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Trust In Care

Policy for Health Service Employers on Upholding the Dignity and Welfare of Patient/Clients and the Procedure for Managing Allegations of Abuse against Staff Members

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Introduction

The health service is committed to promoting the well-being of patients/clients and providing a caring environment where they are treated with dignity and respect. Health service employers are also highly committed to their staff and to providing them with the necessary supervision, support and training to enable them to provide the highest standards of care. In order to achieve these objectives, a working group was established on a partnership basis between health service employers and unions to produce a policy for the public health sector on upholding the dignity and welfare of patients/clients.

The aim of this Policy is two-fold:

(i) *Preventative*: to outline the importance of the proper operation of human resource policies in communicating and maintaining high standards of care amongst health service staff;

(ii) *Procedural*: to ensure proper procedures for reporting suspicions or complaints of abuse and for managing allegations of abuse against health service staff in accordance with natural justice.

Terms of Reference

The terms of reference of the Working Group was to agree a policy document for the health service on the prevention of abuse of patients/clients by staff members and the management of allegations against staff members of patient/client abuse. This document is exclusively concerned with these issues in the context of the employment relationship. It is acknowledged however that health care and social care agencies have a duty of care to their patients/clients that goes beyond their duty as employers and this policy must therefore be accompanied by other safe care policies and statutory guidelines, such as ***Children First, National Guidelines for the Protection and Welfare of Children***.

The membership of the Working Group is set out in Appendix 6.

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Approach of the Working Group

The Working Group met for the first time on 30th October 2003 and held a further eight meetings.

The Group commenced its work by identifying a number of issues arising from the operation of the original Trust in Care Guidelines (2002):

- The need to produce a policy document which would be applied consistently across the health service
- The need to focus on abuse prevention by giving greater emphasis to the importance of human resource policies in communicating high standards of care and the role of local management in maintaining these standards and dealing promptly with shortfalls
- The fact that allegations of abuse may arise due to a lack of awareness on the part of staff regarding appropriate conduct and the employer's duty to protect staff from situations which render them vulnerable to such allegations
- The need to ensure that the document was consistent with the relevant provisions of related statutory guidelines such as ***Children First, National Guidelines for the Protection and Welfare of Children.***
- The need to devise a robust procedure for dealing with allegations of abuse against staff members which ensures that the rights of the staff member to natural justice, including a presumption of innocence, are protected whilst recognising that the welfare of patients/clients is paramount.

The Working Group also engaged in an extensive consultative process with the Department of Health and Children, health service employers and unions. All of these submissions were given due consideration in the drafting of this document.

This policy is the definitive document for the health service formally agreed between health service employers and unions and endorsed by the National Joint Council,

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1 *Policy Statement*

Dignity is an essential component of the quality of life for all people. Health service employers have a duty of care to protect patients/clients from any form of behaviour which violates their dignity and to maintain the highest possible standards of care. The majority of staff working in the health service are highly motivated and caring individuals who are committed to providing the highest possible quality of care. Health service employers have a duty of care to provide staff with the necessary supervision, support and training to enable them to deliver a high quality service and to protect staff from situations which may leave them vulnerable to allegations of abuse or neglect.

Where allegations of abuse of patients/clients are made against a staff member, the welfare and safety of the patient/client is of paramount importance. It is also acknowledged that staff members may be subjected to erroneous or vexatious allegations which can have a devastating effect on the person's health, career and reputation. Health service employers are therefore committed to safeguarding the rights of the staff member against whom allegations of abuse are made to a fair and impartial investigation of the complaint.

