



**SUPREME HEADQUARTERS ALLIED POWERS
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SHAPE DIRECTIVE 050-009

DISCRIMINATION AND HARASSMENT IN THE WORKPLACE

- REFERENCES:
- A. NATO Civilian Personnel Regulations.
 - B. ON(2013)0076, Prevention and Management of Harassment, Discrimination and Bullying in the Workplace, dated 17 December 2013.
 - C. ON(2017)0026, Code of Conduct, dated 07 June 2017.
 - D. ACO Directive 045-001, Allied Command Operations Military Personnel Management and Administration for Peacetime Establishment Posts, dated 13 April 2015.
 - E. ACO Directive 050-013, Management and Administration of Civilians Employed under the Provisions of the NATO Civilian Personnel Regulations, dated 13 July 2017.
 - F. The Conditions of Employment for Monthly and Hourly Paid Local Wage Rate (LWR) Personnel at SHAPE, dated 29 November 2011.
 - G. The Conditions of Employment for LWS Personnel employed by SHAPE through SHAPE Community Services Fund (SCSF), dated 15 March 2014.

1. **Status.** This directive supersedes the SHAPE Directive (SD) 50-09 dated 15 October 2008.
2. **Purpose.** To provide guidance on policy, aims, responsibilities, definitions and procedures governing discrimination and harassment in the workplace.
3. **Applicability.** This directive is applicable to all personnel - military and civilian regardless of their employer, based at SHAPE and NATO Programming Centre (NPC) Glons. It is also for the information and guidance of National Military Representatives (NMRs) in support of SHAPE.
4. **Publication Updates.** Updates are authorised when approved by the Director of Management (DOM) SHAPE.

5. **Proponent.** The proponent for this directive is SHAPE J1 Civilian Personnel Branch, Relations and Staff Development Section.

FOR THE SUPREME ALLIED COMMANDER, EUROPE:



Taner Sađırođlu
Brigadier General, TUR A
Director of Management

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CHAPTER 1 – INTRODUCTION

1-1. Introduction

- a. Supreme Allied Commander Europe (SACEUR) directed the development of a policy and directive on Discrimination and Harassment in the workplace. The policy must underline that in our international organisation and multicultural environment, every person must be aware of and respect the sensitivities of others. All staff members must be treated fairly, both within and outside the work place and must be afforded equal opportunities, in an atmosphere free from discrimination or harassment.
- b. The policy is designed to contribute to the creation of an environment in which members of the international community respect and show consideration for each other. Behaviour that undermines that policy or violates the fundamental rights, personal dignity and the integrity of individuals has a negative effect on SACEUR's mission and is therefore unacceptable.
- c. This Directive defines the conduct that will not be tolerated in the work place, measures that may be taken to stop such behaviour and the effective and responsive complaint system and feedback mechanisms in place for filing and resolving grievances.

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CHAPTER 2 – POLICY AND DEFINITIONS

2-1. **Objective.** The aim of this directive is to:

- a. outline the fundamental principles underpinning NATO policy on Discrimination, Harassment and Bullying (Reference B) and to increase its awareness of what constitutes discrimination, harassment and bullying in the workplace;
- b. provide guidance to line managers and key players on how to promote and enforce these principles by establishing rights, responsibilities across the force staff to ensure a workplace environment that fosters dignity and respect for all;
- c. describe the complaint system and feedback mechanisms available to those force staff members who feel to have been discriminated against, and harassed in the workplace by providing procedures for dealing with allegations of inappropriate behaviour.

2-2. **Policy**

- a. Our organisation has a duty to provide a safe, secure and respectful working environment which is free from prejudice, discrimination, harassment or bullying.
- b. Any form of inappropriate or unprofessional behaviour violates the acceptable standards of character, loyalty, respect, and fairness required of all military and civilian staff members. It constitutes an obstacle to unit cohesion and mission accomplishment and cannot be tolerated.
- c. Staff members at all levels must understand the importance for SHAPE to create and maintain a positive work environment. They must practice high standards of professional and personal conduct, including courteous and respectful behaviour towards their colleagues. Staff members bear personal responsibility for making this policy effective.
- d. In a multinational environment, every person must be aware of and respect the sensitivities of others. All staff members must be treated fairly, both within and outside of the workplace, and must be provided equal opportunities, in an environment free from discrimination or harassment. Discrimination or harassment, in any form, will not be tolerated. False claims/accusations of wrongdoing are unacceptable and as revealed, throughout the processes outlined below, will be subject to disciplinary measures.
- e. This directive defines the unprofessional conduct that will not be tolerated from staff members and the measures that may be taken to stop such unprofessional conduct.

2-3. **Definitions.** There is no “one size-fits-all” definition which can adequately describe all forms of abusive behaviour or conduct in the workplace. The instances of discrimination, harassment or bullying do not need to result in concrete psychological, physical or moral harm to the victim. Harassment and the subsequent procedures to address it begin when a person feels discriminated against. However, for the purposes of this directive, the following definitions shall serve as a guideline:

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a. **Abuse of authority** may be defined as the act of using one's position in the organisation in an unreasonable or abusive way against another staff member. It includes, but is not limited to:

- (1) taking unfair or unreasonable advantage of someone;
- (2) gaining access to information that should not be readily accessible;
- (3) verbally attacking another person's dignity;
- (4) physically attacking or manipulating a person by means of insinuating or threatening punishment if they do not comply.

Abuse of authority is particularly serious when a Staff Member in charge of specific function uses his or her influence, power or authority, to improperly and arbitrarily influence or undermine the reputation, the career or employment conditions of another, including but not limited to appointment, tasks' assignment, contract renewal, office-work infrastructure, performance evaluation or promotion.

