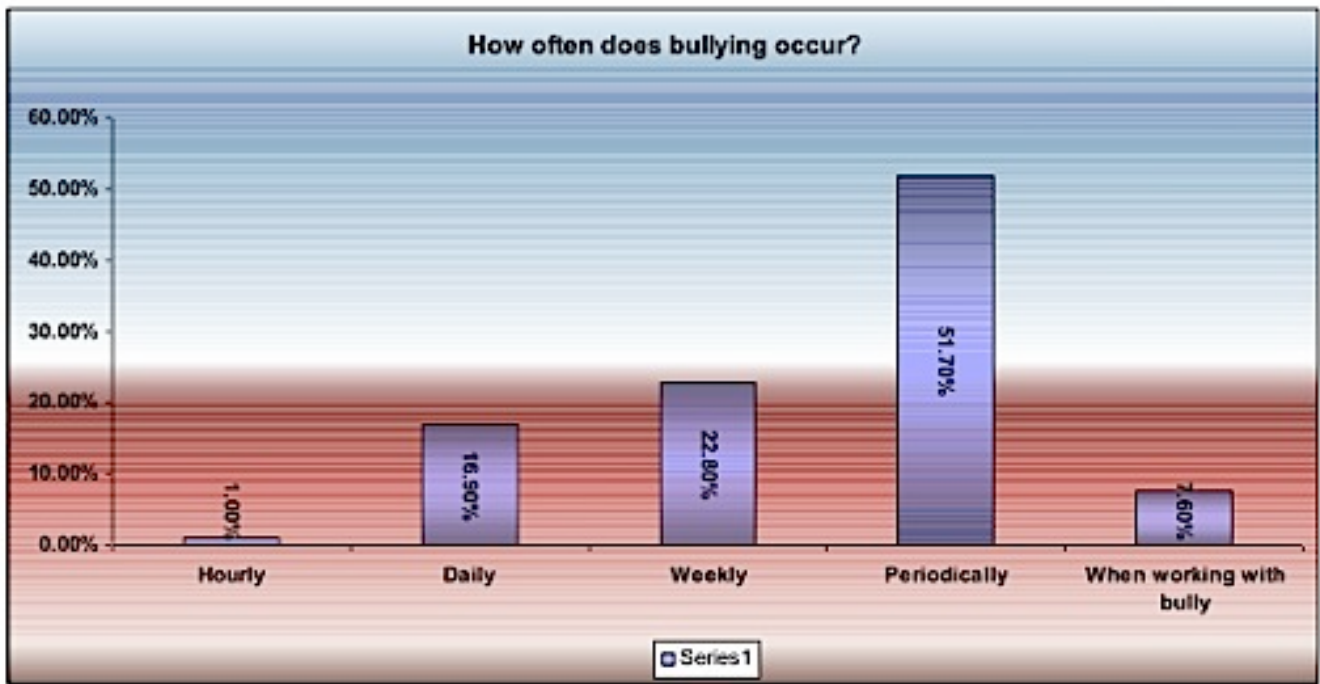
Q2: how did the bullying start?



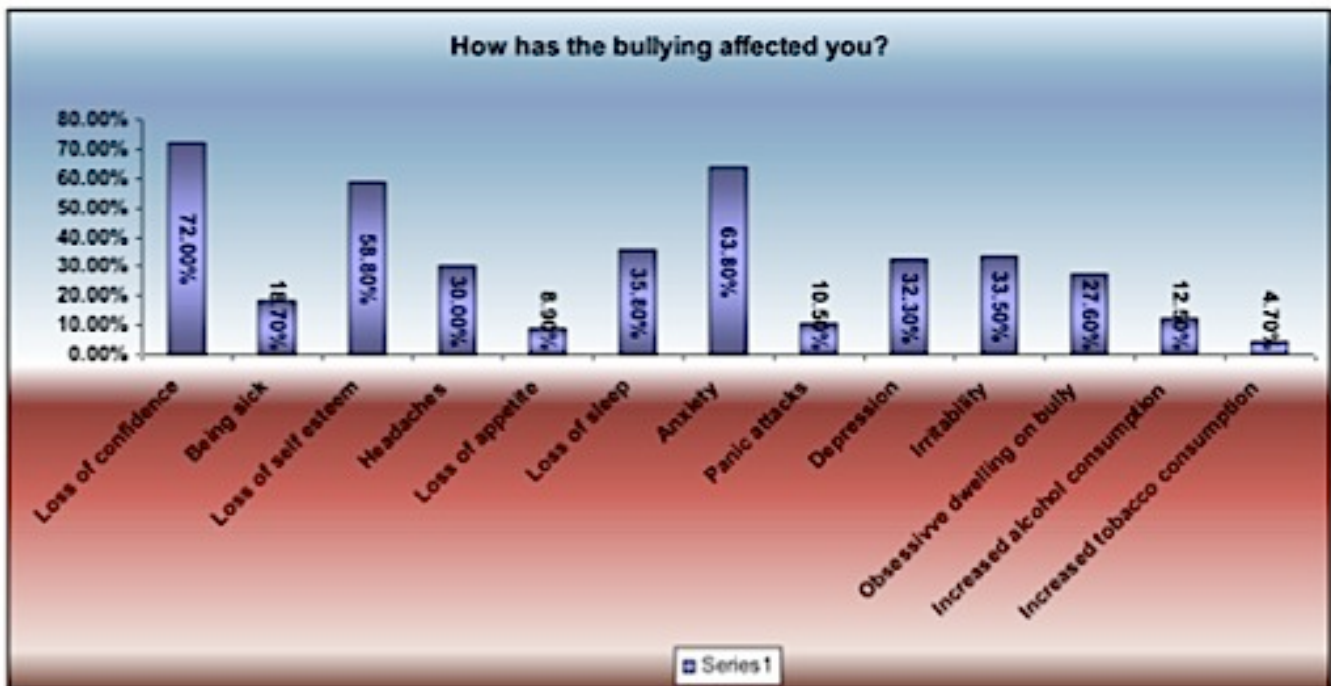
Q3: What form does the bullying take?



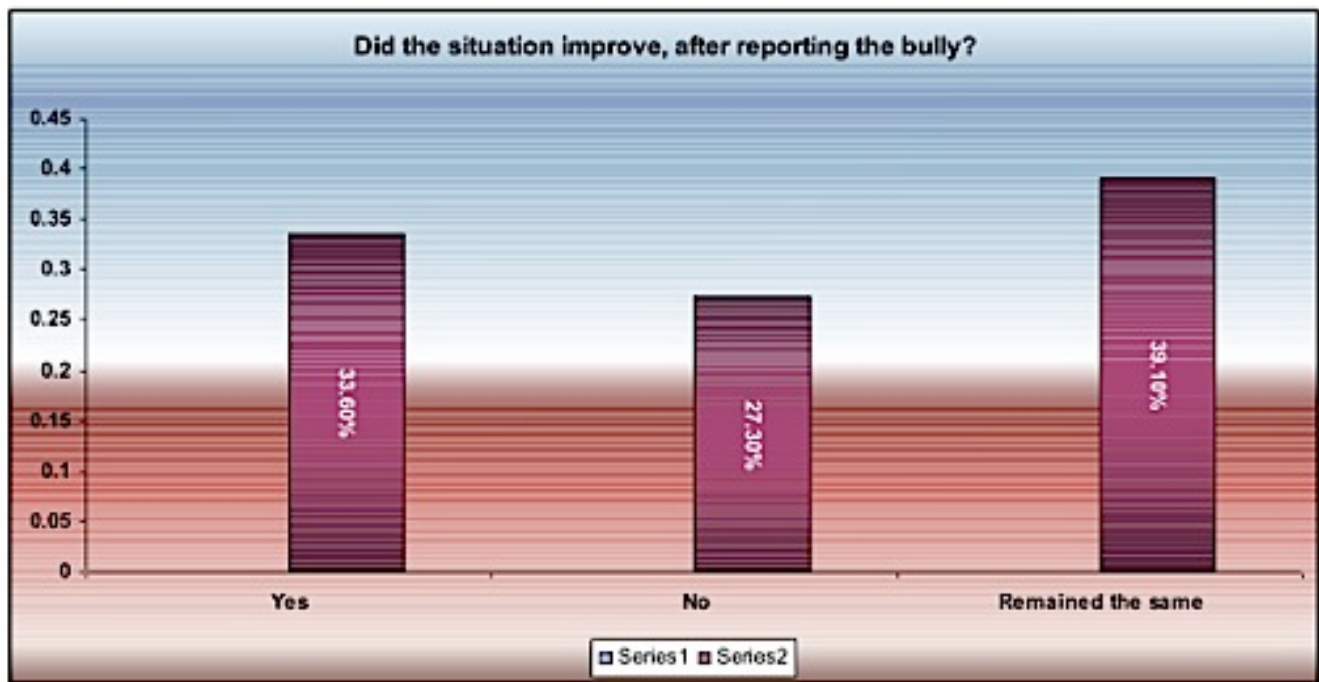
Q4: How often does the bullying occur?



Q5: How has the bullying affected you?