Each health and social care agency will discharge its corporate responsibility to protect the dignity and welfare of patients/clients entrusted to its care and to support staff with responsibility for them through the following measures:

- Ensure insofar as is reasonably practicable that sufficient resources are available to enable best practice standards of patient/client care to be delivered (see Appendix 1)
- Provide safe systems of work to minimise the potential for abuse
- Provide information leaflets which set out how patients/clients, relatives and members of the public can report concerns or complaints of abuse
- Rigorous application of recruitment and selection procedures to ensure that staff possess the required skills and attributes
- Provide induction for all new staff to ensure that they are aware of the standards of care expected from them

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- Provide effective supervision, support and training for all staff so that they are aware of the standards of care expected from them and shortfalls in standards are dealt with promptly
- Communicate the Trust in Care Policy to all staff so that they are fully aware that the welfare of patients/clients is of paramount importance and know the action to be taken if abuse is suspected or alleged
- Manage allegations of abuse against staff members promptly and with due regard for the rights of the staff member to fair procedures whilst safeguarding the welfare of patients/clients.

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2 What Constitues Abuse

The term 'abuse' can be subject to wide interpretation. For the purpose of this policy, abuse is considered to be any form of behaviour that violates the dignity of patients/clients. Abuse may consist of a single act or repeated acts. It may be physical, sexual or psychological/emotional. It may constitute neglect and poor professional practice. It may take the form of isolated incidents of poor or unsatisfactory professional practice, at one end of the spectrum, through to pervasive ill treatment or gross misconduct at the other. Repeated instances of poor care may be an indication of more serious problems within the organisation for which the individual employee cannot be held accountable .[1]

There are four broad definitions of abuse which can be used to illustrate the type of behaviour which may constitute abuse: physical, sexual, psychological/emotional or neglect (see Appendix 2).

[1] *Department of Health (2000) No secrets: Guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse.* Department of Health,London

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3 Abuse Prevention

3.1 Introduction

Health service employers are committed to promoting the well-being of patients/clients and providing a caring environment where they are treated with dignity and respect. Health service employers are also highly committed to their staff and to providing them with the necessary supervision, support and training to enable them to provide the highest standards of care. The proper operation of human resource policies helps to ensure that staff are aware of the standards of care expected from them and are protected from situations which may render them vulnerable to allegations of abuse. Particular attention should be paid to the following:

- Recruitment and selection
- Induction
- Probation
- Employee feedback, supervision and training

The document does not deal with these HR policies comprehensively but rather sets out the additional safeguards which should be incorporated into these policies in order to ensure the safety and protection of both patients/clients and staff and promote a caring and nurturing atmosphere.

Each health service employer should also ensure that the Trust in Care Policy is communicated to all staff and that they are made aware of their responsibilities to maintain a culture of vigilance and report any concerns or complaints of suspected abuse.

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3.2 Recruitment and Selection

Each health and social care agency should follow a rigorous recruitment and selection process for all job applicants to ensure that they possess the required skills, attributes and competencies for the particular job. This involves the following:

- Preparing a job description which clearly sets out the caring responsibilities of the job and a person specification which sets out the caring attributes required to perform the job to the highest standards. The job description should make specific reference to the duty of all employees to report concerns for the safety and welfare of patients/clients.
- Using the interview process to establish if applicants have a caring disposition.
- Verifying qualifications and validating all relevant information and following-up on gaps or inconsistencies in employment history.
- Offers of employment should be subject to receipt of satisfactory references* which should include a reference directly obtained from the applicant's current or most recent employer.

  ***Three references are required for positions in Children's Residential Centres.**
- Offers of employment should be subject to satisfactory garda clearance checks.
- Confirm the identity of the applicant by obtaining a driving licence or passport with the applicant's details together with their signature and photograph.
- Successful candidates should be required to sign a declaration form which obliges them to disclose any information which might have a bearing on their suitability for the position. In the event that information comes to light which was not disclosed and affects their suitability, this could result in the termination of the person's employment.
- Where practicable the same recruitment procedure should apply to the recruitment of all staff, irrespective of whether the posts are being filled on a temporary or permanent basis.

Where health service employers make use of volunteers who have significant and regular contact with patients/clients, they should undertake the same checks as they would when employing paid staff.

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3.3 Induction

All new staff should be required to undergo an induction process to ensure that they are clear about the standards of care expected from them and any protocols to be followed when interacting with patients/clients. These standards and protocols should also be conveyed through a written **Code of Behaviour** to ensure that staff carry out their duties in a manner that is respectful of the dignity of patients/clients.