Management actions, such as oral and written counselling on work performance, investigations, disciplinary actions, and the like, will not be considered abuse of authority if consolidated by established procedures and in accordance with applicable directives.

b. **Discrimination**

- (1) Any arbitrary or unwarranted distinction based on race, sex, religion, nationality, ethnic origin, sexual orientation, disability, age, language, social origin, rank or grade, which has the purpose or effect of treating one staff member or a group of staff members unfairly or unjustly.
- (2) Discrimination may be an isolated event or may manifest itself through harassment or abuse of authority.
- (3) **Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements, thereof, shall not be deemed to be discrimination.**

c. **Harassment**

- (1) Any improper or unwelcome visual, verbal, nonverbal or physical repetitive behaviour or conduct that might be expected to unreasonably interfere with an individual's working performance, or which creates an intimidating, hostile or offensive work environment, or causes humiliation or embarrassment to a staff member¹

¹ Applies not only to the "top-down" organisational context but could be also generated in a "bottom-up" direction when staff members pressure line-managers for career advancement opportunities, upgrades, reassignment, new postings, a better/bigger office etc.

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(2) Disagreement on work performance or any work-related issue is not considered to be harassment. Such matters should normally be considered within the framework of staff appraisal or performance management except when a direct cause-effect relationship may be objectively assessed in terms of inappropriate behaviour affecting an employee's performance.

d. **Sexual Harassment.** Any verbal comment, nonverbal gesture, or physical contact of a sexual nature that makes an individual feel humiliated, intimidated, or offended.

(1) It includes, but is not limited to:

- (a) deliberate and unsolicited physical contact or unnecessarily close physical proximity;
- (b) repeated sexually-oriented comments or gestures about the body, appearance or life-style of a staff member;
- (c) sexually offensive phone-calls, letters, email messages, etc;
- (d) showing or displaying sexually explicit graphics, cartoons, pictures, photographs, social network postings or internet pages;
- (e) persistent unsolicited and unwelcome invitations to social activities (if driven by sexual interest);
- (f) stalking – which can be defined as behaviour in which an individual inflicts upon another repeated, unwanted intrusions and/or communications (if driven by sexual interest). It usually takes the form of following, watching, monitoring and/or obsessive phoning/ mailing.

e. **Intimidation**

(1) Improper behaviour of a repetitive nature of any origin, performed both inside or outside the Headquarters, that is specifically expressed in the form of words, acts, gestures or written documents, the purpose or effect of which is to wrongfully affect the personality, dignity, physical or psychological integrity of a person, to endanger his/her employment, or to create a climate of intimidation, hostility, humiliation or insult.

(2) **Management actions, such as oral and written counselling on work performance, investigations, disciplinary actions, and the like, will not be considered intimidation.**

f. **Bullying**

(1) Repeated or persistent aggression, by one or more person(s), whether verbal, psychological or physical, in connection with work that has the effect of humiliating, belittling, offending, or intimidating an individual.

(2) It includes, but is not limited to:

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- (a) excluding or isolating a staff member from professional activities;
- (b) making persistent negative attacks on personal and professional life;
- (c) abusing a position of power by persistently undermining a staff member's work, setting objectives with unreasonable deadlines or unachievable tasks;
- (d) monitoring a staff member's performance with unreasonable or inappropriate standards;
- (e) refusing annual leave or training with unreasonable or unfounded motivation.

(3) Management actions, such as oral and written counselling on work performance, investigations, disciplinary actions, and the like, will not be considered as bullying.

2-4. Prevention

a. Prevention is the first defense against all discrimination, harassment and bullying in the workplace. Leaders at all levels have an obligation to create and maintain an environment with zero tolerance for discrimination and harassment. Staff members at all levels must understand the importance for NATO and SHAPE of creating and maintaining a positive work environment. Each individual is personally responsible for adhering to the policy laid out in this Directive.

b. J1 shall determine what measures are to be taken to inform all staff members of what discrimination, harassment, intimidation or abuse of authority are, and the consequences of engaging in such behaviour. These measures shall include activities to inform staff and heighten awareness.

c. Training in recognising unacceptable behaviour such as discrimination, harassment, intimidation or abuse of authority in the workplace shall be organised for an appropriate number of staff members of SHAPE and NPC Glons, giving priority to the members of the Prevention and Mediation Panel (see paragraph 3-1.b.(2)). J1, in coordination with J8, is responsible for organising such training.

d. J1 will ensure SHAPE and NPC-wide distribution of the directive and its inclusion in all induction programmes presented to newcomers.

