

HMPPS Professional Standards Review

Bullying, Harassment and Discrimination

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HMPPS Professional Standards Commission Recommendations

In October 2023, I was commissioned by HM Prisons and Probation Service (HMPPS) to conduct a review to identify any specific recommendations for improvement to deliver positive change in how HMPPS addresses bullying, harassment, and discrimination (BHD). The Terms of Reference were finalized in December 2023, and I conducted my work from January 2024 through March 2024.

In the course of this work, I reviewed relevant people policies and procedures, analysed data, interviewed stakeholders across HMPPS and the Ministry of Justice, met with unions, spoke with HMPPS employees who had experiences of BHD, and considered how similar organizations handle these challenges.

Many HMPPS leaders are getting it right, driving meaningful change through difficult, hands-on work with their teams and getting signals back from their staff that they are experiencing the change. Establishing the Tackling Unacceptable Behaviour Unit (TUBU) in 2020 provided a visible focal point and mechanism for driving progress against BHD across HMPPS. This team is filling gaps in the support to staff, providing a valuable signposting service, and preparing assessments to understand BHD across the HMPPS landscape.

While HMPPS is already on the journey to improve their approach to BHD my view is that further work is needed, which I have set out in my recommendations below. I heard from employees who had experienced BHD just how much they love their jobs, despite the tough situations they had faced. I believe that it is more important than ever that HMPPS actively addresses BHD. Apart from the moral imperative, there are solid efficiency benefits to be gained as BHD is inherently costly for any organization. Tackling BHD more directly will reduce absences from work, unlock productive time for staff and managers, and reduce turn-over of staff. In the end, this will result in a more engaged, motivated and loyal workforce. The jobs that HMPPS staff perform are hard and critical for society, which makes improvement in BHD all the more pressing.

Employees that I spoke to are watching for tangible signs of a step change in how BHD is handled by HMPPS. It is crucial that HMPPS makes tangible change on the ground that employees can see, which in turn gives them reason to trust that BHD will not be tolerated by HMPPS.

The public commitments by senior leadership and the establishment of TUBU are solid steps forward, and I believe that my 12 recommendations will support and accelerate progress in tackling this issue and complement existing work underway.

Policy and Procedure Recommendations

1. HMPPS should move to establish an independent channel outside of the line management structure for reporting, investigating and decisioning BHD complaints where a dedicated team of well-trained personnel / experts can handle matters in a ring-fenced, confidential, and standardized process.
2. The forthcoming review of the DIRF (Discrimination Incident Reporting Form) process being undertaken as part of the HMPPS response to the HMIP thematic review should include assessing rigour in data capture and reporting, timeliness of response, and consistent and independent handling of DIRFs. I also recommend assessing the process through the separate lenses of staff, prisoner and visitor as complainant to fully account for differences in context and power dynamics.

3. HMPPS should review the process for handling workplace adjustments, including addressing inconsistencies in the application of managerial discretion, the appropriateness of disregarding recommendations from Occupational Health and the Workplace Adjustment team, and providing more confidential channels for the assessment of medical information and communication of adjustments.
4. In the process of finalizing the working draft of the Sexual Harassment Guidance, HMPPS should consider including information on sexual assault and rape, as well as addressing the provision of pastoral care to the victim. The specific considerations around sexual harassment and assault should ordinarily trigger an investigation without the need for a grievance to be raised.
5. In finalizing policy and procedure revisions, my input should be considered before the policies are subject to consultation and final sign-off.