Each health and social care agency should develop its own Codes of Behaviour for each category of staff which reflect best practice in standards of patient/client care. Codes of Behaviour offer protection not only to patients/clients but also to staff by providing a safe context within which to work and alerting them to situations which could render them vulnerable to allegations of abuse. Staff should be given appropriate guidance on maintaining best practice in relation to areas such as:

- Challenging behaviour
- Personal and intimate care
- Conducting clinical examinations/assessments especially those of an intimate nature
- Appropriate physical contact
- Control and restraint
- Boundaries of social interaction with patients/clients
- Medication
- Handling of patient/clients' money and personal possessions

These Codes of Behaviour should be updated in line with current best practice and be reinforced through ongoing supervision, employee feedback and training.

3.4 Probation

Following the induction process all staff should be aware of their role and responsibilities and the standards of care expected from them. Staff should also be required to undergo a probationary/assessment period to establish their suitability for the job. The basis for assessing performance during this period should be explained by the manager to the employee at the outset so that expectations regarding the purpose of the probationary period are common.

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As line management are responsible for monitoring the employee's progress during this period there should be regular review meetings to advise the employee whether or not the required standards are being attained. Where any shortcomings exist, training and other appropriate assistance to enable employees to reach the required standards should be provided. If the employee does not demonstrate his/her suitability despite training and other support his/her employment should not be continued.

3.5 Employee Feedback, Supervision and Training

Staff who have satisfactorily completed their probationary period should continue to receive regular performance feedback, supervision and training to assist them in delivering high quality standards of care.

Managers have a duty to be vigilant and to ensure that the required standards of care are maintained. If an employee breaches the organisation's rules or his/her work falls short of the required standards the manager is responsible for addressing these shortfalls and, where appropriate, operating the progressive stages of the disciplinary procedure. Early intervention is key to ensuring that poor working practices do not develop and culminate in a more serious incident.

3.6 Communicating the Trust In Care Policy

Each staff member should be given a copy of the Trust in Care Policy. Briefing sessions should be organised for all staff to ensure that staff are aware of their obligations towards patients/clients and know the action to take if abuse is suspected or alleged. Attendance at these briefing sessions should be mandatory.

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At the briefing sessions staff should be made aware of their role in promoting a culture of vigilance and clearly informed that the safety and well-being of patients/clients must take priority over all other considerations, including loyalty to work colleagues. Staff should be assured that their concerns will be treated seriously and they will be fully supported throughout the process, regardless of whether or not abuse is found to have occurred.

Staff should be given appropriate guidance on behaviours which indicate that a patient/client may be at risk (e.g. they should be alert to anyone who is spending excessive time alone with children or paying excessive attention to particular patients/clients).

Staff should receive guidance on dealing with complaints of abuse from patients/clients in particularly vulnerable groups, such as children, older people, persons with intellectual disabilities or persons with progressive neurological illnesses e.g.:

- Encourage the patient/client to give as much detail as possible but avoid asking "leading questions", i.e. questions which suggest certain actions might have occurred or which name particular people who may have been involved. Allow the patient/client as much time as possible.
- Do not press the patient/client for details beyond that which s/he is willing to disclose.
- Do not promise to keep the information a secret.

Volunteers should be informed of the policy and procedures for reporting complaints or concerns regarding the welfare of patients/clients.

3.7 Monitoring Awareness and Implementation of the Policy

A form should be circulated to all Heads of Department at least once a year to remind them of their responsibility to ensure that all staff are familiar with the Policy and relevant Codes of Behaviour and copies of the Policy and Codes are readily accessible.

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4 Procedures for Receiving a Complaint of Abuse

4.1 Introduction

Information suggesting that abuse may have occurred can come from a variety of sources. The matter may, for example, be raised by the person who is abused, a concerned relative, or a member of staff. It may come in the form of a complaint, it may be an expression of concern, or it may come to light during a needs assessment.

Any staff member who receives information, suspects or is concerned that a patient/client has been abused, is being abused or is at risk of abuse has a duty of care to report the matter as soon as possible to his or her immediate line manager. The staff member is not responsible for deciding whether or not abuse has occurred but is obliged to report suspicions or allegations of abuse so that appropriate action can be taken.