Q6: Did the situation improve after reporting the bully?



Chapter 3: What is Bullying?

What is workplace bullying?

One of the difficulties in approaching the problem of workplace bullying, is that it may be hard to recognise and its effects may be attributed to something else, for it creeps up on the victim long before they are able to appreciate what it is, and how that is making them feel the ill effects.

Bullying is a gradual wearing down process that makes individuals feel demeaned and inadequate, that they can never get anything right, and that they are hopeless, not only within their work environment, but also in their domestic life.

Definitions of bullying

A good deal of workplace bullying can be overlooked or excused because of a number of euphemisms which are frequently used to justify bullying behaviour's

- Harassment
- Intimidation
- Aggression
- Bad attitude
- Coercive management
- Personality clash
- Poor management style

Defining workplace bullying

There really is no simple definition of bullying because it can take so many forms, occur in a variety of situations and crosses gender, race, age and can involve one or a number of individuals. However, the Society of Radiographers defines this behaviour as:-

- Unwarranted humiliating offensive behaviour towards an individual or groups of employees.
- Such persistently negative malicious attacks on personal or professional performance are typically unpredictable, unfair, irrational and often unseen.
- An abuse of power or position that can cause such anxiety that people gradually lose all belief in themselves, suffering physical ill health and mental distress as a direct result.
- Bullying can be regarded as the use of position or power to coerce others by fear, persecution or to oppress them by force or threat. It has been identified as a more crippling and devastating problem for both employees and employers, than all the other work related stresses put together.

Workplace bullying can range from extreme forms such as violence and intimidation to less obvious actions, like deliberately ignoring someone at work. Yet the disturbing manifestations of adult bullying in this particular context are widely dismissed.

Strong management techniques or bullying?

Bullying is a sustained form of psychological abuse and often emanates from a senior person taking what they feel is a 'strong line' with employees. There is, however, a fine line between strong management and bullying.

That line is crossed when the target of bullying is persistently downgraded with the result that they begin to show signs of being distressed, becoming physically, mentally or psychologically hurt. It can be distinguished from other work related problems, in that it is not the intention of the perpetrator, but the deed itself and its impact on the recipient or target that constitutes workplace bullying.

Experts agree that bullying thrives where it is common behaviour across the management hierarchy. This is especially the case in highly competitive environments where many individuals consider bullying as the accepted method of motivating staff. In organisations that pride themselves on strong management, bullying can soon become part of the company's culture and management will be seen by their employees to have condoned such behaviour simply through their inaction.

Employees may feel that they have to put up with bullying behaviour as part of the job, and may not wish to complain for fear of further victimization or being labelled a troublemaker

Yet, what sort of workplace can really condone a form of behaviour which engenders fear in their employees. People cannot contribute their best when under fear of harassment, bullying or abuse.

The difference between constructive and destructive criticism

As part of the 'everyday management process' managers are required to provide staff with feedback concerning their performance, conduct, time keeping and so on. If any of these areas have been unsatisfactory the feedback may be critical of the worker concerned. If criticism is delivered in a constructive manner it can be beneficial to the member of staff, providing them with the opportunity to reflect on their behaviour and make any necessary improvements.

Destructive criticism, on the other hand, can have detrimental effects on staff moral and damage the psychological contract between manager and employee.

Macdonald (2005) clearly demonstrates the difference between the two types of behaviour in her book *Wellness at work: protecting and promoting employee wellbeing*.

Constructive criticism will focus upon:

- actions and behaviour, focusing on what the employee has done or not done
- facts, with specific examples of behaviour that has been inappropriate and an explanation of why it was inappropriate
- future improvement, for example requiring the employee to do something differently or

make changes.

Destructive criticism, on the other hand, may involve:

- aggressive behaviour, such as yelling
- personal insults or put-downs
- allocating blame rather than responsibility
- focusing on how awful the situation is, rather than on future improvement or rectification of the problem.

Chapter 4: Understanding and dealing with the problem.

What are the effects of bullying?

As we have seen with the SoR survey 72% of people who are bullied lose their self confidence, self esteem and are at increased risk of suffering stress.

Work related stress is now widely recognised as a significant problem in the health service. The Health and Safety Executive (HSE) says that workers in health and social care have some of the highest rates of self reported illness due to stress.

The Health and Safety Executive defines stress as 'people's natural reaction to excessive pressure. It is not a disease. But if stress goes on for some time it can lead to mental and physical ill health'.

If stress remains untreated the following consequences become very real;

Behavioural:

- Smoking – over indulgence;
- Alcohol/Drugs – over indulgence;
- Accidents;
- Impulsive, emotional behaviour;
- Relationships at home suffer, breakdown
- Poor workplace performance.
- Emotional withdrawal of person
- Social isolation

Physical:

- Headaches
- Backaches;
- Poor sleep patterns;
- Indigestion;
- Chest pains, anxiety;
- Nausea, dizziness;
- Excessive sweating and trembling
- Heart disease – (long term effect of problem not being dealt with)
- Hypertension
- Ulcers and general poor health

Emotional: (short term effects)

- Tiredness
- Anxiety
- Boredom
- Irritability
- Depression
- Inability to concentrate and apathy
- Insomnia, chronic depression and anxiety (long term effects of problem not being dealt with)

Stress impacts on the whole of a workplace and the NHS service itself. Employers who fail to tackle sources of stress should be reminded that the whole organisation will suffer as a result, leading to low morale, high sickness and absenteeism, rates, high staff turnover, insufficient delivery of service and possibly, effects on patient care. All of which uses further valuable resources to cover rather than addressing the situation promptly.

Anger and Irritability:

Can often be the result of being bullied and of suffering from stress. This could potentially be very damaging to the individual being bullied, as the bully will then feel that their behaviour is justified. Anger may be expressed directly at the bully, or towards innocent colleagues who quite simply happen to be in the wrong place at the wrong time. Whatever form it takes, it creates an atmosphere of tension in the workplace which can lead to disciplinary action being taken against the individual who is being bullied.

Depression:

Can be a severe illness, which can be a result of stress that remains untreated. A depressive disorder is a condition in which feelings like sadness, loss of interest, reduced energy suicidal thoughts and sleep and appetite disturbance go beyond normal mood changes. If depression becomes severe, it becomes difficult even to carry out relatively normal tasks – even getting up in the morning seems impossible to achieve. Life becomes increasingly bleak and despair clouds all thoughts and actions. Feelings of guilt become disproportionate, until in the end – suicide seems the only escape. Once depression becomes severe, it generally needs to be treated with anti-depressants and/or counselling.

In addition to serious illness, such as depression, those being bullied or harassed may be more likely to be **absent from work due to illness**. Those suffering from stress become more susceptible to minor illnesses such as colds, irritable bowel syndrome and migraine. This could lead to a relatively high sickness absence level, which in turn could lead to the employer commencing an investigation into sick record levels.

All the above effects of bullying and harassment can lead to the victims' **work suffering** with an increased likelihood of mistakes and oversights occurring.

Why do people bully?

We should never generalise what makes a bully, as this is unhelpful, but there are several factors both individual and organisational, which appear to be common in many cases.

Individual factors include;

- Lack of confidence;
- Insecurity
- Seeing other peoples' suggestions as a challenge to their authority;
- Irrational dislike of a colleague;
- Behaviour may be rooted in childhood experiences of being bullied or always having their

own way.

Organisational factors play an important part in whether or not bullying occurs in a workplace.

- Bullying is more likely to happen in workplaces where there is a very competitive environment;
- Poor working relationships generally;
- Lack of job security;
- Authoritarian management;
- Organisational changes;
- Uncertainty
- Excessive workloads and demands on people.

There can be other wide ranging factors that will determine whether conflicts will arise or whether working relationships will be harmonious;

Factors at work;

- Formation in the workplace of 'cliques'
- Group pressure
- Stereotypes

Factors inherent in the relationship;

- Effective communication,
- Breaking relationship rules.

Factors inherent in the people concerned;

- Personality clashes
- Gender difference
- Age difference
- Religion/religious beliefs difference

Factors inherent in our evaluation and treatment of others;

- Preconception about others
- Misuse of authority
- Power tactics
- Manipulation

Factors inherent in our evaluation of the situation;

- General expectations and beliefs
- Misunderstandings
- Unreasonable beliefs and assumption

Chapter 5: What is harassment?

Harassment - What is it?

The European Code of Practice defines harassment as:

“Unwanted conduct affecting the dignity of men and women in the workplace”.

This can include unwelcome physical, verbal or non verbal conduct, including bullying. There may be an isolate incident or repeated action. Harassment can be related to someone’s appearance or caused by someone simply taking a personal dislike to a colleague.

It may be related to age, sex, race, disability, religion, sexuality, nationality or any other personal characteristic of the individual.

The key is that the actions or comments are viewed as demeaning and unacceptable to the recipient.

Types of harassment

Bullying by senior manager/colleagues

Examples of behaviour

Destructive innuendo and sarcasm;
Intimidatory use of discipline procedures;
Shouting in front of colleagues;
Setting impossible deadlines;
Areas of responsibility removed without consultation;
Innumerable memo’s;
Abuse;
Violence to person and property;

Sexual:

This can be described as conduct of a sexual nature or conduct based on sex affecting an employees’ dignity at work.

