Yorkshire Dales National Park Authority **Item 5**

Finance and Resources Committee

17 December 2024

Anti-Harassment, Anti-Bullying and Anti-Victimisation Policy

Purpose of the Report

1. To agree changes to the Authority Anti-Harassment, Anti-Bullying and Anti-Victimisation Policy.

Recommendation

2. That Members approve the Anti-Harassment, Anti-Bullying and Anti-Victimisation Policy, set out in **Appendix A**.

Strategic Framework

3. The information and recommendation(s) contained in this report are consistent with the Authority's statutory purposes and its approved strategic planning framework;

    - Corporate Action Plan Objective 33
      Ensure that we have HR policies, procedures, terms and conditions to attract and support the right people with the right skills to deliver the work of the Authority effectively.

Background

4. Under the current provisions of the Equality Act 2010, sexual harassment is prohibited within the workplace. Employers are liable for any harassment committed by their employees during their employment. However, if they can demonstrate that they took all reasonable steps to prevent this happening, this will serve as a defence to any harassment claim.

5. On 26 October 2024 the Worker Protection (Amendment of Equality Act 2010) Act 2023 came into force. The Act introduces a new positive legal obligation on employers to take reasonable steps to protect their workers from sexual harassment – a preventative duty. The new Act goes one step further than previous requirements by placing an anticipatory duty on employers to stop sexual harassment from happening in the first place.

6. The Equality Act 2010 defines sexual harassment as 'unwanted conduct of a sexual nature which has the purpose or effect of violating someone's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them'.

7. The new duty is set out here Worker Protection (Amendment of the Equality Act 2010) Act 2023. The preventative duty only applies to sexual harassment.

Context and implications

8. Until now, the onus was on individual workers to make a complaint if they experienced sexual harassment. For the first time, employers will have a proactive legal duty to take reasonable steps to prevent sexual harassment of their workers to prevent such harassment from happening. There is no definition of what is 'reasonable' - it will differ from employer to employer depending on the facts and the circumstances.

9. Crucially the new preventative duty will also require employers to protect their workers from harassment by a third party, including in situations other than the usual workplace.

10. If an employer breaches the preventative duty, the Equality & Human Rights Commission will have the power to take enforcement action against the employer. Employment tribunals must take into account the employer's compliance with this duty and will also have the power to increase compensation for sexual harassment by up to 25%.

11. Statistics suggest women are three times as likely to have encountered sexual harassment than men, although this statistic may not take account under-reporting, especially by men. However, the gender is irrelevant as harassment can involve any identification, or same sex.

12. Third-party harassment is not a stand-alone claim under the Equality Act 2010 but the preventative duty does require employers to take reasonable steps to prevent sexual harassment of workers by third parties.

Proposed changes

13. The new duty was discussed at the September meeting of the Equality, Diversity and Inclusion (EDI) Working Group. A sub-group was established to consider how the legislation would impact the Authority and what steps should be taken to prepare for the duty.

14. It was recognised the current Anti-Harassment, Anti-Bullying and Anti-Victimisation Policy needed to be updated and amended to incorporate the new duty.

15. In addition, it has been agreed for:

    a. The Unreasonable Behaviour Guidance to be updated to specify a zero tolerance approach to sexual harassment;
    b. All staff to complete an ELMS training course on sexual harassment at work;
    c. All managers to attend a workshop on preventing sexual harassment at work;
    d. A risk assessment to be undertaken and finalised.

16. The proposed changes have been discussed and shared with UNISON.

Financial Implications

17. None.

Legal Implications

18. The amendments should ensure that the policy aligns with legal requirements.

Equality, Diversity and Inclusion Implications

19. The amendments should foster a culture of respect and inclusion within the workplace.

Conclusion

20. The revised Anti-Harassment, Anti-Bullying and Anti-Victimisation Policy allows the Authority to meet the requirement of the new duty introduced on 26 October 2024.

Vikki Thomas
Head of HR

Appendix A

Anti-Harassment, Anti-Bullying and Anti-Victimisation Policy

1. Introduction

1.1 The Authority believes that having a culture that is diverse, equitable and inclusive benefits the organisation and supports wellbeing, enabling people to work better.

1.2 The Authority is committed to providing a welcoming work environment, which is free from discrimination or intimidation and in which dignity, trust and respect are paramount; where everyone can achieve their potential, be themselves and feel that they belong.