Operational Recommendations

6. HMPPS should consolidate formal complaints into one database and regular reporting to senior leadership and key stakeholders should occur, including monitoring of KPIs related to employee experience and policy guidelines.
7. TUBU should review the objectives and approach to Climate Assessments to determine opportunities to improve impact, streamline output, and build credibility with staff.
8. Continued care should be taken in hiring TUBU mediators and investigators with personal and professional profiles that reflect neutrality and independence.
9. HMPPS should consider reporting metrics on BHD matters and outcomes on a regular basis to all employees. Due to sensitivity, specific care should be taken to ensure anonymity of any cases reported.
10. HMPPS should publicly celebrate and showcase leaders who are driving meaningful change, including communicating the successful measures they deployed.
11. HMPPS should assess the current approach to performance feedback, considering whether it is effective across all branches and where there are opportunities to improve on it to better support communicating, documenting and reinforcing expectations on professional standards of behaviour.
12. HMPPS should assess whether current hiring practices enable sufficient assessment of a candidate's alignment with HMPPS values prior to hiring.

I gave careful consideration to a number of options to drive the necessary changes and improvements forward. In my view, what HMPPS needs is a different system for resolving BHD complaints, a system oriented towards the fundamental principle of independence in investigations and decision-making processes, geared for effectiveness in an operational environment. If this principle is adopted, I anticipate that the next step would be further work to develop such a system.

Throughout my work, I received support and assistance from a number of people and I am grateful to them for their time and effort. I would also particularly like to thank the HMPPS staff members and union officials who spoke to me, whose experiences informed this work. Of special note are the staff members with experience of BHD whom I interviewed confidentially. I am grateful for the trust of all involved.

The report which follows is mine and mine alone. I was grateful however, for privileged independent legal advice throughout from Eleena Misra KC (who was instructed as set out in the Terms of

Reference). Given that we worked cooperatively together my report is written using “we” throughout, but as I have noted, it remains my report and mine alone. I have received legal advice about the inclusion of legally privileged information in a draft of my report and I changed parts of that draft to safeguard that information. HMPPS have confirmed to me and wish to make clear that they do not waive privilege over any such privileged information which has inadvertently remained in my report despite those changes.

What follows is the text of my report.

Jennifer Rademaker

October 2024

Non-Executive Director, Ministry of Justice

Introduction

Ensuring a workplace with high professional standards is a key goal for any large organization and proving increasingly important as societies place premiums on equality, diversity, dignity and fairness. HM Prisons and Probation Service (HMPPS) has been on a journey to continuously improve the approach to professional standards, including a particular focus on addressing bullying, harassment, and discrimination including victimisation (BHD). Establishing the Tackling Unacceptable Behaviour Unit (TUBU) in 2020 provided a visible focal point and mechanism for driving progress against BHD across HMPPS.

TUBU has made an impact through supporting staff via the confidential helpline, providing insights into BHD experienced by staff, conducting climate assessments of probation and prison sites, and providing signposting, mediation and investigation services. Yet more work needs to be done given the complex nature of HMPPS, the challenges in driving culture change, and the scale of the problem.

In the 2023 People Survey, 12% of HMPPS staff reported experiencing bullying and harassment at work in the past 12 months and 12% reported discrimination at work. These rates are 50% above the comparable statistics for the Civil Service, at 8% and 7% respectively. Of those HMPPS staff who answered that they experienced bullying and harassment, 43% did not report the experience and 36% said they felt punished for reporting.¹

I was commissioned by the HMPPS senior leadership to conduct a review to identify specific recommendations for improvement and deliver positive change in how HMPPS addresses BHD. In the course of this work, Eleena Misra KC and I reviewed relevant people policies and procedures, analysed data, met stakeholders across HMPPS and the MOJ, spoke with unions, interviewed 13 HMPPS employees² who reported experiencing BHD, and considered how similar organizations handle these challenges. Our Terms of Reference were finalized in December 2023, and we conducted our work from January 2024 through March 2024. Through the course of our investigation, we benefited from the support of a small team of HMPPS staff.

We recognise that in ways that are both obvious and implicit, the Covid-19 pandemic may have impacted on the mental health, working arrangements, expectations and practices of staff and managers with some roles more amenable to flexible working arrangements than others. We also recognise the unique working environment of HMPS, and the unique challenges faced by staff in HMPPS overall.