Unwanted sexual comments;
Unwanted comments on dress or appearance;
Demands for sexual favours;
Staring;
Jokes;
Propositions and touching;
Unpleasant telephone calls;
Innuendos;
Being subjected to degrading printed material such as pin ups.

Racial Harassment:

Can take many forms, but two factors are always present. The harassment is unwelcome and it is directed at workers of a particular ethnic origin or race by colleagues, managers or members of public who are in a different ethnic origin or race

Abusive language, including racist jokes;
Written or verbal abuse, especially racist language or graffiti
Open hostility;
Refusal to co-operate because of a person’s ethnic group;
Provocative behaviour – such as wearing racist or fascist badges or insignia;
Ridicule for cultural differences; exclusion from events because of colour of ethnic origin.
Physical violence

Sexual Orientation:

Harassment on the grounds of someone’s perceived sexuality:

Homophobic jokes;
Innuendo and mockery;
Refusal to co-operate because of a person’s sexual orientation;
Deliberate exclusion from conversation and activity – professional or social;
Health related discrimination.

Age

Ageism becomes institutionalised with attitudes become part of an organisation’s structures and

Coercive pressure to retire; Negative assumptions about ability/competence; Failure to consider for interview or promotion;

systems

Assumptions about sickness records

Disability

Harassment of individuals who have disabilities or long term illnesses may be based on lack of understanding or it may be intentional.

Offensive jokes language or innuendo about a disability or disabled person;
Assumptions about the ability to do a job;
Assumptions about sickness record;
Failure to shortlist;
Claiming disability is a financial burden;
Coercive pressure to leave a profession;
Dismissal.

Religious or belief related

Deriding or demeaning a religion or belief;
Coercive pressure to participate;
Exclusion from conversation and activity either professional or socially

Trade Union related

Harassment on the grounds of either belonging to a trade union or being a trade union appointed rep

Coercive pressure to withdraw from activity;
Failure to shortlist or promote trade union members or representatives

This table demonstrates that specific groups are particularly vulnerable to harassment. Research by the Chartered Institute of Personal Development (CIPD) on sexual harassment documents the link between risk and recipients perceived vulnerability and suggest that:

- Divorced, separated women, young women, new entrants to the labour market and those with irregular or precarious employment contracts, women in non-traditional jobs, women with disabilities, lesbians and women from ethnic minorities are disproportionately at risk;
- Gay men and young men are also vulnerable to sexual harassment;
- Pregnant women and part-time workers are vulnerable to harassment in respect of job security.

Chapter 6: Sexual harassment?

Sexual Harassment:

As we have already identified there are a number of forms of harassment which affect SoR members. This chapter concentrates on sexual harassment; firstly by defining what it is and outlining existing relevant legislation; secondly we will examine the issues surrounding drawing up a policy which would successfully tackle sexual harassment in the workplace; and finally the SoR statement of policy is reproduced.

The SoR feel that it is essential that our members, industrial relations and health and safety representatives all know how to recognise sexual harassment and more importantly how to deal with the issue quickly and effectively as soon as an incident occurs.

The Agenda for Change handbook Section 5 Equal Opportunities; 32.6: Dignity at work recommends that "NHS employers in consultation with staff representatives should agree what actions will be taken to identify the main causes of harassment or bullying at work and what actions should be taken to remove these causes".

This chapter is intended to equip SoR representatives negotiate a comprehensive policy in sexual harassment within their workplace, which includes provision for managers in order to prevent problems occurring.

Advice on sexual harassment can be obtained from a variety of sources including the Society of Radiographers, the Equality and Human Rights Commission.

In 2007 the Dti (Department of Trade and Industry) conducted the first British survey of employees to explore unfair treatment, bullying and sexual harassment at work:

- Around 2.1 million or 8.9% of employees said they had personally experienced unfair treatment, bullying or sexual harassment in last 2 years
- Only small differences by sex – 8.0 per cent for males vs. 9.9 per cent for females
- Only 9 in every thousand employees (0.9%)
- More women (1.1%) than men (0.7%)
- though men account for two-fifths
- Disabled employees five times as likely as non-disabled to be sexually harassed
- Managers twice as likely as non-managers
- Almost 4% of employees who worked with others said they were aware of others at work being sexually harassed
- One of the key findings of the research was that Two-fifths of those sexually harassed are men

Sexual Harassment and the Law

The definition of harassment in the SDA

"Harassment, including sexual harassment" is defined as follows in a new section 4A SDA:

"(1) For the purposes of this Act, a person subjects a woman to harassment if –

(a) on the ground of her sex, he engages in unwanted conduct that has the purpose or effect –

1. of violating her dignity, or
2. of creating an intimidating, hostile, degrading, humiliating or offensive environment for her,

(b) he engages in any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that has the purpose or effect –

1. of violating her dignity, or
 2. of creating an intimidating, hostile, degrading, humiliating or offensive environment for her,
- or

(c) on the ground of her rejection of or submission to unwanted conduct of a kind mentioned in paragraph (a) or (b), he treats her less favourably than he would treat her had she not rejected, or submitted to, the conduct.

(2) Conduct shall be regarded as having the effect mentioned in sub-paragraph (i) or (ii) of subsection (1)(a) or (b) only if, having regard to all the circumstances, including in particular the perception of the woman, it should reasonably be considered as having that effect."

Section 4A (5) makes it clear that the definition also applies, with such modifications as are required, to the harassment of men.

Section 4A(3)-(4) contain special provisions prohibiting harassment on the ground that someone intends to undergo, is undergoing, or has undergone gender reassignment or less favourable treatment because someone has rejected, or submitted to, unwanted conduct of this type.

The European Union Recommendation and Code of Practice

The EC Recommendation on the Protection of the Dignity of Women and Men at Work 92/131/EEC

has a Code of Practice annexed to it.

Although the Code is not legally binding, employment tribunals (ET's) have often bore this in mind and made use of the Code's definition of sexual harassment, namely:

conduct of a sexual nature, or other conduct based on sex which affects a person's dignity at work where such conduct is unwanted, unreasonable and offensive to the recipient.

According to the Code such conduct is unacceptable in the workplace:

- where submission to or rejection of the harassment is linked to career How decisions about the recipient, and
- where the conduct creates an intimidating, hostile or humiliating work environment for the recipient.

How do we define sexual harassment?

“Conduct of a sexual nature, or other conduct based on sex which affects a person's dignity at work where such conduct is unwanted, unreasonable and offensive to the recipient.” (European Union)

Sexual harassment can come in many disguises - it can be overt or subtle, a one off comment or on going. The key to deciding whether the comment constitutes sexual harassment lies in whether the action is welcomed by the person it is directed against. The TUC says **“whether or not the harasser intended to be offensive is not the point. If the behaviour is unwelcome and unreciprocated, it is harassment”**

Many reported cases are directed at women by men, as in many cases it will be a women who is in a junior position and therefore whom offensive behaviour is directed. However as the Department of Trade and Industry 2007 survey of employees to explore unfair treatment, bullying and sexual harassment at work demonstrates two fifths of those sexually harassed are men.

Forms of Sexual Harassment include:

- Physical contact ranging from unwelcome touching, patting, pinching or brushing against another employees body to sexual assault and rape;
- Demands for sexual favours;
- Propositions or pressure for sexual activity, including continued suggestions for social activity outside work after being made aware that they are unwelcome;
- Suggestive remarks, innuendoes or lewd comments;
- The display of pin-ups or sexually suggestive pictures or materials;
- Unwanted comments on dress or appearance;
- Conduct which denigrates, ridicules or intimidates an employee because of his/her sex, such as gender related insults

Effects and cost of sexual harassment

As we have seen in chapter 4, it is not surprising that unwanted, unwelcome and offensive behaviour can have an adverse effect on a persons work performance and their health. Both of which will result in additional costs to the employer, apart from the fact that the discriminating aspects of sexual harassment are against the law.

What are the effects of Sexual Harassment

Harassment in any form can take on many guises, The TUC biennial survey of safety reps 2008,

identified sexual or racial harassment as one of the factors linked to overwork or stress. The statistics increased alarmingly in the 2008 survey with 5% identifying it as a cause of stress. Whilst in 2006 this was at 3%.

Worryingly sexual or racial harassment was most significant in the public sector, with 6% of safety representatives signalling as a stress factor, this is significantly higher than the private and voluntary sector with 4%.

The NHS National staff survey 2007 demonstrates how reported incidents have continued to rise steadily over the years:

Harassed by:	2005	2006	2007
Members of the public			6%
Manager/ Team leader	7%	7%	8%
Other Colleagues	11%	12%	13%

Regionally, the South East of England fared worst on sex and racial harassment, with 9% of safety representatives citing it as a factor in stress, triple the lowest figure in the North West (3%).

It is not surprising; after the startling results of the TUC survey that the sexual harassment begins to take an adverse effect on the person's performance of their job and their own health.

