

## BULLYING IN THE WORKPLACE/ PROFESSIONAL BEHAVIOUR

Described as the most “destructive phenomenon plaguing medical culture”<sup>1</sup> workplace bullying poses significant risks to patient safety and quality of patient care<sup>2</sup>, staff morale and job satisfaction<sup>3</sup> and the physical and psychological wellbeing of doctors and their co-workers.<sup>4</sup>

This *Standpoint* provides a contextual overview of the issues and describes ASMS’ involvement. It looks at what constitutes bullying and its impact, as well as research to understand what is happening and initiatives to address unprofessional behaviour. It also advises members what to do if accused of bullying, and how to complain if members experience or witness this behaviour.

### Introductory comments

In 2011 the ASMS published advice to members in the form of the first *Standpoint* on bullying. ASMS led the way within the medical profession in recognising the scale and significance of the problem and in providing targeted advice to members to deal with bullying behaviour or complaints. Several years later, bullying and harassment of employees (and other unprofessional behaviour) still looms large as a major problem across the health workforce.

At the same time, however, a number of discussions about these issues have been occurring within and across the sector, and there are tentative signs of progress. All of the health unions are now involved in their own campaigns and there has been significant work done by some of the Colleges (in particular, the Royal Australasian College of Surgeons <https://www.surgeons.org/about-respect/>).

ASMS has continued to lead the way by challenging District Health Boards (DHBs) whenever they have tried to introduce or enforce poor policies and by insisting on sensible processes to deal with bullying (and other) complaints. We have also led an initiative to investigate the best ways to avoid bullying, which included arranging a cross-sector visit to Australia to learn about the Cognitive Institute’s Vanderbilt-based programmes. We saw merit in these programmes and subsequently encouraged DHBs to adopt them within New Zealand.

As of late 2017 around a third of DHBs have embraced this new way of working.

In 2011, we reported our growing concerns about bullying in light of the increased numbers of bullying complaints being made against ASMS members. We noted that this might have resulted from a heightened awareness of bullying within society in general, rather than an actual increase in instances of bullying. Either way, it is pleasing to note the number of complaints has steadily fallen in the past two years, and complaints that do arise are often being dealt with in a better way.

One indication of the progress that has been made involves the greater awareness of unprofessional and bullying behaviour as problems that must be addressed. All health sector employees are now expected to understand what bullying is and to know not to bully their colleagues or to know not to stand by when others are being bullied.

DHBs have also been put on notice; ASMS expects them to do more to address bullying and unprofessional behaviour than simply having a formal policy. In addition to policies that are up-to-date with current best practice, ASMS expects DHBs to have good processes in place to manage complaints safely (for all concerned), without risk of career or other retribution.

Instead of providing an ambulance at the bottom of the cliff or a fence at the top, we expect DHBs to make sure there’s no cliff to fall over.



### ASMS Research

ASMS has carried out research into the prevalence and impact of bullying in New Zealand's senior medical workforce, and the results were published as a *Health Dialogue* in November 2017. The publication is available online at <https://www.asms.org.nz/wp-content/uploads/2017/11/ASMS-Health-Dialogue-Bullying-WEB.pdf>.

The ASMS survey of senior doctors and dentists working in New Zealand's public health system found more than a third had been bullied at work, and two-thirds had witnessed others being bullied. Behaviour described in the report ranges from violence, threats and intimidation through to humiliation, persistent criticism, allegations, gossip, exclusion and excessive monitoring of work.

### The safe workplace

Employers have statutory and common law obligations to provide a safe and secure work environment. The statutory obligations are set out in the Health and Safety at Work Act 2015 and the common law obligations have been repeatedly affirmed in case law. Employers have a well-recognised duty to maintain the relationship of trust and confidence with their employees, which will be negated by an employer's failure to address serious and sustained acts of bullying in the workplace.

The Health and Safety at Work Act 2015 Act and related regulations require employers to ensure the health and safety of employees at work and to eliminate or minimise risk, so far as reasonably practicable. This includes risk to both physical and mental health. In securing the health and safety of staff, employers must take all practicable steps to:

- provide and maintain a healthy and safe working environment
- provide their staff with facilities for their health and safety while at work, and maintain these facilities
- ensure that it has appropriate resources to eliminate or minimise risk and have up to date knowledge of workplace health and safety
- ensure that staff aren't exposed to hazards when in the workplace or when they're working near the workplace and under employer control
- develop procedures to deal with emergencies.