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CHAPTER 3 – PROCEDURES FOR REPORTING AND INVESTIGATING COMPLAINTS

3-1. The Parties Involved

- a. The Parties are those individuals directly involved or implicated in the complaint.
 - (1) **The Complainant.** A force member or civilian employee who has witnessed or who feels that has been the subject of unacceptable behaviour, discrimination, harassment, intimidation or abuse of authority as per Chapter 2.
 - (2) **The Alleged Offender.** An individual accused by the complainant of having committed an act of unacceptable behaviour, discrimination, harassment, intimidation or abuse of power as per Chapter 2.
- b. Other Parties
 - (1) **The Prevention Adviser.** Head, Civilian Human Resource Management (HRM) Relations & Staff Development Section, who is responsible for implementing and monitoring the policy and who takes part in the development of preventive measures and the training of the Trusted Persons.
 - (2) **The Prevention and Mediation Panel.** A body established by the SHAPE Chief of Staff (COS) either to recommend measures for protection against discrimination and harassment or to seek a peaceful solution to an ongoing dispute. The Panel will be composed of a Chairperson and up to 5 staff members as Trusted Persons. Furthermore, and in case the alleged offender or complainant is a NATO International Civilian, the Chairperson of the appropriate Civilian Staff Association or their representative shall also be a member of the Panel. Each of these individuals can be chosen as mediator under paragraph 3-4 bc(21). Details on the role and responsibilities of the Mediator can be found at Annex B.
 - (3) **Trusted Person.** A Trusted Person is a designated individual who can counsel and assist the staff members and can initiate conciliation between the two parties. Nominations are a responsibility of the Heads of the organisational elements. Trusted Persons are to be selected based on the following principles:
 - (a) The function of a Trusted Person is not considered to be a full-time job and is conducted in addition to the official duties of the selected individual.
 - (b) A Trusted Person has to volunteer for this function and thus may not be appointed by order.
 - (c) A Trusted Person shall normally be selected for a period of two years. They should have at least one year's work experience at SHAPE and/or NPC.
 - (d) Eligibility should be determined based on a variety of factors such as voluntary, personal integrity, communication skills, the ability to listen and to provide sound judgment.

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(e) A Trusted Person shall receive the required training needed to participate in the Prevention and Mediation Panel and to act as a mediator.

The Trusted Person may be advised by an internal or external qualified professional trained in the psycho-social aspects of inappropriate behaviour.

(4) **Witness:** A person, who was present when the alleged unacceptable behaviour, discrimination, harassment, intimidation or abuse of authority occurred, called upon to provide evidence

3-2. Rights and Responsibilities

a. **The complainant** has the right to:

- (1) Put forward a complaint without fear of embarrassment or reprisal.
- (2) To choose the mechanisms to engage in the resolution of their complaint from the options detailed below.
- (3) Discretion – the process should be completed with the confidentiality of the matter and the individuals involved at the forefront.
- (4) Be accompanied by a dependable colleague of their choice throughout all stages of the procedure.
- (5) Benefit from a fair and impartial investigation.
- (6) Be informed of each step of the process and the outcome of the investigation and the measure(s) that shall be taken.
- (7) Report to Prevention Advisor or Line Manager their intention to stop informal or formal process at any time.

They are responsible for:

- (1) Making known their disapproval or unease about a person's actions or behaviour to the alleged offender or the Prevention Adviser (see paragraph 3-4.).
- (2) Seeking advice and/or guidance if necessary on the best course of action to be taken from persons listed in paragraph 3-4.c(1).
- (3) Cooperating with those responsible for investigating their complaint.

b. **The alleged offender** has the right to:

- (1) Be informed that an informal complaint has been made or that a formal complaint has been filed against them.
- (2) Discretion of the process.

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- (3) Be provided with the complainant's statement in case of informal procedure. Names of potential witnesses or supports of the complainant and the testimonies or elements complementing the statement itself will not be disclosed.
- (4) Be provided with a written statement of the formal complaint, if filed, and have the opportunity to respond within the process.
- (5) Be accompanied by a dependable colleague of their choice throughout the procedure.
- (6) Benefit from a fair and impartial investigation.
- (7) Be informed of the outcome of the investigation and the measure(s) that shall be taken.

They are responsible for:

- (1) Seeking advice and/or guidance if necessary, from appropriate persons.
- (2) Cooperating with those responsible for investigating the complaint.

c. **SHAPE Chief of Staff** is responsible for:

- (1) Promulgating clearly stated guidance and directive on the prevention and management of discrimination, harassment and mobbing in the workplace;
- (2) Promoting a safe, secure and respectful working environment through awareness campaigns and specific training;
- (3) Ensuring an impartial enforcement of the policy and a readily available system for submitting grievances without intimidation or threat of reprisal;
- (4) Ensuring that complaints of alleged violations of this policy are handled as discreetly as possible by all concerned and investigated in an impartial and fair manner;
- (5) Authorising the creation of the Prevention and Mediation Panel (PMP);
- (6) Validating the nomination of PMP chairperson, PMP members and Trusted Persons (see Annex B);
- (7) Nominating an independent and objective investigator or Complaint Committee to conduct the investigation of a formal complaint. COS decision to follow up with disciplinary action (see paragraph 3-5.d(9)) is final.
- (8) Encouraging Nations to take the appropriate remedial or disciplinary actions to facilitate the expedient resolution of complaints.

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- d. **ACOS J1** is responsible to the Chief of Staff for:
- (1) developing and promulgating a clear policy Directive on the prevention and management of discrimination, harassment and mobbing in the workplace;
 - (2) implementing and monitoring the policy;
 - (3) establishing a Prevention and Mediation Panel against Discrimination, Harassment and Bullying;
 - (4) submitting at COS approval the nomination of the PMP chairperson;
 - (5) developing and organising specific training criteria/courses, aimed at preparing those staff members selected as Trusted Persons and members of the Prevention and Mediation Panel to recognise undesirable behaviour and intervene, as appropriate²;
 - (6) monitoring the process whereby Division Heads nominate the staff members to act as Trusted Persons and members of the Prevention and Mediation Panel;
 - (7) ensuring that one or more members of the Civilian Staff Association is/are nominated to act as a Trusted Person and receives the appropriate training;
 - (8) liaising with National Military Representatives to inform COS Office of remedial or disciplinary actions and resolution of complaints.