Personal costs

- The victim/s usually suffers the highest personal costs, although the perpetrators and even observers can also be harmed if harassment is allowed to go uncontrolled.
- Few people who have not experienced it personally understand the distress and even terror sexual harassment can cause. Most women experience it as an insult, that undermines their self-confidence and thus also their personal effectiveness. It may also undermine their trust in men and in people in authority. In the case of women who were sexually abused as children or as adults, another negative experience can cause serious psychological damage.
- Women who resign because of sexual harassment problems, often have difficulty getting good references from their previous employers, or giving reasons for having left their previous job; and may thus have difficulty in finding another position. Obviously, this could disrupt such a woman's entire life.
- Women, who resist harassment or complain, may be victimised, for example, overlooked for promotion. Thus this can hold back their career development and personal growth.
- The harassers themselves could fall into bad habits if their behaviour is allowed to continue. This can negatively influence their effectiveness at work, their interpersonal relationships, their marriage, and their personal development. Particularly in the case of the last two of the types of harassers mentioned above, the serial and the situational harassers, ignoring their behaviour could cause a deep-seated problem to go untreated.
- Men or women who observe harassment going unchecked may lose trust in their superiors, may feel threatened by the situation if they believe that others are favored because they play along, or may be tempted to indulge in the same type of behaviour if that appears to be "the rules of the game" in their company.

Costs to companies

- Harassment costs companies money by reducing productivity, morale and motivation. If a worker is constantly concerned that the harasser may strike again, she is unlikely to be able to work effectively. At the same time, colleagues who are not involved may be demotivated if they are aware of unacceptable goings-on, or fear possible favoritism.
- Companies may lose valuable staff. Many women resign rather than go through the unpleasantness of a confrontation.
- High absenteeism among women could also be a result (or a possible symptom) of harassment, as the stress caused by such an unresolved problem, or the fear of being harassed again can either cause illness, or encourage women to stay "safely" at home.
- The knowledge that harassment is permitted can undermine ethical standards and discipline

in the organisation in general, as staff lose respect for, and trust in, their seniors who indulge in, or turn a blind eye to, such behaviour.

- If word gets around that a company allows sexual harassment to go unchecked, the company's image among its staff, customers and the general public may also suffer.

How does a SoR rep need to deal with Sexual harassment?

It's overwhelmingly women who suffer from sexual harassment, but some men experience it too, more noticeably young men and gay men. The SCoR oppose all forms of sexual harassment. The SCoR want all reps to be equipped to better deal with not just sexual but all forms of harassment.

If a SoR member is suffering from sexual harassment and comes to you with a grievance:

- Ensure that the member is aware that what is discussed between the both of you is confidential.
- Be sympathetic (the member may find the incident highly embarrassing to reveal remarks made about their appearance, sexual suggestions and in particular physical abuse).
- If the victim is a woman and you are a male Industrial relations rep, offer the opportunity to speak to a female SoR rep (if one is available).
- Keep notes of what happened including times, locations and whether there were witnesses, how the person being harassed felt at the time. Confirm that the harassment was unwelcome;
- Assure the SoR member that he/she will have the support and representation of a SoR Rep at any subsequent investigation or hearing Explain the procedures for dealing with harassment - both the trusts/hospital procedure and recourse to tribunal - and agree the way forward - the victim/complainant should decide the best way forward.
- Any action taken on the members' behalf - even a quiet word with the harasser - should only take place with his/her full consent.

The options include:

An informal approach by the HR/SoR Rep

It is advisable that the Society is involved at all stages of this procedure. It is obviously better if any incidents of sexual harassment can be resolved quickly at the lowest level possible. However, it is important to stress in any written procedure that an informal stage is not compulsory. This is to ensure that the harassed employee is not subject to further harassment and intimidation - or further embarrassment. The stages of any informal procedure should include the following:

An informal meeting between the SoR Rep and the alleged harasser, or between the SoR rep and both parties, may be a preferred option. The harasser should be advised that, although the conversation is informal, discriminatory behaviour cannot be tolerated and that, if harassment continues, the issue will be formally raised.

If the harassed employee does not feel able to take action personally, they should be able to contact specifically named personnel for confidential advice (such as personnel manager, human resource manager).

Any person suffering from any form of harassment should be encouraged to contact their SoR rep at an early stage and be entitled to be accompanied by them at all stages. In cases where the representative is a different sex to the employee, it may be necessary to seek advice from a full time officer regarding representation.

The procedure and possible courses of action should be explained to the employee. Possible courses of action should be:

- No further action at this stage, other than to keep the situation under review and record any

future incidents;

- If not already done so the offender should be asked to stop the offending behaviour and the situation kept under review;
- The Offender's manager could discuss the issue with him/her informally, explaining the situation;

To make a formal complaint;

- Personnel can recommend that disciplinary procedures are commenced immediately.

Formal complaint.

Make sure the SoR are involved at all stages of the procedure;

A formal complaint should be put in writing to the line manager, or the next in line manager if the line manager was involved in the incident(s);

Alternatively, the complaint could be addressed to personnel or human resource manager;

The letter should indicate that it is a formal complaint under the procedure and provide full details of incidents.

The next stage should be a commitment by management to investigate the complaint and take appropriate action;

There should be some mention of the possibility of referral to an industrial tribunal here, and it would be helpful if it could be pointed out that there is no length of service requirement for cases of discrimination, victimisation or harassment; There should be a clear description of how an investigation will be carried out including:-

- Name of person conducting the investigation
- Length of time investigation is expected to take.
- Whether suspension or redeployment of the harasser during the investigation will be considered.
- How the investigation will be conducted.

It is essential that those carrying out the investigation are not concerned with the incident in any way and written records will be kept at all stages of the procedure.

Further action to be taken

When an employee has been found guilty of sexual harassment, there are several options which should be considered: -

1. To initiate the disciplinary procedure;
2. To recommend redeployment
3. To set up monitoring arrangements
4. To arrange training on equal opportunities
5. To provide an apology from the harasser
6. To ensure there is no victimisation against those involved in the complaint.

If option one is chosen, there should be extra provision that the victim should not need to attend the hearing, but can be represented by a SoR Representative.

Additionally, the hearing panel should whenever possible reflect the nature of the complaint - for instance, if sexual harassment has been carried out by a man towards a woman there should be

adequate female representation on the panel.

Model Policy on Sexual Harassment at work

Policy Statement:

This trust fully supports the rights of all employees to be treated with dignity and respect at work and to seek, obtain and hold employment without discrimination.

Sexual harassment is a form of sex discrimination, and unlawful under the Sex Discrimination Act. It is also improper and insulting behaviour, which can create a threatening and intimidating work environment and can adversely affect the job performance, health and well-being of employees. The trust views sexual harassment as a serious matter, which will not be tolerated and will be dealt with under the disciplinary procedure, possibly resulting in dismissal for gross misconduct.

The trust believes that it is the impact of behaviour towards the individual and not the intent of the perpetrator that is the key principle for consideration.

It is the policy of this Trust to provide a working environment free of sexual harassment and intimidation.

This policy and procedure will be made available to all employees and managers in the Trust and are all required to comply with it. No employee will be victimised for bringing a complaint of sexual harassment.

Definition.

Sexual harassment means a conduct of a sexual nature or other conduct based on sex, which is unwanted and unreciprocated, affecting the dignity of women and men at work.

Forms of sexual harassment include:

- **Physical conduct of a sexual nature:** unwanted physical contact, ranging from unnecessary touching, patting, pinching or brushing against another employee's body to sexual assault and rape.
- **Verbal conduct of a sexual nature:** demands or proposition for sexual favour, continued suggestions for social activity outside work after being made aware that they are unwelcome, offensive flirtations, suggestive remarks, innuendoes and lewd comments.
- **Non-verbal conduct of a sexual nature:** displaying pin-ups or sexually suggestive pictures, objects or written materials, leering, whistling or making sexually suggestive gestures.
- **Sex based conduct:** conduct which denigrates, ridicules or intimidates an employee because of his/her sex, such as gender related insults and offensive comments on appearance of dress.

Code of practice to prevent sexual harassment

All managers have a particular responsibility for maintaining a working environment free from discrimination, harassment and victimisation. Their responsibilities include:-

- Implementing the policy
- Ensuring that all employees for whom they are responsible know about and understand

the policy

- Ensuring that employees understand that they are not required to endure sexual harassment;
- Taking action where there is a clear breach of the policy even if no individual has complained (e.g. displays of pin ups or other offensive material)
- Failure to take immediate corrective action to comply with the policy if they become aware of sexual harassment will be considered a failure to fulfil the responsibilities of the job and the manager could be subject to disciplinary action
- Conduct by a manager which threatens or implies that an employee's refusal to submit to sexual advances will adversely affect the employee's conditions of employment or career prospects will be treated as a serious disciplinary offence.

Courses will be made available for managers in how to recognise and deal with sexual harassment, their responsibilities, the law and implementation of this policy and procedure. Guidance will be provided by the personnel manager, human resources department for managers, designated officers and members on any investigating, disciplinary or grievance panel'

Counselling will be offered to individuals suffering from sexual harassment.