Staff who make a complaint or express concerns that abuse may have occurred should be reassured that:

- they will be taken seriously;
- they will be protected from the risk of reprisals or intimidation;
- complaints made in good faith are covered by the defence of qualified privilege (see appendix 1)
- they will be kept informed of action that has been taken and its outcome.

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4.2 Reporting Procedures

The following reporting procedures should be followed by staff in the event of abuse being suspected or alleged. In the event that a staff member feels inhibited for any reason from reporting his or her concerns to the immediate manager or if they feel that inappropriate or insufficient action has been taken, they should raise the matter with a more senior member of management.

a) Staff member receives a complaint of abuse from a patient/client, relative/guardian or member of the public

A staff member who receives a complaint of abuse from a patient/client, relative/guardian or member of the public should ensure that the details of the alleged abuse are fully documented including dates, times and any witnesses to the alleged incident. The statement should be read back to the person making the complaint to ensure accuracy. The staff member should then report the matter immediately to his/her supervisor.

(b) Staff member suspects abuse

A staff member who suspects that a patient/client may have been abused should notify his/her immediate supervisor without delay. The staff member should outline in writing the grounds on which his/her concerns are based. This report should be submitted without delay. The staff member should not question the person against whom the complaint is made.

(c) Staff member observes another staff member engaging in abusive behaviour towards a patient/client

A staff member who witnesses another staff member engaging in inappropriate behaviour towards a patient/client should intervene or seek help to stop the behaviour. The staff member should ensure that the patient/client is not in any immediate danger and receives the necessary treatment and support. The staff member should then immediately report the incident to his/her supervisor and complete a written report as soon as possible (preferably before going off duty) or within a fixed timeframe.

The Protection for Persons Reporting Child Abuse Act, 1998 provides immunity from civil liability to any person who reports child abuse "reasonably and in good faith" to designated officers of health boards or any member of An Garda Siochana. It also provides significant protections for employees who report child abuse covering all forms of discrimination up to, and including, dismissal.

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5 Managing Allegations of Abuse

5.1 Preliminary Screening

Managers are responsible for maintaining the required standards of care within their area of responsibility and for dealing with any shortfalls in standards or reports of suspected or alleged abuse. In the event that a manager receives a complaint of abuse, a preliminary screening should be carried out to establish the facts pertaining to the complaint. When dealing with the complaint, the manager should ensure, insofar as possible, that confidentiality is maintained and the staff member against whom the allegation is made is fully protected throughout the process.

The purpose of the preliminary screening is to ascertain if it is possible that an abusive interaction could have occurred. The preliminary screening of the complaint should be carried out by the immediate line manager of the person against whom the allegation is made. Under no circumstances should the preliminary screening attempt to establish whether or not the abuse actually occurred. The manager's role with regard to preliminary screening must include the following:

- The manager must immediately notify the staff member against whom the complaint is made of the details of the allegation and advise him/her that a preliminary screening process is being undertaken. The staff member must be advised in advance of his/her right to be accompanied at this meeting by a union representative or work colleague
- The manager must ensure that the details of the alleged or suspected abuse are documented
- The manager must arrange for a physical or psychological assessment of the patient/client to be carried out where appropriate
- The manager must consult with another member of management or appropriate professional colleague before he/she makes a final decision as to whether or not an abusive interaction could have occurred

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If the manager is satisfied that an ***abusive interaction could not have occurred*** and no further action is warranted, s/he should keep a record of the decision on the staff member's personnel file. The record should contain details of the precise nature of the allegation and state that a preliminary screening in respect of the complaint has been carried out in accordance with the Trust in Care Policy and a decision has been made by (specify names of relevant individuals) that an abusive interaction could not have occurred (giving the reasons for the decision) and therefore it is not necessary to proceed to a formal investigation. The purpose of this record is to protect the reputation of the staff member concerned.