The Health and Safety at Work Act defines "health" as physical and mental health. The word "hazard" has a wide definition and includes anything that is an actual or potential cause or source of harm. This would include a person putting others at risk of workplace stress due to bullying or harassment.

Accordingly, as part of providing a safe working environment, the employer should:

- have a formal policy on bullying and harassment
- act to eliminate or reduce workplace bullying and harassment
- act with fairness and regard to the principles of natural justice
- act with due confidentiality and impartiality
- display sensitivity and concern for human dignity
- act with due speed and responsiveness
- act in good faith and in accordance with its policies and procedures.

ASMS does not see that policies to deal with bullying and harassment are the full answer. Research suggests that some people will continue to bully others despite policies that are in place.

Further measures are needed, involving education, training and non-punitive processes that focus on eliminating bullying and harassment across the health sector.

## What is bullying?

The concept of bullying has not been finally defined in New Zealand law but good information about what constitutes bullying is available from WorkSafe New Zealand at <http://www.worksafe.govt.nz/worksafe/toolshed/bullying-prevention-toolbox>:

### **WorkSafe defines bullying as:**

*Bullying at work is repeated and unreasonable behaviour directed towards a worker or a group of workers that can lead to physical or psychological harm.*

Workplace bullying can be defined as an escalating process where individuals repeatedly, and over a period of time, experience negative actions and behaviours from the people they encounter at work<sup>5</sup>.

Elements of this definition were reflected in a 2005 Employment Relations Authority determination<sup>6</sup> which defined bullying as:

*“Bullying may be seen as something that someone repeatedly does or says to gain power and dominance over another, including any action or implied action, such as threats, intended to cause fear and distress. The behaviour has to be repeated on more than one occasion and there must be evidence that those involved intended or felt fear.”*



***The range of behaviours that constitute bullying is wide and includes:***

- physical violence or intimidation
- vexatious reports and malicious rumours
- verbal threats, yelling, screaming, offensive language or inappropriate comments
- non-communication, excluding or isolating the person (including assigning meaningless tasks unrelated to the job or giving him/her impossible tasks or enforced overwork)
- deliberately changing work rosters to inconvenience the individual
- undermining work performance by deliberately withholding information or by 'sabotage'
- inappropriate or unwelcome sexual comment or attention
- making threats about job security
- forwarding emails with ill intent
- overt or passive aggression
- exertion of excessive power or control over an individual
- invasion of an individual's privacy
- spreading of malicious rumours or untruths about others
- undue criticism including 'career retribution' through inappropriate or unfair feedback in supervision or other reports

- ridicule
- inappropriate gestures and comments
- differential treatment
- scapegoating
- electronic bullying – excessive messaging, unrealistic timeframes, out of hours harassment
- unwarranted disrespect
- abuse of position - whether the position is official or procedural
- withholding advancement or resources the person would otherwise be entitled to whether that entitlement is due to common practice or achievement
- unfair or inequitable treatment of the person being bullied.

This list is not exhaustive but indicates common bullying behaviour.

SMOs often work in a 'pressure cooker' environment and when things go wrong, the 'lid might pop'. While still inappropriate, a single or isolated incident of one of the types of behaviour listed above will not usually amount to bullying. A complaint will usually involve behaviour that has occurred repeatedly, or involves more than one of the actions listed.

Please note that behaviour not defined as bullying or harassment may still be considered inappropriate, and can lead to disciplinary outcomes.