ACOS J1 main responsibilities are to:

- (1) inform, systematically, the appropriate National Military Representative, if the complainant or the alleged offender is a member of the armed forces or a civilian component accompanying the forces.
- (2) be watchful in the respect a time-line to ensure expedient resolution of complaints and monitoring the complaint procedure for correctness.
- (3) forward the received formal complaints to the Chief of Staff and, under COS guidance, preparing the Memorandum of Nomination of an independent and objective investigator or Complaint Committee to conduct a full and proper investigation of the complaint.
- (4) J1, in conjunction with the appropriate Legal Office, shall, upon proposal of the Chain of Command, or on its own initiative, take steps to close - after a preliminary investigation - any case found to be manifestly unfounded, without prejudice to actions as described in paragraphs 3-3 and 3-8. The Prevention

² Training may include raising staff awareness of discrimination, harassment and bullying issues when joining the Organisation; specific training for managers to improve awareness and help them manage such situations; specific training for Trusted Persons and members of the Prevention and Mediation Panel (psycho-social skills, analytical skills to deal with conflict situations; techniques for coaching and counselling); etc. Such training/specific courses are to be recognised as mission-essential training and planned consequently.

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Adviser will ensure that the reasons to close the case are properly documented and the concerned staff members informed.

(5) The Prevention Adviser will keep record of the number of complaints, the nature of these complaints, the outcome of mediation, and the type of corrective measures.

e. **Line Managers**

(1) They are the principal and essential actor during the verbal informal process.

(2) Line Managers have an obligation to:

(a) set an example of the highest standards of conduct;

(b) establish a positive and professional climate within their work centres and take all reasonable steps to ensure that this policy is adhered to;

(c) examine and try to resolve any cases of unacceptable behaviour, discrimination, harassment, mobbing, intimidation, or abuse of authority of which they become aware, whether or not a complaint has been made;

(d) ensure that, when informal procedures failed, any complaint is promptly reported to ACOS J1 and dealt with in an impartial and fair manner.

f. **Gender Advisor (GENAD)**

(1) GENAD provides Prevention Advisor, Line Managers, Trusted Persons, PMP members and staff member's advice and guidance related to gender³ discrimination and gender perspective issues at any time during the informal or formal process of reporting and investigating allegations of inappropriate behaviour.

(2) GENAD attends, as a member, the Prevention and Mediation Panel Board when complaints are linked with gender discrimination issues that cannot be resolved informally or through mediation.

(3) GENAD will be prepared to contribute in any inquiry or investigation concerning a breach of NATO Standards of Behaviour, or an allegation of rape, sexual and gender based violence or other forms of sexual exploitation and abuse.

³ Gender refers to the social attributes associated with being male and female learned through socialization and determines a person's position and value in a given context. This means also the relationships between women and men and girls and boys, as well as the relations between women and those between men. These attributes, opportunities and relationships are socially constructed and are learned through socialization processes. Notably, gender does not equate to woman.

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- g. **Legal Advisor** is responsible for:
- (1) providing Prevention Advisor, Line Manager, PMP members, Trusted persons and staff member, with advice and guidance at any time during the informal or formal procedures reporting and, investigating allegations of inappropriate behaviour,
 - (2) addressing any jurisdictional issues including national criminal or disciplinary jurisdiction
- h. **Provost Marshal** is responsible for:
- (1) addressing and taking forward to the appropriate Host Nation authorities any jurisdictional issues deemed by the Legal Advisor to pertain to their range of competence,
 - (2) intervening in any issues which come to light during an investigation and which are deemed by the Legal Advisor to fall under the domain of criminal law.

Provost Marshal intervention shall be performed under the umbrella of applicable agreements with the Host Nation and in close coordination with BEL Federal Police.

3-3. **Principles Governing Procedures**

- a. The presumption of innocence is guaranteed to alleged offenders.
- b. The Chief of Staff shall safeguard the rights of the complainant, as well as those of the alleged offender, until a thorough investigation has been performed and a decision taken.
- c. Retaliation of any kind is expressly prohibited (e.g. reassigning a staff member to a less desirable post or forcing the complainant to take a leave of absence).
- d. If the alleged offender is also the supervisor of the complainant, then he or she should, if possible and where justified, be kept physically and hierarchically separate during the investigation, in the interests of all parties.
- e. Any staff member found responsible for harassment, discrimination, bullying, intimidation or abuse of authority shall be subject to appropriate remedial or disciplinary action (paragraph 3-7- refers).
- f. Any staff member who abuses this policy or makes false claims or accusations of wrongdoing out of malice or in bad faith shall be subject to appropriate remedial or disciplinary action (paragraph 3-8 refers).
- g. All requests for assistance by a staff member complaining of discrimination, harassment, bullying or other such abuse shall be investigated speedily, fairly, thoroughly and as discreetly as possible by all concerned. Informal and Formal Procedures for reporting, investigating and resolving allegations of inappropriate behaviour should take no longer than 90 days – 120 days in exceptional circumstances.

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h. Confidentiality must be guaranteed throughout the entire procedure, in so far as this is compatible with the due process rights of the person or persons accused of inappropriate behaviour or conduct.

i. First approach in case of inappropriate behaviour or conduct is to advise the complainant on the actions available to them and that any situation should be resolved at the lowest level possible by applying informal procedures first, as described in paragraph 3-4.a, b (verbal approach) - c (Conciliation) and - d (Mediation) before filing a Formal Complaint at paragraph 3-5.

j. Chapter XIII and Chapter XIV, Annex IX of the NATO Civilian Personnel Regulations (NCPR Reference A) that outline Disciplinary actions, powers and procedures and the Complaints and Appeals procedures within NATO are unaffected by the provisions of this document, and always remain options for civilian staff who consider that “a decision affecting their conditions of work or of service does not comply with the terms and conditions of their employment”.