If the preliminary screening indicates that an ***abusive interaction could have occurred*** then the matter should be referred to senior management who will decide whether the employee has a case to answer or whether the matter is capable of being dealt with at local level.

If it is decided that a formal investigation is warranted, a meeting should be arranged to advise the staff member of the intention to carry out a formal investigation. The staff member should be advised of his/her right to be accompanied at this meeting by a union representative or work colleague. The staff member should be given details of the complaint at the meeting and afforded an opportunity to make an initial response if s/he so wishes. S/he should be advised as to what happens next and told not to make contact with the complainant.

The staff member should be advised of support and counselling services that are available.

Allegations of child abuse against an employee must be dealt with in accordance with the provisions of ***Children First: National Guidelines for the Protection and Welfare of Children.***

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5.2 Protective Measures

At an appropriate stage in the process, management should take whatever protective measures are necessary to ensure that no patient/client/ or staff member is exposed to unacceptable risk. These protective measures are not disciplinary measures and may include:

- providing an appropriate level of supervision
- putting the staff member off duty with pay pending the outcome of the investigation.

The views of the staff member should be taken into consideration when determining the appropriate protective measures to take in the circumstances but the final decision rests with management.

Putting the staff member off duty pending the outcome of the investigation should be reserved for only the most exceptional of circumstances. It should be explained to the staff member concerned that the decision to put him/her off duty is a precautionary measure and not a disciplinary sanction.

5.3 Conducting the Investigation

Principles governing the investigation process

- The investigation will be conducted thoroughly and objectively in strict accordance with the terms of reference and with due respect for the rights of the complainant and the rights of the staff member to be treated in accordance with the principles of natural justice.

- The investigation team will have the necessary expertise to conduct an investigation impartially and expeditiously. Where appropriate, the investigation team may request appropriately qualified persons to carry out clinical assessments, validation exercises, etc.

- Confidentiality will be maintained throughout the investigation to the greatest extent consistent with the requirements of a fair investigation. It is not possible however to guarantee the anonymity of the complainant or any person who

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participates in the investigation.

- A written record will be kept of all meetings and treated in the strictest confidence.

- The investigation team may interview any person who they feel can assist with the investigation. Staff are obliged to co-operate fully with the investigation process and will be fully supported throughout the process.

- Staff who participate in the investigation process will be required to respect the privacy of the parties involved by refraining from discussing the matter with other work colleagues or persons outside the organisation.

- It will be considered a disciplinary offence to intimidate or exert pressure on any person who may be required to attend as a witness or to attempt to obstruct the investigation process in any way.

Steps in conducting the Investigation

- The investigation will be conducted by the designated person(s) agreed between the parties.

- The investigation will be governed by clear terms of reference based on the written complaint and any other matters relevant to the complaint. The terms of reference shall specify the following:
  - The investigation will be conducted in accordance with the Trust in Care Policy;
  - The timescale within which the investigation will be completed;
  - The investigation team may set time limits for completion of various stages of the procedure to ensure the overall timescale is adhered to;
  - Scope of the investigation i.e. the investigation team will determine whether or not the complaint has been upheld and may make recommendations (other than disciplinary sanction) where appropriate;

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- The staff member against whom the complaint is made will be advised of the right to representation and given copies of all relevant documentation prior to and during the investigation process, i.e.
  - Complaint
  - Witness statements (if any)

- The investigation team will interview any witnesses and other relevant persons. Confidentiality will be maintained as far as practicable.

- Persons may be required to attend further meetings to respond to new evidence or provide clarification on any of the issues raised.

- The investigation team will form preliminary conclusions based on the evidence gathered in the course of the investigation and invite any person adversely affected by these conclusions to provide additional information or challenge any aspect of the evidence.

- On completion of the investigation, the investigation team will form its final conclusions based on the balance of probabilities and submit a written report of its findings and recommendations to senior management.

- The staff member against whom the complaint is made will be given a copy of the investigation report and an opportunity to comment before any action is decided upon by management.

If the complaint is upheld, the matter will be referred to the chief executive officer (or equivalent) or designated manager who is empowered to take disciplinary action up to and including dismissal.[2]

[2] Persons who are authorised to make decisions regarding disciplinary action are not precluded from participating on the investigation team.