We heard from employees who reported experiencing BHD just how much they love their jobs, despite the tough situations they had faced. While a significant amount of work has gone into raising awareness of BHD, confirming the importance of professional standards, and signposting to TUBU and other resources, employees are watching for tangible signs of a step change in how BHD is handled by HMPPS. This is a crucial moment to now turn from the giving of assurances and policy

¹ 2023 Civil Service People Survey – HMPPS Results; This is internal data and not for external publication. Published People Survey data can be accessed here: <https://www.gov.uk/government/publications/civil-service-people-survey-2023-results>

² 13 HMPPS staff spoke confidentially and related what they considered to be their experience of bullying, harassment and discrimination

commitments to making change on the ground that employees can see, which in turn gives them reason to trust that BHD will not be tolerated by HMPPS.

The Current State of Bullying, Harassment, and Discrimination within HMPPS

There is no one central repository where all HMPPS bullying, harassment, and discrimination complaints are captured and tracked, so it is not currently possible to get a complete and accurate picture of the scale of the problem. Compounding this lack of complete data is the fact that many cases are handled informally, go unreported or reported but not taken forward by the manager (and hence not captured). While logging cases raised informally is probably not feasible, we raise the gap here to highlight the likely underestimation of the scale of issues.

One source of data is formal grievances submitted to the Single Operating Platform (SOP). The TUBU team and others receive periodic bespoke extracts of this data, but there is no regular management reporting prepared specifically on BHD complaints.

A recently prepared response to a Freedom of Information request provides a view into the data available through SOP³. This response was specific to prison staff and provided the number of staff facing investigations due to misconduct. The table below is a subset of allegations selected for bullying, harassment and discrimination. “Unprofessional Conduct” is included, but this category is broad and could include non-BHD conduct. To put these figures into perspective, staff facing investigations as a percent of total public sector prison staff⁴ was calculated.

Even including the large, broad category of “Unprofessional Conduct”, there is a significant gap between the 3% of staff facing investigation and the BHD reported by 15% of HMPS staff through the People Survey (see below). This could be attributed to employees unwilling to report or reporting but managers not taking the complaint forward.

Number of public sector prison staff facing investigations for BHD-related allegation.

| Allegation | 2019/20 | 2020/21 | 2021/22 | 2022/23 |
|--|----------------|----------------|----------------|----------------|
| Abusive Language / Behaviour towards staff | 68 | 112 | 126 | 141 |
| Bullying / Harassment | 97 | 105 | 103 | 117 |
| Making / Prompting false statements | 62 | 105 | 110 | 84 |
| Racial Harassment | 24 | 51 | 46 | 29 |
| Sexual harassment / assault | 46 | 55 | 86 | 109 |
| Unprofessional Conduct | 457 | 711 | 639 | 607 |
| Total | 754 | 1,139 | 1,110 | 1,087 |
| Public sector prison staff | 33,741 | 34,267 | 34,150 | 36,716 |
| Percent of staff facing investigations | 2% | 3% | 3% | 3% |

Some reports of BHD may be made via the channel for reporting corruption and may then go uncounted and tracked. The Corruption Team captures reports through the Mercury and CLUE database, and a sizable portion of corruption reports are in fact related to professional standards. A snapshot of reports submitted to the Counter Corruption Unit over 2 months in 2023 showed

³ FOI 231219029 prison staff investigations by allegation final tables.xlsx

⁴ HM Prison and Probation Service Workforce Quarterly: December 2023 (and 2022, 2021 and 2020)

reporting levels of professional standards to the Counter Corruption Unit were similar to levels of reports of corruption. The Corruption Team refers reports related to professional standards back to the appropriate manager. While the reports are held centrally on the Mercury or CLUE systems, the Corruption Team is not resourced to track whether these reports are pursued post-referral.

We also have some indication of the bullying, harassment and discrimination challenges through calls to the TUBU helpline. TUBU handled 210 calls in Q1 and Q2 of 2023.⁵ Of these calls, 35% were from managers seeking advice, 31% were related to a manager's behaviour, and 19% were calling on another's behalf. The top three reported behaviours were bullying (32%), discrimination (22%), and unfair treatment (19%).