1.3 Staff should feel safe and comfortable at work and have the right to enjoy a work environment that is free from harassment, bullying and victimisation.

1.4 This policy sets out the steps that will be taken to investigate and deal with complaints of bullying, harassment or victimisation, and how those affected will be supported.

1.5 A toxic workplace culture, where bullying or harassment is tolerated, is harmful to the wellbeing of the workforce as well as the wider organisation. The Authority, therefore, adopts a zero-tolerance approach to instances of bullying, harassment, including all forms of sexual harassment, or victimisation, and the policy will be applied accordingly.

2. The scope and status of this policy

2.1 This policy applies to all staff, volunteers contractors, agency staff and any other person engaged to work for the Authority. This policy also relates to job applicants and is relevant to all stages of the employment relationship. This policy is also relevant to bullying, harassment and victimisation by third parties.

2.2 If the complainant or alleged harasser is not employed by the Authority, i.e. the worker's contract is with an agency, this policy will apply with any necessary modifications. This could mean that the Authority will require the agency to remove the worker, if appropriate.

2.3 This policy does not form part of any contract of employment or contract to provide services, and we may amend it at any time.

2.4 This policy is reviewed regularly. Any suggestions for change should be reported to the Head of HR.

3. The Authority's commitment

The Authority is committed to taking proactive measures to prevent all forms of bullying, harassment, including sexual harassment and victimisation, to its workers by:

- requiring all staff to attend equality, diversity and inclusion training within their first year at the Authority, and again at least every five years;
- providing additional training for managers to ensure that they understand how to implement this policy effectively and their role in preventing and stopping bullying and

harassment (including sexual harassment) from occurring in the workplace and by third parties that may have contact with staff;

- ensuring all staff complete Sexual Harassment at Work training on a regular basis. New starters will be required to complete this training as part of their induction programme;
- encouraging individuals to support our equality, diversity and inclusion, and anti-bullying, anti-harassment and anti-victimisation, initiatives by attending events and workshops organised by the HR team or the Equality, Diversity and Inclusion Working Group to educate themselves on the challenges faced by others and how to help alleviate these in the workplace;
- monitoring the workplace culture through surveys, one-to-one conversations, return-to-work meetings and leaver questionnaires to identify and address any issues;
- undertaking regular risk assessments to determine reasonable measures that can be implemented to minimise the risk of exposure to sexual harassment in the workplace and by third parties that may have contact with staff; and
- ensuring that a zero tolerance approach to all forms of discrimination, bullying, harassment and victimisation, is communicated to all workers and third parties that may have contact with staff.

4. What the Authority expects from others

4.1 The Authority expects everyone to take personal responsibility for observing, upholding, promoting and applying this policy. Whatever someone's job is, this is part of their role.

4.2 Any dealings people have with third parties, including members of the public, suppliers, contractors, agency staff and consultants, must be free from discrimination, harassment, victimisation or bullying. For more information on discrimination, please refer to the Equality, Diversity and Inclusion (EDI) Policy.

4.3 There is no justifiable reason to bully, harass or victimise someone. Even if there is no intention, this does not legitimise the behaviour, as it is the impact on the recipient that is important, and the policy will still apply.

4.4 Individuals can be personally liable for harassment.

5. Meaning of harassment

5.1 Harassment is unwanted physical, verbal or non-verbal conduct related to a protected characteristic that has the purpose or effect of:

- violating someone else's dignity; or
- creating an intimidating, hostile, degrading, humiliating or offensive environment for someone else.

5.2 The Equality Act 2010 prohibits discrimination because of certain protected characteristics. These are: age; disability; gender reassignment; marriage or civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. Although pregnancy and maternity and marriage and civil partnership are not specifically protected under the legal provision on harassment, the Authority considers harassment on any ground to be unacceptable.

5.3 Harassment can occur where someone perceives another person to have a protected characteristic, even if they do not, in fact, have that protected characteristic. For example, a perception that someone is transgender even if they are not.

5.4 Harassment can also arise by association, where someone is harassed because they are associated with someone with a protected characteristic, for example having a family member of a particular religion.

5.5 A single incident can amount to harassment.

5.6 A person may be harassed even if they were not the intended target. For example, a person may be harassed by racist jokes about a different ethnic group if the jokes create an offensive environment.