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5.4 Informing Relatives/Guardians

Where appropriate*, the patient/client's immediate relatives or guardian should be notified by an appropriate member of management as soon as practicable and advised that an investigation into the allegation is being carried out. The identity of the staff member against whom the allegation is made must not be disclosed at this stage. The relatives/guardian should also be assured that the patient/client has received appropriate support or treatment and that appropriate measures have been taken to ensure that no patient/client is at risk.

***Some patients/clients may not wish to have the matter reported to their relatives/guardian.**

Where appropriate patients/clients should be offered the support of an advocate to act on their behalf if they wish.

Anonymous Allegations

Anonymous allegations on their own cannot lead to a formal investigation as there is always the possibility that they are vexatious. Notwithstanding the fact that anonymous allegations cannot be the subject of a formal investigation unless there is supporting evidence, management should assure themselves that the systems in place are robust and the welfare of patients/clients is not at risk.

Reporting to Professional Bodies

Where a complaint has been fully investigated and evidence exists that professional misconduct may have taken place, the employee should be reported to the body or bodies responsible for professional regulation, e.g. the Medical Council (in the case of doctors) and An Bord Altranais (in the case of nurses) and other registration bodies when established.

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6 Follow-on Action

6.1 Abuse has occured

- The patient/client who has been the victim of the abuse and, where appropriate, his/her family should be provided with assistance and counselling to ensure their full recovery from the trauma suffered as a result of the incident.

- Where the abuse is found to have occurred, this can have an adverse effect on staff morale. Assistance should be made available to staff who have been affected by the allegation to help them to come to terms with what has happened and to restore a normal working environment.

- The staff member should be advised of what will happen next and his/her right to due process.

- A review of systems should be carried out where deficiencies have been identified.

6.2 Abuse has not occured

- Where the complaint is not upheld, management should ensure that the reputation and career prospects of the staff member concerned are not adversely affected by reason of the complaint having been brought against him/her. The staff member should be offered counselling and any other support necessary to restore his/her confidence and morale.

- The staff member who made the complaint should be reassured that management appreciates that the complaint was made in good faith.

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- A review of systems should be carried out where deficiencies have been identified.

- Where it is found that a report of abuse was brought maliciously, the staff member who made the complaint should be dealt with under the disciplinary procedure.

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7 Informing An Garda Siochana

Even where the alleged abuse could potentially constitute a criminal offence, the health care agency must conduct an internal investigation into the allegation and take appropriate action in the context of the employer/employee relationship.

Where there are reasonable grounds to suspect that a criminal act has been committed, the matter must be reported immediately to the gardai. Where the gardai are notified, the agency may conduct its own independent investigation in parallel with the criminal investigation.

If the staff member refuses to co-operate with the internal investigation pending the outcome of criminal proceedings, this should not necessarily deter the agency from proceeding with its investigation. The staff member should be advised that if s/he is not prepared to co-operate with the internal investigation, the agency may have to form its conclusions on the basis of the information available and then proceed to take appropriate action (which could include dismissal) (Appendix 4).

It should be noted that an allegation of abuse against an employee is an employment matter which must be investigated by the agency itself. The standard of proof required in criminal proceedings ("beyond reasonable doubt") is higher than that required in investigations carried out by health care agencies in the context of the employer-employee relationship. The health care agency must be satisfied "on the balance of probabilities" that the alleged abuse occurred but does not have to prove the case beyond all reasonable doubt. In other words, the agency must form a reasonable belief that the employee committed the alleged abuse and take disciplinary action accordingly (Appendix 5).

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Appendix 1 Definition of 'Reasonably Practicable'

The extent of an obligation which is said to require an employer to take reasonably practicable measures has been explored by the courts, particularly in the context of occupational health and safety law.