3-4. **Informal Procedure.** Behavioural patterns and tolerance levels in SHAPE diverse and multicultural environments differ considerably. It is important to understand that a staff member may overstep another’s personal boundaries without realising it. In general, such instances can be resolved at the lowest possible level by applying informal procedures. Whenever feasible, a staff member will be encouraged to resolve the issue at the lowest possible level, the ultimate choice of how to proceed rests with the staff member.

a. **Verbal approach/discussion with the Alleged Offender** directly, firmly and promptly informing the alleged offender that his or her behaviour is unwelcome and requesting that it change or cease;

(1) Provide an opportunity where the Complainant and the Alleged Offender can talk face to face and explain that the conversation is confidential.

(2) Explain the issue by describing how the alleged offender’s behaviour is perceived and felt.

(a) Request the Alleged Offender to stop the behaviour found offensive.

(b) Allow the Alleged Offender to reply.

(c) Note the details of the discussion(s), including the dates of the discussion(s) and what was said, for future reference.

b. **Verbal approach/discussion with the Line Manager**

(1) If it is not possible for the complainant to talk to the alleged offender, or if the alleged offender does not wish to address the problem, the complainant should approach his or her line manager to:

(a) explain what was found offensive in the behaviour of the Alleged Offender;

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- (b) inform him or her that attempts were made to discuss with the Alleged Offender to solve the issue;
- (c) request the line manager discuss the issue with the Alleged Offender;
- (d) request that all parties meet to discuss and resolve the issue;
- (e) keep note of the contact dates and discussions with Line Managers, for future reference.

c. **Conciliation:** Process that facilitate dispute resolution and explore possible solutions. Conciliation is similar to mediation but is less formal.

(1) If the staff member finds it too difficult to confront the offender and needs guidance and help from another person, they may choose to discuss their concerns with any of the following:

- (a) A dependable colleague.
- (b) Their supervisor.
- (c) The Prevention Adviser who may direct the staff member to one of the following:
 - 1/ A Trusted Person of the Prevention and Mediation Panel after coordination with the Chairman of the Mediation Panel.
 - 2/ The appropriate Civilian Human Resources Manager (if the complainant or the alleged offender is a NATO International Civilian staff member, a Local Wage Rate staff member or a Local Wage Scale staff member).
 - 3/ Any relevant expert such as the appropriate Legal, Gender or Medical Advisers.

(2) The above persons, as stated in paragraph 3-4.c(1), shall - throughout the procedure - assist, listen to and guide the staff member who has approached them. They shall provide confidential advice and/or guidance on possible courses of action towards the person whose behaviour is alleged as offensive, with the aim of resolving the case amicably.

(3) The alleged offender shall be informed of the situation by the Prevention Adviser and they are equally entitled to guidance and assistance, under the same conditions as the complainant as stated in paragraph 3-4.c (1).

(4) Should the conciliation lead to a solution for both parties, the staff member should inform the Prevention Adviser and no further action will be required.

(5) If conciliation fails, Prevention Advisor may propose that the Complainant or Alleged Offender request mediation.

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d. **Mediation:** form of alternative dispute resolution in which an impartial third party act as facilitator to assist in resolving a dispute between two or more parties.

(1) Either party has the right to request or refuse mediation and may at any time ask for the mediation procedure to be stopped. Refusal of mediation does not prevent either individual from requesting a formal investigation, or automatically prevent the said investigation from being initiated by a third party.

(2) If mediation is requested, the Prevention Adviser will inform the Chairperson of the Prevention and Mediation Panel who shall appoint in 5 working days one or two of the Trusted Persons to act as mediator for the case in question, as provided for in paragraph 3-1.b.(2).

(3) The selection of a particular mediator may be challenged by either of the Parties, in which case, the Parties must both agree on the choice of another member of the Prevention and Mediation Panel.

(4) The mediator has 30 working days to clarify the facts, seek a settlement and propose a solution. This solution shall only be valid if both parties agree to it and sign a mediation agreement document. See Annex D.

(5) The mediator shall draw up a written mediation report with the help of the Chairperson of the Prevention and Mediation Panel or the Prevention Adviser. This report, which is to include the mediation agreement document - signed or not - shall be addressed to the Parties. See Annex E.

(6) During mediation, the complainant and the alleged offender each have the right to be accompanied and assisted by a dependable colleague of their choice.

(7) If the parties are unable or unwilling to settle their differences by conciliation or mediation or if, after the informal process, the inappropriate behaviour persists, a formal procedure may be invoked.

3-5. **Formal Procedure**

a. Should the informal procedure not resolve the matter, the complainant may file a complaint to the Prevention Adviser within 90 calendar days of the alleged act or, if the matter has been submitted to mediation and the mediation attempt failed, within 30 calendar days of the reception of the report mentioned at paragraph 3-4 b(5). Exceptions can be made when the complainant provides an objective justification. Submission requirements are further discussed in paragraphs 3-5.c. and d. below. The complaint should in particular indicate as much of the following as possible:

(1) The type of unacceptable behaviour, discrimination, harassment, intimidation or abuse of authority perpetrated on the complainant, giving concrete examples attesting to the frequency of the events.

(2) The date(s), time(s) and place(s) of the occurrence(s).

(3) The identity of the alleged offender(s).

