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# HES Unacceptable Actions Policy

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## Introduction

Historic Environment Scotland believe that everyone has a right to be heard, understood and treated with respect. We also believe that all our colleagues have the same rights. This policy reflects our commitment to uphold these rights and to ensure we act in accordance with our legal duty to protect the safety and wellbeing of our employees.

This Code applies to all persons working for Historic Environment Scotland (HES), including colleagues at all levels, board members, trustees, directors, agency workers, seconded workers, volunteers, interns, contingent workers or fixed term contractors, wherever located. We work hard to be open and accessible to everyone.

Occasionally, the behaviour or actions of individuals we have business with outside our organisation, provide us with services or who visit our sites make it very difficult for us to respond to an enquiry and/or undertake our work. Individuals are all persons who are not direct personnel of Historic Environment Scotland, including visitors, members of the public and third-party service providers/contractors.

In a small number of cases the actions of individuals become unacceptable because they involve abuse of our colleagues or our processes. When this happens, we have to take action to protect our colleagues. We also consider the impact of the behaviour on our ability to do our work and provide a service to others. This Policy explains how we will approach these situations.

# WHAT ACTIONS DO WE CONSIDER TO BE UNACCEPTABLE?

We understand that people may act out of character in times of trouble or distress. We understand that a person may be experiencing upsetting or distressing circumstances leading up to them contacting us, visiting our sites, or they may have a medical or health condition which impacts on their behaviour when interacting with our colleagues.

We do not view behaviour as unacceptable just because a person is forceful or determined. However, the actions of people who are angry or excessively demanding may result in unreasonable demands on our services or unreasonable behaviour towards our colleagues. It is these actions that we consider to be unacceptable, and that we aim to manage under this Policy. We have grouped these actions under three broad headings:

- Aggressive or abusive behaviour;
- Unreasonable demands; and
- Unreasonable level of contact

## Aggressive or abusive behaviour

We have adopted the Health and Safety Executive (HSE) definition of work-related violence which is:

*“any incident in which a person is abused, threatened or assaulted in circumstances relating to their work”*

We understand that people can feel passionate about the issues they discuss with us, and that they are sometimes hurt, frustrated or angry. If those feelings escalate into aggression towards our colleagues, we consider that unacceptable. We will never tolerate violence towards or abuse of our employees.

Violence and aggression are not restricted to acts which cause or threaten physical harm. They also include behaviour or language (whether oral or written) that may cause our colleagues to feel offended, afraid, threatened or abused. In some instances, a person may not intend their behaviour towards our colleagues to be offensive, threatening or abusive, this does not mean it is acceptable. Examples of such behaviour include swearing, threats, rudeness, personal verbal abuse or any discriminatory or harassing behaviour, for example sexist, racist, xenophobic or homophobic remarks and includes sexual harassment. Inflammatory statements and allegations, for example that suggest our colleagues are corrupt, can also be abusive behaviour. We may also decide that comments aimed not at us but at third parties are unacceptable because of the effect that listening to or reading them may have on our colleagues.

## Unreasonable Demands

A demand becomes unreasonable when it starts to (or when complying with the demand would) impact substantially and negatively on our ability to carry out our work.

Examples of actions grouped under this heading include:

- insisting on access to our sites immediately prior to their closure for the day or prior to opening;
- repeatedly demanding responses within an unreasonable timescale;
- insisting on seeing or speaking to a particular member of staff;
- persistent phone calls, letters or emails;
- refusing to accept that we cannot provide a particular service or action on a particular issue;
- repeatedly changing the exact nature of a complaint or raising unrelated concerns;
- vexatious or serial complaints that indicate no willingness to reach or accept a solution;
- unsolicited filming or photography of colleagues and/or sharing such footage without prior consent, or continuing to film or photograph and/or share such footage after being advised consent is not given.

These demands are considered unacceptable and unreasonable if they start to impact substantially on our ability to do our work or deliver our services, such as taking up an excessive amount of time to the disadvantage of others or the delivery of our functions. This can be difficult and stressful for colleagues to deal with when it is impossible to find common ground or a realistic approach to the issues being raised.