But given the lack of a complete data set and known under-reporting, perhaps the best read for the scope and profile of bullying, harassment and discrimination can be found in the annual People Survey data.

In 2023, 12% (~3,300 employees) of People Survey respondents in HMPPS reported experiencing discrimination at work in the past 12 months and an equal percentage (12%) reported experiencing bullying and/or harassment at work in the past 12 months.⁶ Notably, employees in the Prison Service report substantially higher rates of discrimination, bullying and harassment than HQ and the Probation Service.

| | HMPPS Overall | HMPPS HQ | HMPS & YCS | Probation Service |
|--|------------------|----------|---------------|----------------------|
| E01. Experienced discrimination at work in the past 12 months | | | | |
| Yes | 12% | 10% | 15% | 10% |
| No | 79% | 83% | 75% | 82% |
| Prefer Not to Say | 9% | 7% | 10% | 8% |
| E03. Experienced bullying and/or harassment at work in the past 12 months | | | | |
| Yes | 12% | 10% | 15% | 10% |
| No | 81% | 85% | 77% | 84% |
| Prefer Not to Say | 7% | 6% | 8% | 6% |

Patterns of discrimination reported in the 2023 People Survey vary in terms of prevalence across the three branches of HMPPS. In terms of age discrimination in HMPS, interviews conducted with staff and the trade unions reported discrimination at both ends of the age spectrum. Older staff reported feeling targeted as they approached retirement age and younger staff felt disregarded and targeted based on their lack of experience. As seen in the table below, mental health surfaced as an issue in both HMPS and the Probation Service, while not appearing in the top reasons for HQ. Issues around staff working patterns surface in particular in the Probation Service.

⁵ TUBU Headline Information Q1Q2 23-24

⁶ 2023 Civil Service People Survey – HMPPS Results

| Top 5 reasons cited for discrimination | HMPPS HQ | HMPS &YCS | Probation Service |
|--|-------------------|----------------|-------------------|
| 1 st | Gender | Age | Disability |
| 2 nd | Grade or Level | Gender | Mental Health |
| 3 rd | Disability | Grade or Level | Working Pattern |
| 4 th | Ethnic background | Disability | Age |
| 5 th | Age | Mental Health | Grade or Level |

Grounds for bullying and/or harassment reported in the 2023 People Survey are more consistent across the three branches.

| Top 5 grounds for bullying / harassment | HMPPS HQ | HMPS &YCS | Probation Service |
|---|--|--|--|
| 1 st | Negative micro management | Treated less favourably to others | Negative micro management |
| 2 nd | Treated less favourably to others | Negative micro management | Humiliated in front of team or others |
| 3 rd | Humiliated in front of team or others | Humiliated in front of team or others | Treated less favourably to others |
| 4 th | Ignored, excluded or marginalised | Spreading gossip or making false accusations | Intimidation or verbal or written aggression |
| 5 th | Intimidation or verbal or written aggression | Ignored, excluded or marginalised | Ignored, excluded or marginalised |

For all three branches, the most cited perpetrator of the bullying and or harassment is a “Colleague in my area, Directorate or Division”, followed by “My Manager” and “Another Senior Member of Staff”. The prevalence of perpetrators who are senior to the employee is consistent across the three branches at 42%-44%.

| Perpetrator of bullying / harassment | HMPPS HQ | HMPS &YCS | Probation Service |
|--------------------------------------|----------|-----------|-------------------|
| Colleague in my area | 32% | 30% | 32% |
| My Manager | 22% | 21% | 24% |
| Another Senior Member of Staff | 20% | 23% | 18% |
| Other | 26% | 26% | 26% |

Unfortunately, many employees who believe that they are experiencing bullying and harassment do not report their experience. There is some variation here with Probation employees somewhat more likely to report their experiences and HMPS employees somewhat less likely. Of those

employees who did report it, all branches were skewed towards reporting through less formal channels, with HQ and Probation much more likely to take this path. Prison Service employees were more likely to pursue a formal complaint, but even so this comprised only 30% of those reporting.