## Examples of bullying

1. An SMO in a small predominantly nurse-led service found himself being excluded from meetings and decision-making by the service manager. Upon asking why, he was told it was because the team did not want to hear his advice and found him divisive and unfriendly. The SMO was shocked and took pains to quietly ask nurse colleagues if there were any issues. The feedback was positive and he was told by several that the manager in question always operated in this way in order to divide and rule. The SMO made several requests for a meeting with the manager but these were refused. Over a period of 18 months the SMO was denied leave, CME, secretarial assistance and generally treated differently and poorly by the manager until he was at the end of his tether. On seeking ASMS assistance he was directed to the bullying resources to consider if this was a situation of bullying. Once he realised he was at the mercy of a serial bully (surrounded by colleagues of a similar mind), the SMO laid a formal complaint of bullying. The employer determined that this was bullying and the manager was 'retrained'.
2. A GP working for a non-DHB organisation was advised on numerous occasions that his applications for CME and other leave were "inappropriate" and that it was the organisation's policy that he take annual leave as directed. He was also denied leave to attend clinical meetings with colleagues from other parts of the region. He was challenged on numerous occasions about his practice, and on asking for assistance was told there was no avenue for this. After almost two years of this, his confidence and morale were diminishing and he wondered how he could address his shortcomings. Happily, while his manager was on leave, the acting manager asked if he was attending the next clinical get-together and for the first time he did so. In discussion with these colleagues from elsewhere, he came to realise that he was treated completely differently and he was in fact being bullied. With ASMS advice he laid a complaint of bullying and, following a difficult process, the employer finally agreed that the manager had been bullying him and others and needed to be 'retrained'. The manager resigned at short notice soon after.
3. An SMO (A) had been employed by a DHB for 18 months without issue when a new SMO (B) was appointed to the team. From the outset of his employment, SMO B made sexist and derogatory comments to a number of female members of staff, including SMO A. Shortly after he started work, SMO B singled her out on a number of occasions, unjustifiably criticising her work in front of colleagues. Whenever she attempted to discuss issues with SMO B regarding his patients, he would react in a very angry manner, shouting and berating her, and accusing her of interfering with his patients. This behaviour continued for a number of weeks and culminated in an incident when she was approached by SMO B in a corridor and physically threatened. She reported it to her service manager and subsequently made a formal complaint. SMO B resigned prior to the investigation into his behaviour.

### What is NOT bullying behaviour?

Complaints of bullying should only be made where bullying has actually occurred, so as well as defining what constitutes bullying, we also need to understand what bullying is not.

Reasonable instructions given by an employer are not bullying. Neither are appropriate instructions or teaching that occurs in the process of training. Generally, one instance of 'out of the blue' unpleasant behaviour from a colleague or manager is not bullying. Specific examples of behaviour that do not constitute

bullying (identified for Australian legislation) include:

- reasonable action taken in a reasonable manner by an employer to transfer, demote, discipline, counsel, retrench or dismiss an employee
- a decision by an employer, based on reasonable grounds, not to award or provide a promotion, transfer, or benefit in connection with an employee's employment
- reasonable administrative action taken in a reasonable manner by an employer in connection with an employee's employment.

### Examples of bullying complaints that were not bullying behaviour

1. A surgeon entered the theatre to carry out a short procedure only to find the patient awake. Asking the anaesthetist why the patient was still awake, the surgeon was told that the 'bloods' were unavailable because the nurse could not remember her log in. The surgeon firmly requested that the nurse find someone who could remember the log in so they could get on with it. This resulted in a bullying complaint from the nurse and a full investigation by the employer. ASMS submitted that this complaint did not meet the threshold for bullying, but the employer went ahead anyway. The surgeon was cleared with ASMS assistance but only after a stressful series of delays.

2. An anaesthetist, responsible as training supervisor for an RMO on a training run, had grave concerns about the RMO's abilities in theatre. He discussed these concerns with SMO colleagues from a previous surgical run who had also raised issues. As a result he was very particular in his training but eventually marked the RMO down for the run. The RMO in response claimed he had been bullied by the SMO and laid a formal complaint. He claimed the alleged bullying was the reason he failed the run. This complaint was treated seriously by the employer and was formally investigated. Fortunately, the SMO had carefully documented the RMO's failings and could show the failure was due to a lack of competence rather than any bullying or unfair treatment by the SMO. Although cleared, the SMO has now declined further duties as training supervisor due to his fears that at any time an allegation of bullying could be used as 'revenge' for a poor training report.

As noted earlier, the fact that poor behaviour was not found to meet the definition of bullying or harassment does not mean that such behaviour is acceptable.

## Perceptions of bullying

A complaint of bullying is just the same as any other allegation of misconduct and is subject to the same legal rules and principles of natural justice. The employer is obliged to provide a fair and just process which includes objectively assessing what actually occurred. A complaint of bullying that is found to be malicious, mischievous or vexatious should be seen as a disciplinary matter in itself, due to the damage such complaints can cause.

## Dealing with bullying

The best way to deal with bullying is to avoid it happening in the first place. ASMS encourages members to take part in the various courses and programmes being run by DHBs and their Colleges. Most bullying behaviour is still 'accidental', often driven by tiredness and/or fatigue or 'a rush of blood' due to frustration or irritation. Research indicates that an employee who acts once in this way will not do so again in 80% of cases, if advised that such behaviour is unacceptable. It is even better if they then address the causes of their behaviour (eg, excessive fatigue or frustration).