6. Examples of harassment

Harassment can occur in many forms, and can take place either at work, outside work, in person, or online. While this is not an exhaustive list, examples of harassment include:

- "banter", jokes, taunts or insults that are sexist, racist, ageist, transphobic, homophobic or derogatory against any other protected characteristic;
- unwanted physical behaviour, for example, pushing or grabbing;
- excluding someone from a conversation or a social event or marginalising them from the group;
- derogatory comments about pregnancy, maternity leave or IVF treatment;
- mimicking or making fun of someone's disability;
- derogatory or offensive comments about religion;
- unwelcome comments about someone's appearance or the way they dress that is related to a protected characteristic;
- "outing" (i.e. revealing their sexual orientation against their wishes), or threatening to "out", someone;
- consistently using the wrong names and pronouns following the transition of a person's gender identity;
- displaying images that are racially offensive;
- excluding or making derogatory comments about someone because of a perceived protected characteristic, or because they are associated with someone with a protected characteristic.

7. Meaning of sexual harassment

7.1 Harassment may be sexual in nature. Sexual harassment is any unwanted physical, verbal or non-verbal conduct of a sexual nature that has the purpose or effect of violating a person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

7.2 A single incident can amount to sexual harassment.

7.3 Sexual harassment includes treating someone less favourably because they have submitted or refused to submit to unwanted conduct of a sexual nature, or that is related to gender reassignment or sex, in the past. This would include situations where the reason for the less favourable treatment is the victim’s rejection of or submission to harassment from a third party.

7.4 Employers are legally obliged to take reasonable steps to prevent sexual harassment of their workers in the course of their employment and by third parties, such as customers, members of the public, suppliers, consultants and/or contractors.

7.5 **Examples of sexual harassment**

Sexual harassment can occur in many forms, and can take place either at work, outside work, including at social events organised by the employer (e.g. Christmas lunch), in person, or online. While this is not an exhaustive list, examples include:

- physical conduct of a sexual nature, unwelcome physical contact or intimidation;
- persistent suggestions to meet up socially after a person has made clear that they do not welcome such suggestions;
- showing or sending offensive or pornographic material by any means (e.g. by text, video clip, email or by posting on the internet or social media);
- unwelcome sexual advances, propositions, suggestive remarks, or gender-related insults;
- offensive comments about appearance or dress, innuendo or lewd comments;
- leering, whistling or making sexually suggestive gestures; and
- gossip and speculation about someone's sexual orientation or transgender status, including spreading malicious rumours.

8. Meaning of Bullying

8.1 There is no legal definition of bullying. However, the Authority regards it as conduct that is offensive, intimidating, malicious, insulting, or an abuse or misuse of power, and usually persistent, that has the effect of undermining, humiliating or injuring the recipient.

8.2 Power does not always mean being in a position of authority but can include both personal strength and the power to coerce through fear or intimidation.

8.3 Bullying can be physical, verbal or non-verbal conduct. It is not necessarily face to face and can be done by email, phone calls, online (cyber-bullying) or on social media. Bullying may occur at work or outside work.

8.4 If the bullying relates to a person's protected characteristic, it may also constitute harassment and, therefore, will be unlawful.

8.5 **Examples of bullying**
Whilst this is not an exhaustive list, bullying may include:

- physical, verbal or psychological threats;
- excessive levels of supervision; and
- inappropriate and derogatory remarks about a person's performance.

8.6 It is important to understand that legitimate, reasonable and constructive criticism of a person's performance or behaviour, or reasonable instructions given to people in the course of their employment, will not of themselves amount to bullying.

9. Microaggressions

9.1 Microaggressions - sometimes called micro-incivilities - are statements, actions, or incidents that are regarded as indirect, subtle, or unintentional discrimination against members of a marginalised group such as a racial/ethnic minority or religion/faith groups. They are sometimes referred to as "death by a thousand cuts". Microaggressions generally take one of three forms:

- Micro-assaults: Conscious and obvious insults made verbally or non-verbally to a marginalised individual or group, for example directing limp-wristed hand gestures towards a gay colleague and saying "It's just a joke".
- Micro-insults: Unintentionally insensitive remarks or assumptions based on stereotypes, for example saying to a person with a disability "You don't look disabled to me".
- Micro-invalidations: Where a person denies, or seeks to cancel, the feelings and lived experiences of a marginalised individual or group, for example a white person saying "I don't think the UK has a problem with racism - some people are just too sensitive".