A lack of trust in the process and fear of reprisal come through clearly as reasons why employees chose not to report. Believing that action would not be taken and worry about being seen as a troublemaker or placing your job in jeopardy was a motif in the anecdotal feedback heard directly in interviews with employees and trade union representatives.

Notably only a small percent of employees answered that they did not know how to report it or who to speak to. Whether a result of the promotion of the TUBU services, the efforts of the trade unions, or other channels, lack of information about the process is not reported as a significant barrier.

| | HMPPS HQ | HMPS & YCS | Probation Service |
|--|-------------|---------------|----------------------|
| E05. Reported experience of bullying and harassment | | | |
| Yes | 44% | 42% | 48% |
| No | 44% | 45% | 40% |
| Prefer Not to Say | 13% | 13% | 12% |
| E05A. How the incident was reported | | | |
| I confided in someone | 23% | 28% | 23% |
| I raised a formal complaint | 22% | 30% | 23% |
| I reported it in another way, through less formal means | 46% | 34% | 48% |
| In another way | 8% | 8% | 6% |
| E05B. If did not report, why? | | | |
| I did not believe that corrective action would be taken | 34% | 36% | 33% |
| I did not know how to report it or who to speak to | 4% | 5% | 6% |
| I did not report it for another reason | 11% | 8% | 12% |
| I did not want to be seen as a troublemaker | 24% | 23% | 26% |
| I felt it might jeopardise my job | 21% | 27% | 21% |
| The behaviour stopped before I could report it | 5% | 2% | 3% |

Finally, the 2023 People Survey can also give insights into the aftermath of reporting an incident. Here, the Prison Service shows a different pattern than HQ and Probation, with Prison employees more likely to feel punished for reporting, less likely to believe that appropriate action was taken, more likely to report that the bullying continued, and more likely to believe that the culture allows this treatment to happen.

Notably, employees across the board are more guarded about answering whether the bullying / harassment has ceased, with 26% - 28% preferring not to say.

While Prison responders are more likely to believe that the culture allows this behaviour to continue (68%), the percentages are still quite high for HQ and Probation, with 51% and 58% agreeing respectively.

| | HMPPS HQ | HMPS & YCS | Probation Service |
|---|-------------|---------------|----------------------|
| E06. Did you feel you were punished for reporting the incident | | | |
| Yes | 34% | 41% | 32% |
| No | 56% | 45% | 53% |
| Prefer Not to Say | 10% | 15% | 15% |
| | | | |
| E06A. Appropriate action was taken to address the behaviour | | | |
| Yes | 30% | 23% | 32% |
| No | 55% | 64% | 54% |
| Prefer Not to Say | 15% | 13% | 14% |
| | | | |
| E06B. The bullying and harassment has stopped | | | |
| Yes | 43% | 35% | 44% |
| No | 30% | 39% | 30% |
| Prefer Not to Say | 28% | 26% | 26% |
| | | | |
| E06C. The culture in my area allows this behaviour to continue | | | |
| Yes | 51% | 68% | 58% |
| No | 20% | 16% | 24% |
| Prefer Not to Say | 29% | 16% | 18% |

To summarize, the picture that is painted by the 2023 People Survey results indicates

- Sizable populations of employees report experiencing discrimination and/or bullying and harassment with the percentage of employees 50% higher for HMPS than for HQ and Probation.
- Some variations across the branches in terms of grounds of discrimination and type of bullying/harassment.
- A high percentage across all branches report experiencing these behaviours from perpetrators who are senior to the victim.
- A lack of information is not a barrier to reporting.
- A lack of trust and fear in the process impeding reporting across all branches.
- High percentages of employees say that they experience negative outcomes as a result of reporting and continuation of bullying, with HMPS notably higher than the other branches.
- High percentages of employees believing that the culture allows this behaviour to continue, again with HMPS notably higher.

In reviewing the existing policies and procedures, these insights provide important indicators to where the processes are effective and where gaps exist.