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- (4) Elements of the proof, including the name(s) of any witness(es) if possible.
 - (5) A description of the steps that have already been taken to resolve the issue (who, what, when, result).
 - (6) The impact on the work performance, on the person, on others, on the workplace environment.
 - (7) The complainant's expectation with regard to the alleged offender.
- b. The following shall be established in regards to the complaint: the status of the complainant and the alleged offender, such as Military staff members, NATO International Civilian, Local Wage Rate, Local Wage Scale, Contractor, Consultant, Minister of Defence (MOD) civilian or any civilian seconded to SHAPE or NPC Glons.
- c. If the alleged offender and complainant are Military staff members or MOD civilian staff or any civilian seconded to SHAPE or NPC Glons, the complaint shall be addressed to the NMR of the alleged offender within the appropriate NATO organisation or national element. The following procedures should then be followed:
- (1) The appropriate COS shall request an independent and objective investigator, either military or civilian, from a 'third' nation appointed by the appropriate NMR to conduct a full and proper investigation of the complaint. The investigator shall determine their own working procedure, have authority to examine any documents, hear the complainant and the alleged offender and perform all functions necessary to shed light on the case. Legal counsel shall be provided to the investigator upon request.
 - (2) All staff members of SHAPE or NPC Glons organisational elements, or co-located other bodies who are able to give information about the case (i.e. as a witness), are urged to cooperate with the investigator.
 - (3) Upon completion of the investigation, the investigator shall forward a report containing their findings and conclusions via the appropriate COS office to the NMR of the alleged offender.
 - (4) The alleged offender's NMR is urged to report all measures taken concerning the case, decisions and the results of the investigation to the appropriate COS or his/her designate.
 - (5) As soon as the appropriate COS or their designate receives information concerning issues handled under the procedures described above and their outcome, they shall inform the complainant in writing and decide whether and in what detail they should inform the superiors of the persons involved.
- d. If the alleged offender or complainant is a NATO International Civilian (NIC), Local Wage Rate (LWR) or Local Wage Scale (LWS) employee, the complaint shall be referred to the Prevention Adviser who will, in coordination with the Civilian Human Resources Manager and the concerned Legal Adviser, determine the procedure to follow based on References A, F and G.

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- (1) When receiving the complaint from a NIC, COS may take a decision upon the evidence presented or convene a committee to investigate the complaint and provide recommendations. Depending on the nature of the complaint, COS may decide to refer the matter for an external investigation.
- (2) COS will appoint a chairman and two other members to form a Complaint Committee.
 - (a) Where a military staff member is alleged to be the offender, the Committee shall include a military Chairman of higher rank and one other military member.
 - (b) Where a NIC is involved, the Committee shall include at least one civilian and one military member.
 - (c) At least two different nationalities are to be represented on the Committee.
 - (d) No person may be appointed as member of the Committee, who is directly or indirectly involved with the supervision of either party, is a co-worker or subordinate of either party, or where there is a conflict of interest or such may be implied.
- (3) Complaint Committee shall be convened within 21 calendar days of receipt of the complaint and will provide a copy of the complaint to the alleged offender. The alleged offender must provide their response to the Complaint Committee within 14 calendar days unless the Chairman decides to grant an extension to this period.
- (4) The Complaint Committee will determine its own working procedures, have the authority to examine any documents, hear the complainant and the alleged offender, witnesses and other staff members who are able to provide pertinent information, and generally perform all functions necessary to examine the case. Legal counsel shall be provided to the Committee upon its request.
- (5) The Committee shall perform its functions with fairness, impartiality and speed consistent with a thorough investigation.
- (6) Within 45 calendar days of receiving the complaint, the Chairman will deliver to the COS, the Committee's report outlining the scope, method and findings of their investigation as well as the Committee's recommended action to be taken by the COS. The report shall be signed by all members of the Committee. The Committee investigation, deliberations and report shall be treated as privileged information at all times.
- (7) The COS shall take a decision within 30 calendar days of receiving the Committee's Investigation report.
- (8) All aspects of the Committee's investigation, to include all written, electronic and verbal communication shall be treated as "confidential" and may not be communicated to any unauthorised individual.

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(9) COS may decide to take disciplinary action in the case of inappropriate behaviour or where an individual's action willfully falls short of the principles outlined in Code of Conduct, as described in Reference C.

e. The Legal Adviser, in coordination with the responsible representative, will address any jurisdictional issues and make a determination as to whether national criminal jurisdiction or disciplinary competence should be considered. In such case:

(1) criminal law not applicable - the formal procedure continues;

(2) criminal law applicable – COM BSG will liaise with the appropriate Host Nation authorities and keep all interested parties informed.

(3) National disciplinary competence exerted – COM BSG will liaise with the appropriate NMR or PNMR and keep the interested parties informed.

f. Chief of Staff, Prevention Advisor, PMP chairperson or the Legal Advisor, shall – upon proposal of Line Management or on his own initiative – take steps to close, after preliminary investigation, any case found to be manifestly unfounded, without prejudice to actions.

g. Military Personnel Section will retain all documents associated with this policy as it pertains to military personnel and CHRM will retain all documents associated with this policy as it pertains to NICs, LWRs and LWS.

3-6. Roles and Responsibilities of the Prevention and Mediation Panel. The role and responsibilities of the Panel appointed by COS, and the responsibilities and role of the Mediator are described at Annex A.