Chapter 7: The Law

The legal position

Individuals are protected from discrimination both while applying for a job, during it, and after the working relationship ends (for example in terms of the provision of a verbal or written reference). There is also protection for people against harassment on the basis of their membership or non-membership of a trade union and, in Northern Ireland, against harassment on the basis of political belief.

What the law covers

Identifying the relevant law in a case of bullying or harassment is not always easy. There is, for example, no law explicitly outlawing bullying in the workplace. The options, however, include the following:

Discrimination law:

Since October 2006 UK discrimination law has covered harassment on a variety of grounds including age, disability, colour, ethnic or national origin, race, religious belief or other similar philosophical belief, sex and sexuality

In general, harassment is explicitly recognised by the law as a 'free-standing' form of discrimination, except in respect of discrimination (under the Race Discrimination Act 1976) on the grounds of colour and nationality.

In April 2008, the Sex Discrimination Act was further amended to change the definition of sex harassment and to include for the first time employer liability for third party harassment.

According to the Government Equalities Office 'the difference between sex harassment and sexual harassment is that sex harassment occurs when a person generally behaves in an offensive way to

another related to gender (such as male manager referring to a female colleague as a 'bimbo'). By contrast, sexual harassment occurs where a person subjects another to unwanted attention of a sexual nature (for example pinching a colleague's bottom or making lewd comments)

A person is unlawfully harassed where, on a prohibited ground, the harasser engages in unwanted conduct which has the purpose or effect of either violating the other person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

The conduct must reasonably be considered as having the effect of violating the complainant's dignity and this means that the test is not confined to whether the complainant asserts that it violates their dignity.

Nevertheless, the tribunal is obliged to take the complainant's perception into account in assessing whether the conduct could reasonably be considered as having that effect. Currently, where there is no explicit definition of harassment in the discrimination legislation, it is nevertheless treated as being a form of direct discrimination that constitutes less favourable treatment to the detriment of the complainant. Identifying the relevant law in a case of bullying or harassment is not always easy. There is, for example, no law explicitly outlawing bullying in the workplace. The options, however, include the following:

Disability: under the Disability Discrimination Act 1995 it is unlawful to subject a disabled person to harassment where, for a reason which relates to the disabled person's disability, the harasser engages in unwanted conduct which has the purpose or effect of (a) violating the disabled person's dignity, or (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

An employer would be liable for the actions of an employee unless it could show that it had taken reasonable steps to prevent the harassment from occurring.

What is third party harassment?

Employers are now liable if they unreasonably fail to protect employees from third party harassment. 'The new provisions relating to harassment by third parties may create the greatest difficulties for employers, who do not have the same control over third parties as they have over employees. An employer is to be treated as subjecting a woman to harassment where:

- a third party subjects the woman / man to harassment in the course of her employment, and
- The employer has failed to take such steps as would have been reasonably practicable to prevent the third party from doing so.

This is provided that the employer knows that the woman man has been subject to such harassment on at least two other occasions. The term 'third party' means anyone other than the employer or one of his employees. It is immaterial whether the third party is the same or a different person on each occasion.'

It is likely that we will have to wait on case law to guide us further on this In Rachel Dineley's of Beachcroft LLP words: 'However unacceptable sexual harassment may be, it must be recognised that some jobs inevitably entail dealing with unwanted conduct on the part of third parties (as, for example, those in the police and medical profession dealing with drunk and injured offenders). In defending claims for sexual harassment, employers will need to demonstrate that they have anticipated such circumstances and have taken such measures as were reasonably practicable to prevent such harassment. What those measures should be may well depend upon the nature of the job being undertaken, the workplace environment and the degree of risk of third party harassment occurring

Whistle blowing

In appropriate cases the employee may be able to rely on the 'whistle blowing' legislation. The Public Interest Disclosure Act 1998 gives protection to employees who disclose, generally in good faith, information about wrong doing in the workplace. This may include:

- failure to comply with any legal obligation
- Dangers to health and safety.

Revealing information to the employer about bullying and harassment could fall within the protection afforded by the Act. Any subsequent detriment experienced by, or dismissal of, the whistleblower is unlawful under the Act.

Protection from Harassment Act 1997

The Act states that a person must not pursue a course of conduct which amounts to the harassment of another, and which they know or ought to know amounts to such. As a result of a recent ruling by the Court of Appeal, employers can now be held vicariously liable for incidents of harassment by an employee.

Other relevant legislation includes:

- Crime and Disorder Act 1998
- Criminal Justice and Public Disorder Act 1995
- Employment Act 2002
- Employment Rights Act 1996

Some of the difficulties of pursuing a personal injury negligence or breach of contract claim may be averted if a recent judgment of the Court of Appeal in *Majrowski v Guys and St Thomas NHS Trust* [2005] IRLR 340 is upheld on appeal to the House of Lords. An employee claimed to have been bullied, intimidated and harassed by his line manager, and sued the employer as being vicariously liable for the statutory tort, that is, civil wrong, of harassment, contrary to section 1 of the Protection from Harassment Act 1997.

The Act was originally intended to deal with 'stalking', but doesn't define harassment (other than referring to 'alarming' someone, or causing them 'distress'), nor does it exclude behaviour in the workplace. It created both criminal and civil wrongs arising from harassment. One of the new criminal offences created by the Act, and also a civil wrong, is described as 'pursuing a course of conduct that amounts to harassment of another person, and which the perpetrator knows or ought to know amounts to harassment'.

The Court of Appeal in *Majrowski* allowed the civil case to proceed. An employer is strictly liable under the Act for any harassment by an employee in the course of employment, and there is no need for the claimant to demonstrate that the injury was reasonably foreseeable.

Damages under the Act can include an amount for any anxiety caused, and any financial loss resulting from the harassment. Furthermore, the time limit is six years for bringing a claim, not the usual three years for personal injury claims.

Although it is too early to assess the impact of the judgment, it should be noted that the harassment under the Act has to be a 'course of conduct' and so cannot arise out of a single incident.

Health and Safety Executive (HSE) Guidance

The view from the Health and Safety Executive is that bullying and harassment are primarily employment relations issues and as such should be dealt with by employers' internal procedures. However, HSE does recognise that negative relationships can be a source of work-related stress and can be addressed by the Management Standards that HSE have produced to help employers carry

out a risk assessment of stress.

Employers have duties under the Management of Health and Safety at Work Regulations 1999 to assess the risk of stress-related ill health arising from work activities and to take measures to control that risk. The standards were launched in 2004 following extensive development and piloting. They are an effective tool to assist organisations in identifying the causes of stress and implementing practical solutions to manage the risks.

Causes of stress are classified into six key areas:

- demands – workload, work patterns, work environment
- control – how much say a person has in the way they do their work
- support – encouragement and resources provided by the organisation, line management and colleagues
- relationships – includes promoting positive to avoid conflict and dealing with unacceptable behaviour
- role – understanding the role and avoiding role conflict
- change – how organisational change is managed and communicated.
- Further information and materials to implement the standards are available from the HSE website, www.hse.gov.uk

Criminal offences

Intentional harassment has been a criminal offence since 1995, under the Criminal Justice and Public Order Act 1994 and is punishable by fine or imprisonment.

When introducing the new law, the Government made clear that the offence covered harassment at work. Intentional harassment is committed when a person ‘uses abusive or insulting behaviour, with intent to cause a person distress or harassment, and which causes that person distress or harassment’. It is also an offence to display ‘any writing, sign or other visible representation which is threatening, abusive or insulting’.

As has already been mentioned, the Protection from Harassment Act 1997 created two new criminal offences of harassment:

- pursuing a course of conduct that amounts to harassment of another person, and which the perpetrator knows or did know amounts to harassment.
- pursuing a course of conduct that the perpetrator knows or ought to know causes another person, on at least two occasions, fear that violence will be used against him or her.

Agenda for change: Handbook provisions

Part 5 (Equal opportunities) Sections 30, and 32 of the Agenda for change provide terms and conditions of service handbook regarding equal opportunities and harassment at work.

Section 30: General statement on equality and diversity

30.4 Equality of opportunity means that an individual’s diversity is viewed positively and, in recognising that everyone is different, valuing equally the unique contribution that individual experience, knowledge and skills can make.

30.5 Everyone who works in the NHS, or applies to work in the NHS, should be treated fairly and valued equally. All conditions of service and job requirements should fit with the needs of the service and those who work in it, regardless of age, disability, race, nationality, ethnic or national origin, gender, religion, beliefs, sexual orientation, domestic circumstances, social and employment status, HIV status, gender reassignment, political affiliation or trade union membership.

Section 32: Dignity at work

Setting a culture to promote dignity at work

32.6 NHS employers and local staff representatives should agree what actions will be taken to identify the main causes of harassment or bullying at work and what actions should be taken to remove these causes.

32.7 NHS employers have a duty to prevent harassment taking place. Managers have a responsibility to set the standards of acceptable behaviour expected of staff. They should ensure their own behaviour could not be construed as personal harassment by acting with fairness and equity. This includes using their judgement to correct standards of conduct or behaviour which could be seen as harassment, and to remind staff of these standards. Each member of staff carries responsibility for his or her own behaviour.