9.2 Serious microaggressions can amount to unlawful harassment, bullying or discrimination but even less serious microaggressions can negatively impact the health and wellbeing of the person experiencing them.

10. Meaning of victimisation

10.1 Victimisation includes subjecting a person to a detriment because they have done, or are suspected of doing or intending to do, any of the following protected acts:

- bringing proceedings under the Equality Act 2010;
- giving evidence or information in connection with proceedings under the Equality Act 2010;
- doing any other thing for the purposes of or in connection with the Equality Act 2010; or
- alleging that a person has contravened the Equality Act 2010.

10.2 **Examples of victimisation**

Whilst this is not an exhaustive list, victimisation may include:

- denying someone an opportunity because it is suspected that they intend to make a complaint about harassment;
- excluding someone because they have raised a grievance about harassment;
- failing to promote someone because they accompanied another staff member to a grievance meeting.
- dismissing someone because they gave evidence on behalf of another staff member at an employment tribunal hearing.

11. Dealing with bullying, harassment or victimisation

11.1 The Authority encourages anyone who feels they have been bullied, harassed or victimised to speak up about their experience and concerns. This will enable the Authority to take appropriate action and provide support. Anybody who witnesses bullying, harassment or victimisation of another person (whether a colleague or a member of the public/third party) is also strongly encouraged to raise this with the Authority without delay.

11.2 **Informal procedure**

The person may not know that their behaviour is unwelcome or upsetting. An informal discussion may help them to understand the effects of their behaviour and agree to change it.

11.3 If the member of staff feels able to, they may decide to raise the issues with the other person themselves, to make clear that their behaviour is not welcome and ask them to stop. A note of the date and a summary of what was said/discussed and any agreed actions should be kept.

11.4 Alternatively, if the member of staff does not feel able to speak directly to the other person, they could consider asking their manager, their manager's manager, or a member of the HR team for support.

11.5 The member of staff may, or may not, want someone else to talk to the other person on their behalf and, where possible, their wishes should be respected. However, if the welfare or safety of the individual, or others, is at risk or the allegations are particularly serious, the decision may be taken take further action as appropriate. In such cases, and where possible, this will be discussed with the member of staff first.

11.6 A note of the date and a summary of what was said/discussed and any agreed actions should be kept. This will be useful and relevant if the unacceptable behaviour continues and a formal complaint is submitted.

11.7 Staff may prefer not to discuss an issue with anyone at work, if that is the case help and support is also available through the employee assistance programme (EAP). Staff can use the EAP to speak to an independent adviser on a confidential basis about any issue that is troubling them. Further details are available on the X:drive X:\Corporate Services\Human Resources\Health Assured EAP\.

11.8 There may be other informal methods of resolving the problem depending on the circumstances and these can be fully explored at this stage.

11.9 If a member of staff is not certain whether an incident or series of incidents amounts to bullying or harassment, they should initially contact their manager or a member of the HR team informally for confidential advice.

11.10 **If the other person is not an Authority employee**

Bullying and harassment by third parties, such as customers, members of the public, suppliers, consultants and/or contractors will not be tolerated. Staff experiencing bullying, harassment or victimisation by a third party are encouraged to report this to their manager or a member of the HR team, so that they can provide advice and support on the best course of action.

11.11 **Formal procedure**

If a member of staff is not happy with the outcome of an informal process, or feel it is not appropriate to approach the issue informally, they may decide to raise it formally.

11.12 To make a formal complaint, the member of staff should discuss it first with their manager. If their complaint is about their manager, they should raise it with their Section Head or

Director, or another Section Head or Director. If for any reasons they are unable to approach their manager, Section Head or Director, they can speak to a member of the HR team.

11.13 All written complaints should set out full details of the conduct in question, including the name of the person or persons of the alleged perpetrators, any reason the complainant believes they have been victimised, the nature of the victimisation, the date(s) and time(s) at which it occurred, the names of any witnesses and any action that has been taken so far to attempt to stop it from occurring.

11.14 A formal complaint can be submitted using the Authority's Grievance Procedure and the process detailed within that policy will then be followed.