3-7. Disciplinary Action

a. If the alleged offender is a NATO Military or MOD military/civilian or any civilian seconded to SHAPE or NPC Glons, the matter shall be handed over to the respective NMR for appropriate disciplinary action according to national regulations.

b. If the alleged offender is a NATO International Civilian, they shall be subject to appropriate disciplinary action under Chapter XIII of Reference A.

c. If the alleged offender is a Local Wage Rate employee, they shall be subject to Section XI of Reference F.

d. If the alleged offender is a Local Wage Scale employee, they shall be subject to Articles 32 and 39 of Reference G.

e. If the alleged offender does not fall under any of the above mentioned employment categories, the case shall be referred to the Legal Adviser for further guidance and a way ahead.

3-8. Retaliatory or Repressive Measures. Any staff member who retaliates against a complainant for reporting unacceptable behaviour in the form of discrimination or harassment, or against another person who assists in an investigation, shall be subject to appropriate

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disciplinary action. Likewise, any staff member who retaliates against a person accused of discrimination or harassment will be subject to appropriate disciplinary action.

SEXUAL HARASSMENT

The following provide some generic examples of behaviours that can potential be interpreted or confused as sexual harassment. This list is not exhaustive and just provides an overall awareness for consideration.

1. **The Green Zone.** The following behaviours are behaviours that are either expected or likely to occur within the organisation which are not considered forms of sexual harassment:

- a. Counselling on work performance;
- b. Counselling on appearance, dress code, and manner;\
- c. Touching which could not reasonably be perceived in a sexual way (such as tapping someone on the shoulder);
- d. Engaging in social interaction;
- e. Showing concern, encouragement, paying a polite compliment, or indulging in friendly conversation.

2. **The Yellow Zone.** The following behaviours are considered escalatory and provide examples of behaviour that would be considered sexual harassment:

- a. Violating personal "space" by getting too close for comfort (acknowledged that this can be subjective and varies from culture to culture, most individuals prefer a physical distance of one arm length comfortable)
- b. Acting or gesturing sexually: by provocatively adjusting their clothing, (e.g. unbuttoning the shirt, unzipping pants) showing legs, the cleavage in extreme manner, "wiggling" etc. in such a way that normal rules of modesty are infringed, etc.;
- c. Writing notes, sending emails or faxes with sexual connotations;
- d. Posting pin-ups/calendars/photos with sexual overtones;
- e. Making lewd or sexually suggestive comments, jokes or derogatory remarks;
- f. Showing undue interest in the life, habits, routine, tastes or personal details of another (if intent is driven by sexual interest);
- g. Proposing occasions to meet, repeatedly requesting dates;
- h. Staring, leering and whistling;
- i. Using foul language.

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3. **The Red Zone.** These behaviours are always considered sexual harassment:
- a. Offering career advancement in return for sexual favours;
 - b. Threatening retaliation if sexual favours are not forthcoming or using status to request dates;
 - c. Prying into the life, habits, routine, tastes or personal details of the targeted individual (if intent is driven by sexual interest);
 - d. Making sexually explicit remarks or comments, writing obscene letters, emails or faxes;
 - e. Posting sexually explicit pin-ups/calendars/photos;
 - f. Forcefully grabbing, cornering, fondling or kissing;
 - g. Sexual assault, rape.

ROLE AND RESPONSIBILITIES OF THE PREVENTION AND MEDIATION PANEL

1. The role of the Prevention and Mediation Panel is to assist the Prevention Adviser to promulgate the directive and ensure that said directive is respected within the headquarters. The Panel provides assistance to any staff member who request advice or help concerning harassment and discrimination related issues. The Panel will be composed of a Chairperson and up to five staff members. To be part of the Panel, each staff member will receive training as Trusted Persons.

RESPONSIBILITIES

2. The Prevention and Mediation Panel's main responsibility is to ensure the follow up of the directive and assist the Prevention Adviser in its application. Members of the Panel play an important role in the informal conciliation and mediation procedure, which seeks an early settlement between the parties involved. The Prevention and Mediation Panel through its Chairperson is responsible for:

- a. Assisting the Prevention Adviser in informing all staff members of said policy;
- b. Proposing programmes for education, prevention and awareness of harassment and discrimination;
- c. Nominating the mediator when required;
- d. Evaluating in coordination with the Prevention Adviser the needs for training of its members;
- e. Assisting the Prevention Adviser in the preparation of the annual report; and
- f. Proposing amendments to this directive.

MEDIATOR

3. The role of the Mediator is to try to resolve the differences of the parties outside of formal channel. They are a neutral facilitator that can assist the disputing parties in communicating their issues and exploring solutions. This procedure saves time, resources and tackles the issue more quickly. The Mediator has the following responsibilities:

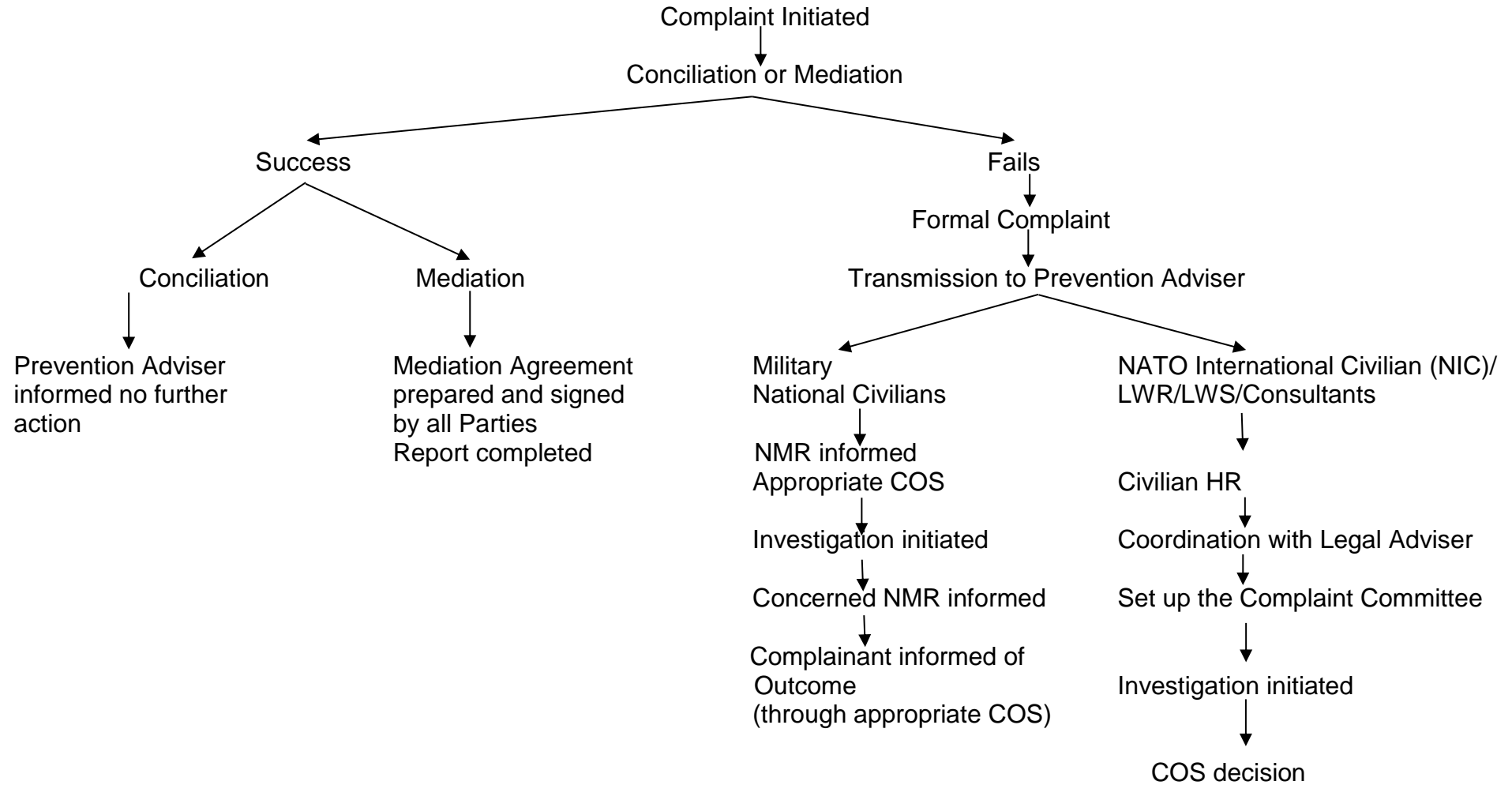
- a. Provide both parties with clear information about the process;
- b. Ensure that parties are heard separately or in a face to face, neutral, non-hostile environment;
- c. Must be impartial and to ensure that emotions do not clog the issue in order to discover the causes of the conflict;

Help parties focus on the problem and a possible solution;

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- d. Transmit the proposition to either party; and
- e. Prepare the mediation report, to be transmitted to the Prevention Adviser via the Chairperson of the Prevention and Mediation Panel.

DIAGRAM RESUMING THE COMPLAINT PROCESS



MEDIATION AGREEMENT

1. It is acknowledged that the mediator is a volunteer impartial individual whose role is to assist the parties to obtain a voluntary resolution of the shared issues.
2. The parties understand that they are here to find a solution to the dispute and that this is most likely to occur if they share information openly.
3. The parties understand the mediator will not make decisions or tell the parties how to solve the problem, but that they are there to help them see both sides, think about solutions, and to write up a mediation report following the proceedings.
4. The parties understand that the mediator is not acting as a lawyer or investigator or counsellor, and the parties understand the mediator will not give legal or financial advice.
5. The parties understand that mediation can be stopped at any time.
6. The parties have reached an agreement and based on the discussions, the following steps will be taken to solve the issues:

(provide a summary of the steps to be taken and a completion timeline)

By signing this agreement, the parties below acknowledge that they have read, understand and agree to be bound by the terms of this agreement.

Furthermore, the parties acknowledge that, by signing this agreement, they give up the right to any action regarding the matter that was submitted to mediation.

Date _____

Complainant:	_____	_____
	Print Name	Signature

Alleged Offender:	_____	_____
	Print Name	Signature

Mediator:	_____	_____
	Print Name	Signature

EXAMPLE OF MEDIATION REPORT

Parties to the Mediation

Name of Complainant

Name of Alleged Offender

Date:

Location:

Mediator:

Terms agreed to:

The parties jointly agreed to a solution that they feel will settle the complaint. The discussions established during mediation stated the following problems

(brief explanation)

and the parties have come to a solution that they both consider to be a settlement to the dispute.

Under the direction of the Mediator, both parties have met on _____ and based on the discussions, the following steps will be taken to solve the issue:

(Write a summary of the discussions and steps to be taken)

Or (delete as applicable)

Under the direction of the Mediator, both parties have met on _____ and on _____ and have been unable to resolve the issue based on the following facts:

(Write a summary of the discussions)

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(Signature of Complainant)

Date

(Signature of Alleged Offender)

Date

(Signature of Mediator)

Date

DISTRIBUTION:

Complainant
Alleged Offender
Prevention Adviser
Chairperson of the Prevention and Mediation Panel