### **Unreasonable level of contact**

We recognise that some people will not or cannot accept that we are unable to assist them further or provide a level of service other than that provided already. They may persist in disagreeing with the action or decision we have taken and/or contact us persistently about the same issue.

Examples of actions grouped under this heading include persistent refusal to accept a decision we have made, repeatedly contacting us about the same issue or closely related issues and continuing to pursue a complaint without presenting any new information. The way in which these approaches are made may be entirely reasonable, but it is their persistent nature in continuing to do so that is not. This can occur over a short period, for example, a number of calls in one day or in one hour, or over the lifespan of a contact.

We consider the level of contact to be unreasonable when we have explained our role, remit and reasons for our actions or decisions, providing signposting information if appropriate, or offering alternatives (such as visiting a site at a different time or on a different day), and nevertheless the person continues to contact us or make a request. The person will be considered to be taking up a disproportionate amount of time and resources to the point of disrupting our ability to undertake our work, or their persistence amounts to unreasonable treatment of our colleagues.

### **Examples of how we manage aggressive or abusive behaviour**

If a colleague feels threatened or abused, we will ask the individual to cease the behaviour which is unacceptable. Where possible we will explain that we must protect our employees from aggressive and abusive behaviour, and that we will end the contact if this behaviour continues. If an individual does not then demonstrate a more acceptable approach, the member of staff can end the contact immediately. Our colleagues have the right to make this decision.

Typically, the type of action we may take to protect our employees in these circumstances is to refuse entry to our sites or ask the person to leave our sites/business premises, end phone calls or, if repetitive, ask service providers to block correspondence or telephone calls from an individual to us where this is possible. We may also withdraw the individual's Historic Scotland membership, if they are a member.

If there is the threat or use of physical violence, verbal abuse or harassment towards our colleagues it is likely to result in a termination of all direct contact with the person. We will record all incidents on our Prime system and may report incidents to the police. This will always be the case if physical violence is used or threatened. On social media, we may also report the comments, posts or activity to the service provider which may result in the individual being banned from the platform.

We will not respond to correspondence (in any format) that contains statements that are abusive to colleagues or contain allegations that lack substantive evidence. Where we can, we will return the correspondence. We will explain why and say that we consider the language used or content to be offensive, unnecessary and unhelpful and ask the sender to stop using such language or making unsubstantiated allegations. We will state that we will not respond to future correspondence if the action or behaviour continues. In such cases we reserve the right to inform the individual that communication on this matter is now closed.

## Examples of how we deal with other categories of unreasonable behaviour

Where a person's actions or behaviour make it difficult for us to carry out our work and provide a service to others, we have to take action. In some circumstances this may involve restricting their contact with us. We will, however, normally aim to do this in a way that allows a person to progress through our processes. We will try to ensure that any action we take is the minimum required to solve the problem.

## Actions we may take

Where a person demonstrates the behaviours set out above, we may decide to:

- tell the person that their language is considered offensive, unnecessary and unhelpful and ask them to stop using such language;
- refuse access to our sites, though we will do our best to provide details of alternative times to visit if the person is able to demonstrate more acceptable behaviour;
- hide or remove the individual's comments made to our blog or social media;
- block or ban individuals from engaging with our blog or social media;
- withdraw the individual's Historic Scotland membership if they are a member;
- ask the person to leave our site/business premises;
- return any documents to the person or, in extreme cases, advise them that further irrelevant documents will be destroyed;
- restrict contact to a nominated member of our staff who will deal with future calls or correspondence;
- see the person by appointment only;
- limit contact to telephone calls from the person at set times on set days;

- restrict contact from the person to writing only;
- inform the person that there will be no response to them;
- in extreme situations, a person will be told in writing that their name is on a 'no personal contact' list. This means that contact with us will be restricted to either written communication or through a third party; or
- take any other action that we consider appropriate. However, unless circumstances make it impractical or inappropriate, the person will be told what action is being taken and why.

We will take into account any extenuating circumstances when deciding how to respond to any behaviour under this Policy, including considering whether the person requires any reasonable adjustments to be made in order to help them to regulate their behaviour or communicate appropriately.