Dealing with complaints

32.8 NHS employers and local staff representatives should agree in partnership a procedure designed to deal with cases where there has been a departure from the dignity at work policy or where there has been an allegation of harassment or bullying.

Definitions

32.9 Harassment is defined as “any conduct based on age, sex, sexual orientation, gender reassignment, disability, HIV status, race, colour, language, religion, political, trade union or other opinion or belief, national or social origin, association with a minority, domestic circumstances, property, birth or other status which is unreciprocated or unwanted and which affects the dignity of men and women at work.”

32.10 Bullying is defined as “the unwanted behaviour, one to another, which is based upon the unwarranted use of authority or power.”

32.11 In all cases it will be for the recipient to define what is inappropriate behaviour.

32.12 “At work” includes any place where the occasion can be identified with either the requirements of the employer, or with social events linked to the same employment. It includes any place where NHS care is delivered.

Chapter 8: Understanding and dealing with the problem:

Checklist: What to do if a member is being bullied or harassed.

If a member approaches a SoR representative with a complaint about bullying or harassment, they should be treated with **sympathy and support**. In many cases, it is very difficult for the victim to speak out about their problems, as on many occasions they may think they may be over reacting or feel fearful of the consequences of reporting incidents.

Complaints of harassment or bullying should **always be taken seriously** and treated with **guaranteed confidentiality**.

Because women may find it difficult to talk to a man about sexual harassment, or black members may find it difficult to talk to a white employee about racial harassment representatives should try to offer the complainant the opportunity to talk to a suitable representative or officer or be accompanied by a friend.

Representatives should suggest in the first instance that the member should give the harasser

an informal warning. If members feel nervous to do this for themselves, it may be more appropriate for a representative to do this on their behalf. It should be explained to the harasser or bully that their behaviour will not be tolerated and that, if this type of behaviour continues, formal actions will be taken against them. If a member is not happy about using this method, it may be more appropriate to speak to a higher level of management. This would be the case if the harasser/bully happened to be the complainant's line manager, as was the case in many of the SoR survey questionnaires.

It is essential to **gather evidence** – reps should encourage the member(s) affected to keep a record of incidents, including dates, times and what was said or done. In addition, any records relating to sickness or poor work records should be kept.

If the member agrees reps should talk to other members to see whether they may have been subjected to harassment or bullying or have witnessed anything which may have bearing on the case. Often a number of people are being harassed, but each feels isolated because they are ignorant of the other cases.

In many cases, an informal warning may lead to further victimisation. Reps should encourage the member to record any instances of this and assure them of their support and representation, should the case go any further.

If informal measures do not work or if the victim wishes to peruse the case formally from the onset, there should be a set policy and procedure for dealing with cases of harassment and bullying. (A model agreement is included a page 39 and 40) If there is no formal policy in a particular trust, or it is the process of negotiation, the grievance procedure should be used. The member should be reassured of the Societies support throughout the procedure.

Agreements should not be given to the complainant being transferred (unless the member wants this) or the complainant being forced to carry on working with the harasser.

If the matter cannot be satisfactorily resolved within internal procedures. It can be taken to an industrial tribunal. The case must be presented within 3 months of the incident(s), but there is now no upper limit for awards made in cases of sex and race discrimination.

Checklist: What to do if a member is accused of harassment or bullying.

SoR reps may be asked to assist a member who has been accused of harassment or bullying, in which case the following steps should be taken:

- 1 SoR reps should listen carefully and make notes of what the member says has happened;
- 2 SoR reps should make sure the member is aware of the trust's policy and procedures to deal with cases of harassment and bullying;
- 3 advice may need to be sought from a Regional Officer, depending on the course of action chosen by the trust;
- 4 As a SoR member, they are entitled to representation, although a rep would not be expected to represent both the complainant and the alleged harasser;
- 5 SoR reps should make notes that are kept to pass onto the Regional Officer if they become involved on behalf of your member;
- 6 SoR reps should try not to prejudge the outcome, but handle with sensitivity

Checklist: What to do if a member witnesses harassment or bullying

If a member has witnessed incidence(s) of harassment and bullying, they can provide important

help and support for someone dealing with harassment. Several steps can be taken:

- 1The member can approach the person being harassed informally and in confidence and tell them what they observed;
- 2If the person being harassed is willing to talk about the situation, the member should listen sympathetically and with their agreement make notes, which may be helpful at a later stage;
- 3If the person being harassed feels unable to discuss the issue, encourage them to talk to someone they can trust and to approach their SoR representative.
- 4A member who has witnessed harassment may be called upon to give evidence, if a formal complaint is made.

Procedures: What to do if you are being harassed.

All NHS Employers, stakeholders, units and trusts guarantee that all complaints will be taken seriously and investigated swiftly. **All parties will be treated with respect.**

Victimisation as a result of a member of staff raising a complaint will not be tolerated. Victimisation is a form of harassment and will be subject to disciplinary action. Staff assisting in an investigation into a complaint of harassment will be protected from victimization or discrimination.

All NHS Employers, stakeholders, units and trusts recognise that many people who are subject to bullying or harassment do not complain about what is happening to them. This may be because:

- the victim feels embarrassed;
- they feel “unprofessional” because they are upset;
- they are worried no one will believe them;
- they will face further victimization for reporting the issue;
- they may not want to get the other person into trouble.

Staff who are faced with harassment by patients may try to “cope” by viewing the behaviour as part of the patient’s illness or distress. All NHS Employers, stakeholders, units and trusts are committed to tackling bullying and harassment in the workplace.

A range of support services is currently provided by NHS organisations for their employees. These include:

- **Counselling** The NHS has provided counselling services to NHS staff since April 2000. Counselling often allows the concerns about bullying to be resolved without the need to take formal action.
- **Trained staff acting as support workers** As part of their role, trained staff provide empathetic assistance to employees with complaints of bullying and harassment, explain how the procedures for making a complaint operate both informally and formally, and help establish and provide support for both alleged harassers and complainants through the process.
- **Bullying and harassment hotline** Hotlines provide staff with a confidential service to discuss their problems and access support
- **External agencies** Employees may be referred to external agencies for support where the employer feels that they are not adequately equipped to provide support.
- **Mediation** Mediators are specially trained to facilitate informal outcomes where possible. Both parties must agree to the use of a mediator.

If you are in any doubt as to whether an incident which has occurred to you constitutes bullying and harassment you should not hesitate to contact a counsellor or your SoR representative. They will be

able to advise you on how to approach the matter and whether the incident merits further action. The ultimate decision on whether to raise a complaint of bullying or harassment lies solely with the individual affected. If you feel you are being bullied or harassed then you should not hesitate in using the following procedures.

Informal Procedure

Many incidents of harassment can be dealt with effectively in an informal way, as often a person is unaware of the effect their behaviour has on others. Once made aware of the distress which is being caused by their actions, the offensive behaviour ceases.

In the first instance, it may be possible and sufficient to explain to the colleague of patient engaging in the unwanted behaviour, that the conduct is not welcome and that it interferes with your work and makes you feel uncomfortable. In circumstances where this is too difficult or embarrassing for you to do on your own, then you should seek support from either your SoR representative, a friend, line manager, personnel officer or from one of the trained counsellors.

Another option would be to write directly to the bully or harasser, giving details of the offensive behaviour and confirming the requirement to stop the behaviour from continuing.

The employee should keep a record of any informal action taken, including the date, and what was said by those involved. Details of any instances of bullying or harassment should also be kept, recording the date, time, place, names of any witnesses and what was said or done. This is necessary should evidence be required at a later date if the bully or harassment does not stop, or recurs.

Using discretion, the employer may arrange for all parties involved to attend external counselling and facilitation, if it is agreed by all involved that this approach may be useful in resolving the issue. If the unwanted conduct comes from a patient, then the appropriate manager has the responsibility to warn the patient, orally and in writing, of their conduct and to instigate necessary measures.

If the harassment persists, or if you prefer, then you should use the formal procedure.

What to Do if You Are Accused of Bullying or Harassment

If a colleague or manager speaks to you informally about your behaviour it could be because you are unaware of the effect it has on other members of the organisation. A person has the right to tell you that they find your actions hurtful, offensive or inappropriate, even if your intentions are good. Try not to be defensive during a conversation of this nature, or make counter accusations. A simple discussion can often resolve the issue, and identify ways of communicating with which all parties involved are comfortable with. If it was necessary, a colleague that both parties trust could be asked to facilitate a discussion to help resolve the problem.

Formal Procedure

The formal procedure is designed to resolve formal complaints of harassment swiftly and effectively with the minimum amount of distress to all parties. It is separate from the grievance procedure, which should be used for all other forms of complaint bar harassment. Both parties have the right to be represented throughout this procedure.

To make a formal complaint, the victim of the bullying or harassment need to approach their line manager, supervisor, SoR rep, human resources manager or the line manager of the alleged bully or harasser. The formal complaint should be made in writing, making it clear that it is a formal complaint following the correct procedure. It should give details of the behaviour which has led to a formal complaint being lodged. All complaints are treated in strictest confidence and throughout the formal complainant and the alleged harasser will not be divulged other than to those who are necessary to the investigation.