ASMS expects and encourages members who see others being treated inappropriately to quietly speak to the person responsible for the unprofessional behaviour. If they feel it would be inappropriate or unsafe for them to do so, they should report the behaviour to an appropriate person so their employer can deal with the situation and prevent it from escalating.

## If you are being bullied

If you believe you have been bullied or harassed:

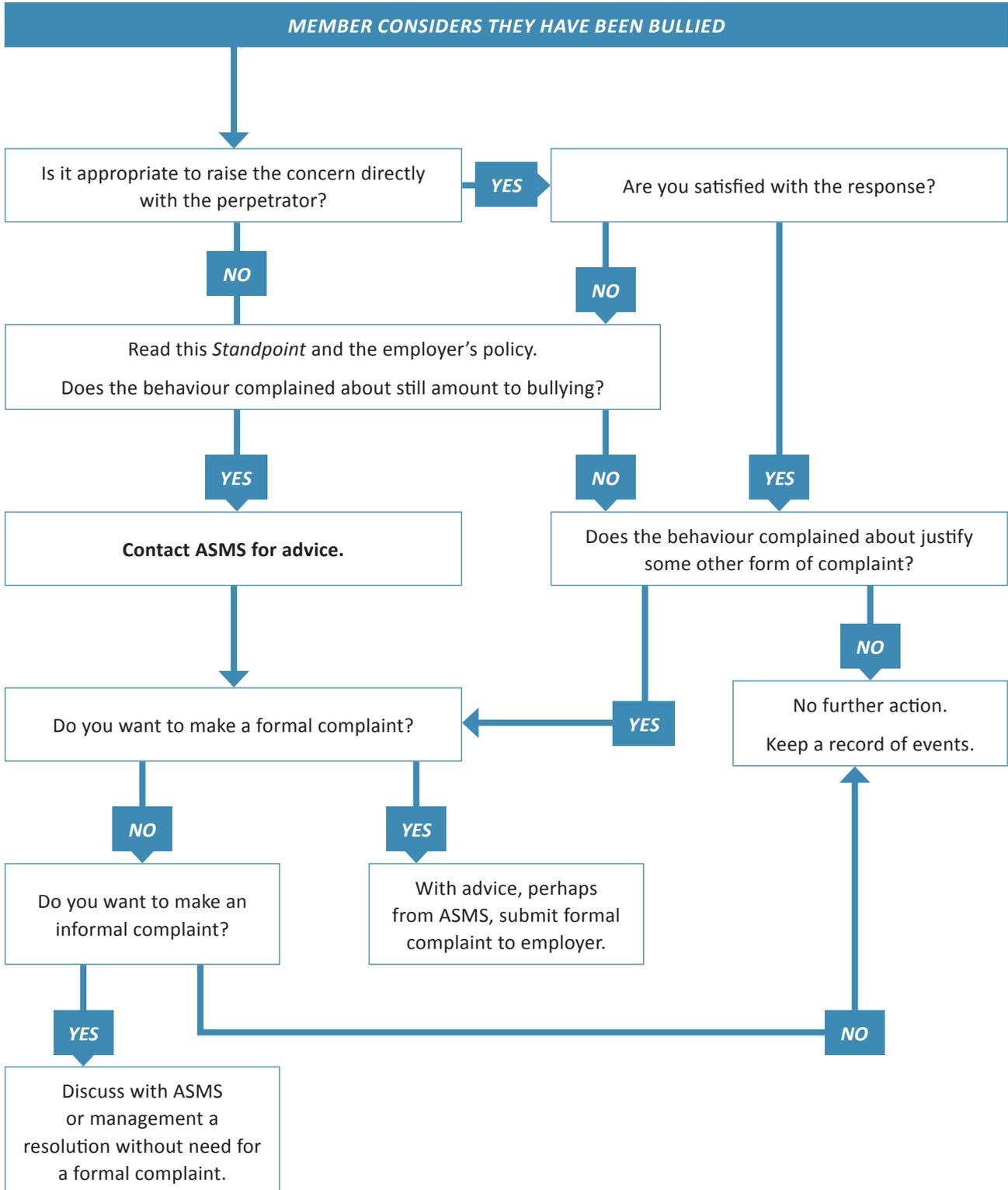
- In the first instance, consider if it is appropriate to discuss the behaviour with the perpetrator. Our experience has been that in most cases the other person did not intend to offend or bully, and that they will be instantly remorseful.
- If it is not appropriate to approach the perpetrator, obtain a copy of your employer's bullying and harassment policy and consider whether the behaviour you have experienced constitutes bullying.
- Consider confidentially contacting a support person or the ASMS for further advice and assistance.
- If the behaviour does constitute bullying and/or harassment and you wish to pursue the matter, lodge a complaint about the behaviour. Note that the ASMS does not accept that complaints can be made anonymously or confidentially. We believe that this precludes a fair investigation.
- You can expect to have your complaint investigated fairly and independently, as far as is practicable.
- You can expect any bullying or harassment to stop once it has been brought to the attention of human resources, management, or the perpetrator.
- You can expect to be treated with respect and not victimised or disadvantaged for making a complaint.
- You should have a change of line management if the complaint is against a manager or the person who the complainant reports to.