## THE PROCESS WE FOLLOW TO MAKE DECISIONS ABOUT UNREASONABLE BEHAVIOUR

Any member of our staff who directly experiences aggressive or abusive behaviour has the authority to deal immediately with that behaviour in a manner that is in line with this Policy.

With the exception of such immediate decisions taken at the time of an incident, decisions to restrict contact with us are only taken after careful consideration of the situation by a Head of Service within our People Directorate. This may involve an investigation into the circumstances by our Health, Safety and Physical Security Department. Wherever possible, we will give a person the opportunity to change their behaviour or actions before a decision is taken.

### Limitations on termination of contact

Any consideration of limiting or terminating contact needs to start by considering the nature of the contact we have had. In some circumstances, for example, our colleagues are acting as regulators, often in a statutory role. In these cases, withdrawal of contact may be impossible or at least undesirable.

### How we let people know we have made this decision

When one of our employees makes an immediate decision in response to offensive, aggressive or abusive behaviour, the person is advised at the time of the incident.

When a decision has been made by senior management, a person will always be given the reason in writing where possible. The communication will set out why a decision has been made to restrict future contact, the restricted contact arrangements and, if relevant, the length of time that these restrictions will be in place. This ensures that the person has a record of the decision.

Where we do not have a means of contacting the person in writing or in another recorded format, we will make a record of the decision in the same degree of detail on our Prime system. This is

to ensure the decision is documented and can be made available to the person concerned if they make further contact or provide a correspondence address.

## **The process for appealing a decision to restrict contact**

It is important that our decisions can be reconsidered. There is no automatic right to appeal to us under this Policy. Examples of when there will be no ability to appeal include, but are not limited to, when threats of violence have been made or when a report has been made by us to the police. However, in most situations a person can appeal a decision to restrict contact. If they do this, we will only consider arguments that relate to the restriction imposed and not to the issue or complaint that led to the unacceptable behaviour. The person's complaint is dealt with separately under our Complaints Handling Procedure.

An appeal could include, for example, a person saying that:

- their actions were wrongly identified as unacceptable;
- the restrictions were disproportionate; or
- that the restrictions will adversely impact on the individual because of personal circumstances.

A senior colleague within our Chief Executive's Office, who was not involved in the original decision, will consider the appeal. They have discretion to uphold the original decision, overturn the original decision or to vary the original decision as they think best. They will make their decision based on the evidence available to them. They will advise the appellant in writing (this can be supplemented if written communication is not the most appropriate form for the individual) that either the restricted contact arrangements still apply or a different course of action has been agreed.

## **Review of decisions made under this Policy**

We may review the restriction periodically or on further request after a period of time has passed. Each case is different. We will explain in the letter setting out the restriction, what review process will be in place for that restriction, and in what circumstances they could request this to be reconsidered.

## **How we record and review a decision to restrict contact**

We record all incidents of unacceptable actions towards our colleagues on our Prime system and such data will be held and processed in accordance with our data protection obligations. Where it is decided to restrict contact, an entry noting this is made on Prime and in the relevant file if there is one. A decision to restrict contact with a person could be reconsidered if they demonstrated a more acceptable approach. The appropriate Head of Service will review the status of everyone with restricted contact arrangements on a regular basis.

# Additional guidance

This Policy takes account of [the Scottish Public Sector Ombudsman's Respectful Engagement Policy](#).

1. For further social media guidance on unacceptable actions please see the terms and conditions of the social media platform and our Social Media House Rules: [www.historicenvironment.scot/customer-services/our-blog-and-social-media-house-rules/](http://www.historicenvironment.scot/customer-services/our-blog-and-social-media-house-rules/)
2. If you become aware of unacceptable comments on social media please contact [web@hes.scot](mailto:web@hes.scot) or [communications@hes.scot](mailto:communications@hes.scot) to alert us.
3. If you are not satisfied with our actions or our services please tell us. Our Complaints Handling Procedure provides more information about how to do this: <https://www.historicenvironment.scot/customer-services/complaints/>



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