A formal complaint will be treated as a disciplinary issue and will be investigated according to disciplinary procedures.

A timetable will be set down for the investigation. This will be sensitive to the stress imposed on the complainant and be sensitive to the three month time limit for pursuing a claim through an industrial tribunal. It is important to bear in mind that there is now no upper limit on awards made under the Sex Discrimination Act and the Race Relations Act.

It is the responsibility of management and/or the personnel or human resources department to conduct an independent investigation into the complaint. The purpose of the investigation is to establish the full details of what happened. This investigation process will include interviews with the complainant and the alleged harasser, conducted separately and with sensitivity.

All relevant witnesses will be interviewed. Where witnesses are interviewed, the importance of confidentiality will be emphasised. Any breach of confidentiality by a witness or investigating officer will constitute gross misconduct and would itself be subject to disciplinary action.

Both complainant and alleged bully/harasser (if a member of staff) have the right to be accompanied at all interviews and supported by a SoR representative or friend throughout the process.

The investigation will be thorough, impartial and objective and will be carried out with sensitivity, in a non-confrontational manner and with respect for the rights of all parties.

The alleged bully/harasser will be given full details of the nature of the complaint and will be given the opportunity to respond. Access to a counsellor and/or SoR representative or friend will be made available.

A report should be produced at the end of the investigation which outlines the facts of the case, and should outline the investigating manager's recommendations. Copies will be sent to both the complainant and the alleged bully/harasser and their representatives.

Should the investigation conclude the bullying/harassment has taken place, the bully/harasser, if a member of staff will be subject to a disciplinary interview followed by appropriate disciplinary action. Where the bully/harasser is a patient, management will consider appropriate action, including legal action.

If a member of staff feels that they have been unfairly treated, they have the right to lodge a grievance. Ultimately a complaint can be taken to an industrial tribunal.

At the conclusion of a complaint between colleagues, whether using formal or informal procedures, **should a breakdown in the working relationship occur between the parties, the bully/harasser and not the complainant will be moved.**

Redeployment considerations

If disciplinary action is taken, management must consider whether contact between the parties is likely to occur during the course of their job and whether this is acceptable.

Management will consult with the complainant. In cases where contact is considered unacceptable, every effort should be made in the first instance to redeploy the person against whom the complaint has been made. However, it will be for the manager and the human resources representative to consider which party may be most appropriately redeployed having fully considered the views of the complainant.

Where disciplinary action is not taken following a full investigation, then the person who alleged harassment may request redeployment. In this case the manager, in consultation with the human resources department, will try to accommodate this request.

Support for bullied or harassed staff.

All NHS employers, stakeholders, units and trusts recognise that bullying and harassment can affect job performance and cause stress. Where such treatment causes deterioration in job performances, this will be treated as a health problem and the person will be encouraged to seek help under the terms of this policy. There will be no discrimination against an individual suffering from bullying and harassment or stress caused by such treatment.

As well as having access to the NHS counsellors, employees who have been bullied or harassed will be offered paid time off to attend counselling sessions. In addition, names of stress counsellors and how to contact them will be posted on notice boards, so that staff can make arrangements for counselling outside their working house if they wish (this is for staff who do not want to ask for time off which could draw attention to their need for counselling).

The trust/hospitals commitment to having an effective strategy to combat bullying and harassment means that this policy will be regularly reviewed and assessed with the intention of improving the policies effectiveness. Specific responsibility for assessing the effectiveness of the policy lies with the director of human resources in conjunction with staff representatives. The review of effectiveness of the policy will be undertaken in conjunction with staff representatives.

Chapter 9: Changing the workplace culture: an organisational approach

Employers can only address cases of bullying and harassment that are brought to their attention. Where levels of under-reporting are high, the organisation will never be able to completely tackle the problem of bullying harassment. Offering victims informal routes, stating that the complaint will be handled with confidentiality and that the complainant will be protected from victimisation may increase levels of reporting.

It is widely recognised that the NHS is a high-pressure working environment with high levels of understaffing, the recent introduction of performance targets and threats of physical violence and abuse from patients. The pressure felt by managers to reach performance targets could be encouraging them to bully employees into achieving the desired results. Managers need to understand that such tactics can backfire, causing stress-related absenteeism and high levels of staff turnover.

All NHS organisations should have in place a bullying and harassment policy which is easily accessible to staff and managers alike and which is monitored on a regular basis by senior managers.

NHS organisations' policies on bullying and harassment should include:

- statement of commitment from senior management to tackle bullying and harassment in the workplace;
- clear definitions of the terms accompanied by examples of unacceptable behaviour;
- a statement that bullying and harassment will not be tolerated and that such behaviour could result in disciplinary action;
- details of the formal and informal complaints procedures, including relevant timescales for action;
- statement that complaints will be handled with confidentiality and that the complainant will be protected from victimization;
- sources of support and guidance;

- legal implications;
- responsibilities of supervisors and managers;
- responsibilities of personnel/HR department;
- training for managers and staff;
- details of prevention measures taken by the organisation;
- details of how the policy is to be implemented reviewed and monitored.

Once a policy has been agreed it should be widely publicised to both new and existing staff.

Information about the policy could be introduced during the staff induction and during mandatory training sessions for existing staff. Such a training programme should include all levels of staff; failure to include managers would be unproductive as they are often the main perpetrators of bullying and harassment.

To support the policy employers need to create a culture where staff feel confident about making complaints concerning bullying and harassment. The 2004 NHS staff survey revealed that only 54 per cent of staff actually reported incidents of bullying and harassment. Reasons for under-reporting include:

- fear that it will make matters worse or nothing would happen;
- concerns about confidentiality;
- fear of possible victimization;
- concerns about being labelled a troublemaker.

Employers can only address cases of bullying and harassment that are brought to their attention. Where levels of under reporting are high, the organisation will never be able to completely tackle the problem of bullying harassment. Offering victims informal routes, stating that the complaint will be handled with confidentiality and that the complainant will be protected from victimisation may increase levels of reporting.

It is widely recognised that the NHS is a high pressure working environment with high levels of understaffing, the recent introduction of performance targets and threats of physical violence and abuse from patients.

The pressure felt by managers to reach performance targets could be encouraging them to bully employees into achieving the desired results. Managers need to understand that such tactics can backfire, causing stress related absenteeism and high levels of staff turnover.

Chapter 10: Bibliography/Resources

ACAS (2005a) *Bullying and harassment at work: guidance for employees*, London: ACAS

ACAS (2005b) *Bullying and harassment at work: guidance for employers*, London: ACAS

Chartered Institute of Personnel and Development (2005) *Bullying at work: beyond policies to a culture of respect*, London: CIPD.

CIPD staff, with thanks to Rachel Dineley of Beachcroft LLP.

Department of Trade and Industry Staff survey 2007

INCOMES DATA SERVICES. (2007) *Bullying and harassment at work*. Employment law supplement. London: IDS.

NHS National staff survey: Summary of key findings 2007.

Parliament (1975) *Sex Discrimination Act*, London: HMSO.

Parliament (1976a) *Race Discrimination Act*, London: HMSO.

Parliament (1976b) *Race Relations Act*, London: HMSO.

Parliament (2000) *Race Relations (Amendment) Act*, London: HMSO.

Parliament (1994) *Criminal Justice and Public Disorder Act*, London: HMSO.

Parliament (1995) *Disability Discrimination Act* (amended 2004, 2005), London: HMSO.

Parliament (1996) *Employment Rights Act*, London: HMSO.

Parliament (1997) *Protection from Harassment Act*, London: HMSO.

Parliament (1998b) *The Human Rights Act*, London: HMSO.

Parliament (1998c) *Public Interest Disclosure Act*, London: HMSO.

TEHRANI, N. (2005) *Bullying at work: beyond policies to a culture of respect*. Guide. London: Chartered Institute of Personnel and Development.

TUC Biennial Safety Representatives survey 2008

Appendix A: Examples of unacceptable behaviour & good practice

There have recently been a number of high profile bullying and harassment cases in the press. One NHS case, *Majrowski v Guy's and St Thomas' NHS Trust* set the precedent that employers can now be held vicariously liable for bullying of their staff by another member of staff. The case, taken under the *Protection of Harassment Act 1997*, was originally thrown out by a County Court on the grounds that the Act was to protect individuals from harassment by other individuals and not to create another level of employer liability. The case went all the way to the House of Lords who agreed that an employer did have liability for the actions of employees under this Act.

In the other case, *Green v Deutsche Bank Services (UK) Ltd*, the High Court found that Green, the claimant, was subject to a relentless campaign of mean and spiteful behaviour by co-workers. The claimant's line managers knew or ought to have known what was going on and that a reasonable and responsible employer would have intervened as soon as it became aware of the problem. The defendant knew of the claimant's previous history of depression which indicated she was more vulnerable than others. The High Court also found that the stress created in the work environment was far more than that normally to be expected in the workplace and it was foreseeable that some people would not be able to stand such level of stress. The behaviour of the individuals concerned amounted to harassment under the *Protection of Harassment Act 1997* because it was targeted at the individual, occurred with great frequency and was calculated to distress.