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*“The best indicator of a sociopathic serial bully is not a clinical diagnosis but the trail of devastation and destruction of lives and livelihoods surrounding this individual throughout their life.” - Tim Field, British anti-bullying activist.*

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The following chart sets out how a complaint should proceed from the point of view of a complainant.





### Potential outcomes for a complainant

The complainant should be advised at the earliest opportunity of the outcome of the investigation into their complaint. This should preferably be done through a meeting with the complainant and a support person.

If the employer, after a thorough investigation, upholds the complaint of bullying they will make recommendations as to how the perpetrator will be dealt with. This could include any of the following:

- change reporting lines (where this has been an aspect of the complaint)
- change where the perpetrator is physically located (this may have already occurred as a health and safety measure)
- corrective action – such as requiring the perpetrator to take part in courses or programmes designed to address the type of behaviour that occurred

- facilitation - with a view to rebuilding the working relationship between the complainant and the perpetrator
- apology
- disciplinary action.

The employer is not obliged to inform the complainant of any action being taken against the perpetrator. However, the employer has a duty of care to ensure the safety of its employees. It would therefore be expected that any action taken by the employer would ensure that no further acts of bullying occurred. This may involve remedial and corrective action, or, in the most serious cases, the removal of the perpetrator from the workplace.

If the employer, after a thorough investigation, does not uphold the complaint, this decision and a full explanation of the reasons for it should be provided to the complainant.

If the employer decides that the behaviour complained of did not constitute bullying but was, however, inappropriate conduct, they may make recommendations as to how the person should be dealt with for the inappropriate conduct. This may include any of the courses of action described above.

ASMS would not expect any negative consequences for the complainant in either situation, provided a fair and proper investigation has been conducted. The only exception would be if the employer concluded that the claim was unsubstantiated and it was vexatious or malicious. Where there is a determination that the claim was vexatious or malicious, disciplinary action may be taken against the complainant.

Notably there have been occasions when the employer has got their decision wrong. Where the employer determines that bullying has taken place but the ASMS or employee cannot agree, there are avenues for appeal and legal remedies

### If a complaint of bullying is made against you

ASMS does not condone or accept bullying or harassment by (or against) our members.

It is not acceptable to expect, due to seniority (the 'power imbalance') or the automatic respect of colleagues, that bad behaviour will be accepted or ignored. No employee, regardless of their seniority, has a right to behave badly and no employee, regardless of their lack of seniority, has to put up with it. There is no longer an acceptance of an 'apprenticeship model' that allows for bad language, yelling, insults, overwork, and treatment as a 'dogsbody'. Trainees, house officers and registrars have reported fear of career retribution if they complain or report bullying or harassment, and this is clearly unacceptable.

It could be the case that an SMO is not behaving any differently than he/she has done for many years (and indeed has experienced him or herself). However, such behaviour may now be considered unacceptable and result in an allegation of bullying. Some recent complaints ASMS has seen have involved loud or aggressive behaviour, even though this might be as a result of a 'flashpoint' in theatre and is behaviour that was not seen as unacceptable by the person complained against.

If a colleague or indeed the person who feels bullied approaches you to discuss their interpretation of your

behaviour, or feelings as a result of it, we strongly advise that you take time to listen and seriously consider what they have to say. In bringing the matter to you in the first instance they are showing that they think you might not be aware that your actions were seen as hurtful and amounted to bullying or harassment and need to understand how it felt for them. They are, in essence, showing trust in your reaction and 'doing you a favour'. Try not to be too defensive and consider carefully how to respond. Don't make things worse by escalating the behaviour or telling them they are wrong.

The first step if a formal complaint is made against you is to contact the ASMS and we will review the complaint to ensure it is valid.