Finally, to return to the fact that data on bullying, harassment and discrimination complaints across HMPPS are held in multiple databases or not captured at all, the lack of a process to consolidate complaints has implications beyond just allowing the organization to track the scope and scale of BHD.

- BHD cases can fall through the cracks, for example when originally filed through the Counter Corruption process and then referred on to a manager.

- It is not possible to definitively track timeliness of the process, which has implications on the employee experience and hinders measurement of compliance with policy guidelines.
- It is not possible to definitively track patterns of behaviour for repeat perpetrators of BHD, a duty of care issue for the organization.
- Informal methods of handling complaints, like mediation, are not always captured and so their usage and efficacy are not fully measured.

The lack of regular reporting means that the executive team and others charged with addressing BHD do not have the management information to adequately identify opportunities and challenges, and key employee experience indicators cannot be measured. Given the scale of HMPPS, the effort to consolidate formal complaints into one database and report is warranted. We also think it is a potential opportunity to include, where trackable, informal methods like Mediation.

Recommendation

HMPPS should consolidate formal complaints into one database and regular reporting to senior leadership and key stakeholders should occur, including monitoring of KPIs related to employee experience and policy guidelines.

The Role of the Tackling Unacceptable Behaviours Unit (TUBU)

The Tackling Unacceptable Behaviours Unit (TUBU) was established in 2020 to improve the working environment in HMPPS. TUBU supports staff and managers through 5 strands of work: Climate Assessments, Confidential Helpline, Mediation Service, Unacceptable Behaviour Change Programme, and Investigations Service.⁷

Climate Assessments

Climate Assessments are designed to help senior leaders at individual sites (for example, a Governor or Head of Probation Delivery Unit) understand the lived experience of staff and to support them in making informed, local decisions about workplace culture.⁸ These Assessments are completed as part of a rolling programme of work, with the aim to have all sites assessed within a three year period. Climate Assessments on a responsive basis can also be requested in cases where there are identified needs or risks at a site.

Climate Assessments use two stages of data collection: a digital survey and interviews/focus groups. While all Climate Assessments conduct a digital survey, sites will only proceed to interviews and focus groups if there is a need to further understand survey findings or pre-identified issues. Most of the Climate Assessments performed on a responsive basis involve interviews and focus groups.

The senior leaders receive materials including a letter outlining the rationale and process and a comprehensive staff communications pack, including promotional materials and FAQs.⁹

The Climate Assessment digital survey covers six areas: leadership and communication, diversity and inclusion, fairness and consistency, teamwork, work life balance, and future plans. The survey also asks respondents about their own experiences of unacceptable behaviour and consideration of protected characteristics.

Two versions of the Climate Assessment are produced: a full report that is provided to the senior leader and then, three weeks later, shared with their supervisor, and a summary report that can be shared with the senior leader's management team and the wider staffing group. The Climate Assessment team also has a final meeting with the senior leader to discuss the findings, answer questions and explore next steps. The Climate Assessment team completed 41 reports in the first two quarters of 2023/2024.

The Climate Assessments themselves are highly detailed and lengthy documents, dense with statistics and recommendations. The net effect is that it can be hard to read these documents and identify the priority actions that must urgently be taken. Compounding this challenge is that the Climate Assessments do not include an overall indicator of relative health of the site's climate or any benchmarking. This is by design, with several reasons given as rationale:

- Designed as a tool to help the senior leader understand the lived experience of staff, not a performance assessment.

⁷ TUBU Headline Information Q1Q2 23-24

⁸ TUBU Climate Assessment Information Sheet

⁹ TUBU Senior Letter Rolling Programme and Annexures

- Conscious decision not to add to the existing array of initiatives that measure performance and to which leaders are held accountable to monitor and report on.
- Concern about creating a “league table aspect” where leaders want to know where their site’s climate ranks relative to others or a norm.
- Lack of clarity around how to approach measures of climate. What is bad enough to be “red” versus “amber”?