For example, in *Boyle –v– Marathon Petroleum (Ireland) Ltd.* [1999] 2 IR 460, the Supreme Court held that reasonable practicability creates a duty that "is more extensive than the common law duty that devolves on employers to exercise reasonable care in various respects as regards their employees. It is an obligation to take all practicable steps. That seems to me to involve more than that they should respond that they, as employers, did all that was reasonably to be expected of them in a particular situation." (Mr Justice O'Flaherty)

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Appendix 2 Definition of Abuse

The following is a template which employers can use to assist them in drawing up definitions and examples which are relevant to their organisation. ***It should be noted that the examples given are for illustrative purposes and are not definitive. It should also be borne in mind that some forms of abuse may not be easily categorised.***

Neglect

Neglect may include an act or omission, where a patient/client is routinely deprived of food, clothing, entitlements, warmth, hygiene, intellectual stimulation, supervision and safety, attention from staff.

Emotional/Psychological Abuse

Emotional abuse may arise in the relationship between a staff member and a patient/client . It is a consequence of the patient/client's needs for affection, approval, consistency and security not being met. Examples of emotional abuse may include:

(i) persistent criticism, sarcasm, hostility or blaming;
(ii) unresponsiveness;
(iii) failure to show interest in, or provide appropriate opportunities for, a client/resident's cognitive and emotional development or need for social interaction;
(iv) use of unreasonable disciplinary measures or restraint;
(v) disrespect for differences based on social class, gender, race, culture, disability, religion, sexual orientation or membership of the Traveller Community.

These examples are not exhaustive

Physical abuse

Physical abuse is any form of non-accidental injury that causes harm or could cause harm to a patient/client. It may involve:

(i) hitting, shaking, slapping, burning or biting;
(ii) deliberate poisoning;
(iii) giving inappropriate medication, alcohol or illegal substances;
(iv) suffocation;

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(v) the use of excessive force in delivering personal care e.g. dressing, bathing, administering medication.

These examples are not exhaustive

Sexual abuse

Sexual abuse occurs when a patient/client is used by a staff member for his/her gratification or sexual arousal. Examples of sexual abuse include:

(i) intentional touching, fondling or molesting;

(ii) inappropriate and sexually explicit conversations or remarks;

(ii) exposure of the sexual organs or any sexual act intentionally performed in the presence of the patient/client;

(iii) exposure to pornography or other sexually explicit and inappropriate material;

(iv) sexual assault;

(v) sexual exploitation of a child or vulnerable adult, including any behaviours, gestures or expressions that may be interpreted as being seductive or sexually demeaning to a patient/client;

(vi) consensual sexual activity between a staff member and a child under 17 years;

(vii) consensual sexual activity between a staff member and a vulnerable adult.

These examples are not exhaustive.

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Appendix 3 The Defence of Qualified Privilege

The Common Law provides a defence, in particular circumstances, to individuals who make verbal or written statements of a kind which could expose their author to a claim of defamation if such statements were made in different circumstances. The defence exists in recognition of the fact that there are circumstances in which individuals have to be able to speak freely without fear of adverse legal consequences.

In general, the privilege covers situations where the maker of the statement has a duty to speak or is obliged to protect some interest. The duty in question does not have to be a strictly legal one: a moral or social duty to make the statement or report is sufficient. The recipient of the statement must have a corresponding duty to receive the statement. The defence only applies where the individual who makes the statement is not motivated by malice in making his statement.

In circumstances where an individual has a duty to speak and does so without malice, he can be assured that the defence of qualified privilege will protect him from any defamation claim to which his statement could possibly give rise. The defence will apply, for example, when an employee reports to his line manager (or HR manager or some specially designated person), his bona fide suspicion that a fellow employee may have committed an act of abuse in the course of the latter's employment.

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Appendix 4 Employee's Right to Silence?

Does an employee who is the subject of investigative/disciplinary proceedings instigated by the employer have a right to silence in the context of such proceedings?

This question has been answered in the negative by Barrington J on behalf of the Supreme Court in his judgment in Mooney v An Post [1988] 4 IR 288. The plaintiff in the case, who was a postman, had been tried and acquitted on a criminal charge of interfering with the postal service. Thereafter, the employer attempted to conduct a disciplinary inquiry into the said complaints. However, the plaintiff refused to co-operate with the employer's efforts in this regard. The employer proceeded with the dismissal and the plaintiff subsequently challenged the employer's decision.