11.15 All formal complaints will be investigated fully, in an objective and confidential way, while also ensuring that the rights of the member of staff and the other person are respected.

11.16 Every effort will be made to complete an investigation into bullying, harassment or victimisation as quickly as possible.

11.17 Where the alleged bully/harasser/victimiser is a third party, the grievance procedure may need to be adjusted to ensure appropriate investigations are conducted and this will be discussed with the member of staff, along with who will report the issue to the third party.

12. Witnesses

12.1 Staff who witness harassment or victimisation are encouraged to take appropriate steps to address it. Depending on the circumstances, this could include:

- intervening where they feel able to do so;
- supporting the victim to report it or reporting it on their behalf;
- reporting the incident where they feel there may be a continuing risk if they do not report it; and/or
- co-operating in any investigation into the incident.

12.2 All witnesses will be provided with appropriate support and will be protected from victimisation.

13. Appeals

13.1 If staff are not happy with the outcome of the formal investigation, they have the right to appeal.

13.2 To submit an appeal, the member of staff should write to/email the Head of HR, setting out what aspects of the decision they are unhappy with and the reasons why. Appeals should be submitted without unreasonable delay and usually no longer than ten working days after you were informed of the decision.

13.3 A meeting will be arranged with the member of staff and another manager, usually a Director, to discuss the appeal in full and to try and reach a satisfactory solution. Staff must take all reasonable steps to attend this meeting and they may be accompanied by a colleague or trade union representative.

13.4 The outcome of the appeal, which will be final, will be confirmed in writing.

14. Support for those affected or involved

14.1 It is understood that anyone affected by, or involved with, a complaint of bullying, harassment or victimisation may feel anxious or upset and the Authority will do what it can to support staff.

14.2 If staff feel they cannot continue to work in close contact with the alleged bully/harasser/victimiser, any requested changes to working arrangements during the investigation into the matter will be seriously considered.

14.3 For emotional support, staff can access free, confidential counselling from the EAP. Further details are available on the X:drive X:\Corporate Services\Human Resources\Health Assured EAP\.

14.4 Anyone who complains or takes part in good faith in a bullying, harassment or victimisation investigation must not suffer any form of detrimental treatment or victimisation. If a member of staff feels they have suffered such victimisation, they should inform their manager or a member of the HR team as soon as possible.

14.5 Regardless of the outcome of a complaint, careful consideration will be given on how to best approach any ongoing working relationship between the member of staff and the individual concerned, including any third party. For example, depending on the specific circumstances, it may be considered to amend job duties, work base or reporting lines of either person. Alternatively, it may be decided that work place mediation or counselling is appropriate.

15. Sensitivity and confidentiality

15.1 Anyone involved with an informal or formal complaint about bullying, harassment or victimisation, including witnesses, must keep the matter strictly confidential and act with appropriate sensitivity to all parties. Individuals who are not involved in the complaint or investigation should not be told about it.

15.2 If staff are found to have breached confidentiality or acted without due care or sensitivity in a case of bullying, harassment or victimisation, the Authority may take disciplinary action against individuals, up to and including dismissal (or other appropriate action for non-employees).

16. Consequences of breaching this policy

16.1 If, following a formal investigation, it is found that a member of staff has committed, authorised or condoned an act of bullying, harassment or victimisation, the issues will be dealt with as a possible case of misconduct or gross misconduct.

16.2 Disciplinary action against a member of staff, up to and including dismissal (or other appropriate action for non-employees), may be taken. Staff should be aware that any aggravating factors, such as abuse of power over a more junior colleague, will be taken into account in deciding what disciplinary action to take.

16.3 Anyone who complains or takes part in good faith in a bullying, harassment or victimisation investigation must not suffer any form of detrimental treatment or victimisation. If it is found

that a member of staff has victimised anyone in this way, the Authority will instigate disciplinary action against them, up to and including dismissal (or other appropriate action for non-employees).

16.4 Staff should refer to the Authority's Disciplinary Procedure for further information.

17. Allegations of bullying, harassment or victimisation made against Members or the Chief Executive

17.1 A complaint received concerning a Member, shall be referred directly to the Monitoring Officer, who will deal with the complaint in accordance with the Procedure for Local Assessment of Code of Conduct Complaints.

17.2 A complaint received concerning the Chief Executive, shall be referred directly to the Chair of the National Park Authority by the Head of HR.