This means that:

- allegations must be in writing and should not be anonymous
- the alleged bully must have access to all information relating to the complaint
- where the complainant is managed, led or trained by the alleged perpetrator, there should be a process where line management changes to protect both parties
- there should be a threshold examination as to whether the alleged behaviour constitutes bullying
- the complaint is not malicious or vexatious.

The second step is to examine your own behaviour to see if you have, in fact, been engaging in bullying behaviour. If you have (inadvertently or otherwise), it is important to recognise this. Following the complaint, you must not contact the complainant. If contact is inevitable, you should not discuss the complaint in any way. You must maintain a quiet dignity and take care not to act in such a way that could be seen as harassment or further bullying. You must not disclose the complaint or discuss it with anyone but your adviser.

### Potential outcomes for an alleged bully

If your employer investigates what occurred and decides reasonably that your behaviour did, in fact, constitute bullying, ASMS would then encourage you to think about how you can change the behaviour complained of and what assistance you might need to do so. A behaviour change will be necessary to minimise the risk of further complaints and/or disciplinary action which could lead to dismissal.

Once the employer has determined that the complaint of bullying is substantiated, they will recommend a course of action which could involve any of the following:

- apology
- corrective action – such as being required to attend anti-bullying workshop or other appropriate courses or programmes
- disciplinary action – penalties range from a verbal warning to dismissal depending on the severity of the complaint and impact on the complainant.

The employer does not always get it right, however, and where the ASMS and member feel that the employer's decision is unfair, an appeal might be made or further action taken as necessary.

### Procedural matters

If the employer does not follow its own procedures for dealing with the complaint, either from the complainant's or the alleged bully's perspective, and ASMS is representing either of the parties, ASMS would make the employer aware of this and expect appropriate action to be taken to rectify the mistake.

### Appeal of decision

If you are dissatisfied with the outcome of the investigation, ASMS will consider the member's reasons and assess whether it is appropriate to pursue the

matter further. If, after considering the reasons given by the member, ASMS considers that it is justified in pursuing the matter further, it will do so. This may result in the submission of a personal grievance.

### If you witness bullying behaviour

The behaviour of people who see bullying take place is very important. If a bystander ignores the bullying, it gives licence for such behaviour to continue. Stepping in or becoming involved in some way, where safe and appropriate to do so, can prevent further problems.

If you have a colleague whose behaviour is such that he/she is at risk of an allegation of bullying, you should consider carefully advising them of that risk, perhaps by explaining that the expectations of other colleagues, patients or staff have changed (or are different in New Zealand), and/or by directing them to this *Standpoint*.

If you think a colleague is being a bully at work, you should tell them so (as appropriate and collegially as possible) and make it clear that this is not acceptable. Addressing incidents of bullying behaviour as they occur will, in 80% of cases, stop further bullying or prevent the behaviour becoming more serious.

If the behaviour is serious and the person doing the bullying is unresponsive, we encourage you to report the issue to the appropriate person, either a manager or a clinical leader.



## Conclusion

Bullying at work is a longstanding problem but it is not acceptable. With ASMS' encouragement, DHBs are now acting to change their cultures and put in place low level systems that should prevent most bullying and other unprofessional behaviour. It is a sign of progress that your employers are now taking active steps to combat this behaviour. However, DHBs are also treating complaints more seriously and officiously. On some occasions, a DHB has insisted that proven bullying should be reported to the Medical Council. We do not agree that this is necessary or correct (and in fact such punitive responses to bullying can be seen to promulgate a bullying culture) but it is a work in progress.

The risks of being bullied have changed little but the risk of being accused of bullying has increased and is treated more seriously than ever. This ASMS *Standpoint* is intended to make members who are being bullied, have been accused of bullying, or are at risk of claims of bullying being made against them, aware of their rights and how ASMS expects the employer to deal with these complaints. We hope this contributes to a safer and healthier workplace.

Advice about managing workplace bullying is also available from the WorkSafe New Zealand website at <http://www.worksafe.govt.nz/worksafe/toolshed/bullying-prevention-toolbox>.

Remember: please contact your ASMS Industrial Officer if a complaint of bullying is made against you.

- 1 Jamieson, Mitchell et al. 2015
- 2 Paice and Smith 2009
- 3 Quine 1999
- 4 (Kivimäki, Virtanen et al. 2003, Hogh, Conway et al. 2016)
- 5 Einarsen and Raknes 1997, Einarsen 2000
- 6 Evans v Gen-i Limited unreported, D King, ERA, 29 August 2005, AA 333/05