The Supreme Court, in holding against the plaintiff, distinguished between the position of a defendant in criminal proceedings and that of a person who is the subject of disciplinary or investigative proceedings being carried out by his employer. The latter proceedings are civil rather than criminal in nature. Furthermore, the Court argued, the right to silence applies only in the context of criminal proceedings but does not carry over to civil proceedings:

> *"It is important to emphasise that the dismissal proceedings were not criminal proceedings and it was not sufficient for a person in the position of the plaintiff simply to fold his arms and say:-*
> ***"I'm not guilty. You prove it."***
> *To attempt to introduce the procedures of a criminal trial into an essentially civil proceeding serves only to create confusion."*

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Appendix 5

The Standard of Proof Applicable to Investigative and Other Proceedings in the Employment Context

The plaintiff in Georgopoulus v Beaumont Hospital [1998] 3IR 132 had been employed as a registrar in neurosurgery at Beaumont Hospital. Certain complaints were made against him arising out of the performance of his duties as a registrar. An investigation was conducted into those allegations and the plaintiff subsequently sought to challenge the decision arrived at by the investigators on the basis, inter alia, that the investigators had failed to substantiate the complaints against him 'beyond a reasonable doubt.'

Addressing the issue of the correct standard of proof to be applied by those charged with conducting such an investigation, the Supreme Court, per Hamilton CJ, held as follows:

> *"The proceedings before the defendant were in the nature of civil proceedings and did not involve any allegations of criminal offences. The standard of proving a case beyond reasonable doubt is confined to criminal trials and has no application in proceedings of a civil nature.*
>
> *It is true that the complaints against the plaintiff involved charges of great seriousness and with serious implications for the plaintiff's reputation. This does not, however, require that the facts upon which the allegations are based should be established beyond all reasonable doubt. They can be dealt with on "the balance of probabilities" bearing in mind that the degree of probability required should always be proportionate to the nature and gravity of the issue to be investigated.*
>
> *I am satisfied that in inquiries, such as conducted in this case, the standard of proof to be applied is not the standard of proof required in a criminal case but is that applicable to all proceedings of a civil nature, namely, "the balance of probabilities"- a standard which takes into account the nature and gravity of the issue to be investigated and decided."*

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Appendix 6 Membership of the Working Group

The members of the Working Group are as follows:

Dr Sean Conroy (Chairman)	HSE – Western Area
Mr James Conway	HSE – Mid Western Area
Ms Maura Donovan	Stewarts Hospital
Mr Alan Haugh	IBEC (Legal Adviser)
Ms Elva Gannon	HSE – Employer Representative Division
Ms Anna Killilea	HSE – Employer Representative Division
Ms Denise O'Shea	HSE – Employer Representative Division
*Mr Barry O'Brien	HSE – Southern Area
Ms Cornelia Stuart	HSE – North Eastern Area
Mr Rory Talbot	St Vincent's Hospital Fairview
Ms Patricia Gilheaney	Mental Health Commission
Mr Joe Masterson	HSE – Midland Area
Ms Mary Crowe	Mater Hospital
*Mr Niall Byrne	Cheshire Ireland
*Ms Jillian Sexton	National Federation of Voluntary Bodies
Mr Oliver McDonagh	SIPTU
Mr Dave Hughes	Irish Nurses Organisation (INO)
Ms Colette Mullins	Irish Nurses Organisation (INO)
Mr Robbie Ryan	IMPACT
Mr Des Kavanagh	Psychiatric Nurses Association (PNA)
Mr Seamus Murphy	Psychiatric Nurses Association (PNA)
Mr P J Keating	IMPACT
Mr Stephen Quillinan	IMPACT
*Dr Kate Ganter	Irish Medical Organisation (IMO)

*Dr Kate Ganter and Mr Niall Byrne were invited to join the Working Group in June 2004 and Ms Jillian Sexton and Mr Barry O'Brien were invited to join in July 2004.

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