In the Green case, the provision of harassment training was not considered a sufficient defence, with the High Court deciding that the employer should have done more to prevent the harassment. NHS managers need to be more proactive and look out and act on the signs of bullying and harassment.

Both cases will have implications for the NHS, where, according to the latest staff survey results published earlier this year, less than 50% of Trusts are taking adequate action to address bullying and harassment.

As a result of these judgments' safety reps should raise the issue at the health and safety committee where the effectiveness of the organisations bullying and harassment policy and procedures should be reviewed and if necessary re-negotiated. As stress and bullying and harassment are intrinsically linked, organisations must also be taking forward work to address and reduce workplace stress.

Example of good practice: Barnsley Hospital NHS Foundation Trust

In a bid to tackle bullying and harassment, the trust appointed 10 harassment support workers in November 2003. As part of their role they provide empathetic assistance to employees with complaints of bullying and harassment, explain how the procedures for making a complaint operate both informally and formally and help establish and support both alleged harassers and complainants through the process.

The support workers are representative of all levels in the organisation and their appointment followed a rigorous selection process designed to ensure a thorough understanding of the role and the boundaries within which it operates and that management and union roles were not undermined.

Since introducing the new service, levels of staff on staff bullying and harassment in the trust have decreased. The percentage of staff experiencing harassment, bullying or abuse from their manager/supervisor in the previous 12 months decreased from 8 per cent in 2004 to 7 per cent in 2005. The percentage of staff experiencing harassment, bullying or abuse from their colleagues decreased from 12 per cent in 2004 to 11 per cent in 2005.

Appendix B: Questionnaire

Bullying and Harassment in the workplace survey.

The TUC has recently reported that incidents of bullying and harassment in the workplace has risen significantly in the last year

The Society of Radiographers is conducting an online survey to collect evidence to determine whether this is an issue amongst our members.

To ensure that our members understand the definitions of bullying and harassment we will define as:

Bullying covers *persistent, offensive, abusive, intimidating, malicious or insulting behaviour, abuse of power or unfair penal sanctions which makes the recipient feel upset, threatened, humiliated or vulnerable*

Harassment is defined as *repeated attacks, unwanted conduct affecting the dignity of women and men at work.*

There are various types of harassment including on the grounds of sex, race, sexuality, disability, age and religion.

Thank you for taking the time to complete this online survey, your participation is greatly appreciated. Should you have any questions, or wish to discuss this survey please do not hesitate to contact me.

Lyn Wigley
Health and Safety Officer

[Download 'Bullying and Harassment in the workplace' Survey](#)

Appendix C. NHS Employers Guidance: Investigation procedure for complaint of bullying or harassment

(This guidance is taken from the NHS Employers guide - bullying and harassment)

All cases must be treated seriously and dealt with promptly, as this will prevent additional stress and anxiety to both sides of the complaint. Failure to do so may result in disciplinary action being taken against the investigating manager for neglect of duties.

Step 1: Initial response

Following receipt of the letter of complaint the investigating manager has five working days to inform the employee that an investigation will be undertaken and ensure that the employee is made aware of the process that will be adopted during the investigation, and what their role may be at any subsequent disciplinary proceedings that may take place.

The person against whom the complaint is made should also be informed at the outset of the investigation of the complaint against them and given a copy of the letter of complaint.

Step 2: Possible suspension or redeployment during the investigation

The investigating manager should consider the appropriateness of suspension or redeployment for the duration of the investigation to relieve the stress and pressure on one or both parties and/or to prevent the risk of further incidents or victimisation occurring.

Suspension of the alleged harasser may be considered where a manager feels that it is in the interest of the individual, the organisation or both. It may be appropriate in some cases for both parties to be suspended. It will be made clear at all times that suspension under this procedure is not a disciplinary act and does not imply that there has been any misconduct, or that there is any suggestion of guilt.

Temporary redeployment of one or both parties can also be considered. In normal circumstances it is appropriate that the alleged bully/harasser should be redeployed rather than the complainant. The complainant could, however, be offered the option of redeployment where appropriate. In some circumstances both parties may be redeployed.

Step 3: Meeting with the complainant

Following receipt of the letter of complaint the investigating manager has 10 working days to sensibly and sensitively arrange and conduct a meeting with the complainant. The purpose of the meeting is for the investigating manager to take a detailed written statement of the incident(s). A trade union official, equivalent professional representative or a colleague may assist the complainant. The complainant should be given the opportunity to nominate witnesses whom they wish to be interviewed by the investigating manager.

Step 4: Meeting with the person against whom the complaint has been made

The investigating manager will meet with the person against whom the complaint has been made and hear what they have to say about the alleged incident(s) - having previously been informed of the allegation against them. Their trade union official, equivalent professional representative or a colleague may assist them. Notes of the meeting will be taken. The employee should be given the opportunity to nominate witnesses whom they wish to be interviewed by the investigating manager.

Step 5: Meeting with the witnesses

The investigating manager will meet with the witnesses nominated by the complainant and the alleged bully/harasser. Employees identified as witnesses to incidents may be assisted at the meeting by their trade union official, equivalent professional representative or a colleague. Notes of the meeting will be taken. Important notes for steps 3–5

- The purpose of these meetings is to establish the facts. They are not disciplinary hearings of any sort. All those giving information to the manager or designated investigating officer will do so privately and not in the presence of any other person involved in or present during the alleged incident(s).
- Notes taken during these meetings will be made available to all those involved in their particular meeting and comments can be made if appropriate.

Step 6: Further clarification

The investigating manager may decide to meet any of the employees again to clarify or gain further information. He/she must also ensure that they obtain copies of any written material that may be used as evidence.

Step 7: Consideration of information

Having obtained all the information possible, the investigating manager and human resources representative will review the information and decide whether the complaint is substantiated. In cases of sexual harassment, in no circumstances will evidence of the complainant's experience, sexual attitudes or behaviour be taken as relevant information.

In some cases there will not be any witnesses and it will be one person's word against another's. In these cases the investigating manager and human resource representative will consider whether on the balance of probabilities the incidents/actions occurred.

Step 8: Further action

The investigating manager and human resources representative will consider the facts and will recommend one of the following:

1. take no action, as the allegation has not been substantiated or there is insufficient evidence;
2. proceed to a disciplinary hearing, as the investigation has found that there may be a case to answer;
3. take alternative management action, as the evidence and/or nature of the complaint does not justify formal disciplinary action.

This could include:

- a recommendation for facilitated discussion/counseling for both parties, where both parties agree to this;
- a recommendation for redeployment of one or both parties, either on a temporary or permanent basis;
- setting up arrangements to monitor the situation;
- required attendance on training courses (such as equality and diversity awareness training)
- a period of special leave to enable working arrangements to be put in place.
- The preliminary investigation procedure will take no longer than four weeks.

Appendix D: Contacts/Resources

Acas

www.acas.org.uk

Helpline numbers: 08457 474747 (Monday – Friday 08.00-18.00)

Minicom users: 08456 061600



Andrea Adams Trust

Maritime House, Basin Road North, Hove, East Sussex. Tel: 01273 704901.



Ban bullying at work Campaign

www.banbullyingatwork.com



Elaine Tidy

Direct line: 01273 270934

elaine@andreaadamstrust.org

Citizens Advice Online advice

www.citizensadvice.org.uk

See Local telephone directory for nearest office



Equality and Human Rights Commission

www.equalityhumanrights.com.

(On the 1st October 2007, Commission for Racial Equality (CRE), Disability Rights Commission (CRE) and Equal Opportunities Commission (EOC) merged to form the new Equality and Human Rights Commission)



Women. Men. Different. Equal.
Equal Opportunities Commission

Manchester

Arndale House,
The Arndale Centre, Manchester,
M4 3AQ
Telephone 0161 829 8100 (non helpline calls only)
Fax 01925 884 000
info@equalityhumanrights.com

London

3 More London,
Riverside Tooley Street,
London,
SE1 2RG
Telephone 020 3117 0235 (non helpline calls only)
Fax 0207 407 7557
info@equalityhumanrights.com

Cardiff

3rd floor,
3 Callaghan Square,
Cardiff,
CF10 5BT
Telephone 02920 447710 (non helpline calls only)
Text phone 029 20447713
Fax 02920 447712
wales@equalityhumanrights.com

Glasgow

The Optima Building,
58 Robertson Street,
Glasgow,
G2 8DU
Telephone 0141 228 5910 (non helpline calls only)
Fax 0141 228 5912
scotland@equalityhumanrights.com

TUC.

Congress House.
Great Russell Street.
London
WC1B 3LS



Violence at work.

ILO. 1998. SBN 92-2-110335-8.
Details from ILO, Millbank Tower,
21-24 Millbank
W1P4QP.
Email: london@ilo-london.org.uk

Bully Online

<http://bullyonline.org/old/successunlimited/about.htm>



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