The Climate Assessment team prepared separate overview documents identifying recurring themes observed in Climate Assessments across Prison and Probation.¹⁰ In line with the rationales above, these reports do not identify specific sites (referring only to “Site A” for example) and do not include any indication of relative health of the site climates (e.g., a Red-Amber-Green status) or progress against next steps. These means that the overview document is not particularly useful in providing executive leadership with any sense of specific troubled sites or progress against issues.

Staff are very sceptical about the effectiveness of the Climate Assessments. Significant resources and effort go into producing these weighty documents but it is not clear to employees what positive change arises. The lack of an indicator of relative climate health means there are no strong calls to action in the Climate Assessments. Staff are also aware that there are no ramifications or additional scrutiny associated with a negative Climate Assessment or even a repeat negative Climate Assessment. In conversations with leaders, Climate Assessments did not seem to be a source of new insights, but rather confirming known issues and dynamics.

While the intent of the Climate Assessments is laudable, the current approach is resource intensive if it is just to expose individual leaders to lived experiences (which they are already alive to) and has unintended negative consequences in terms of staff expectations and scepticism.

Recommendation

TUBU should review the objectives and approach to Climate Assessments to determine opportunities to improve impact, streamline output, and build credibility with staff.

Confidential Helpline

The TUBU confidential helpline is staffed by members of the TUBU team. Call handlers listen to and signpost callers to existing professional support, services or policies. They do not advise callers on what action to take. In some cases, call handlers will offer to intervene or escalate within TUBU; in the calls reviewed, this happened when callers mentioned or seemed particularly at risk of self-harm or personal safety issues.

As mentioned above, the confidential helpline handled 210 calls in Q1 and Q2 of 2023. The helpline team capture in anonymized form the substance of each call for internal management information purposes, and these were made available to me to review in confidence as part of my work (317 calls in 2022; 365 calls in 2023). While these records are anonymized they remain sensitive and confidential. There was a recurring theme of callers seeking advice and the helpline only geared to

¹⁰ Climate Assessment Overview Themes Probation Delivery Units 2022; Climate Assessment Prison Overview Report updated August 2023

signpost. Those seeking advice included those experiencing BHD, managers of those experiencing BHD and senior leaders charged with determining outcomes of grievances. Confidentiality was another recurring theme in the calls, with callers extremely concerned, despite helpline staff assurances, about the safety and confidentiality of the discussion. This did not seem like a reflection on the helpline, but rather the general concern about trust and retaliation in reporting (as evidenced in the People Survey results).

While lack of information does not seem to be a significant barrier to reporting, with only 4%-6%¹¹ of people not reporting a BHD issue citing that “I did not know how to report or who to speak to”, it is difficult to attribute this directly to the TUBU helpline. Regardless, the TUBU helpline is providing a valuable service to employees in ensuring awareness of the array of available options and support. It is also going some way to bridging the gap in training on policies and procedures for managers and senior leaders.

Mediation Service

The TUBU mediation service is a voluntary, confidential and informal process available to all HMPPS staff to help resolve issues or disagreements with colleagues. Until recently, mediation was facilitated by accredited workplace mediators who volunteer to perform a minimum of six mediations per year. TUBU recently (February 2024) appointed 7 new full-time Mediator and Conflict Resolution Managers with future plans to recruit a further 3. The full-time positions will allow more timely provision of service and enable expansion of the mediation service to include group mediation and more support and guidance to managers. The addition of dedicated staff will allow TUBU to promote the mediation service as an early resolution path.

Volumes are small but growing, with 28 referrals in Q1 2023/2024 and 35 in Q2.¹² Currently, almost half of the referrals are made post formal action or with formal action on hold. Acknowledging that volumes are small, the success rates are high, with 80% of completed mediations reaching an agreement in Q1 and 90% in Q2.

In many of the interviews we conducted, employees expressed regret that matters proceeded down a formal route: “I just wanted an apology” or “it would have been enough to have some acknowledgement that a wrong was done.” Mediation can solve for these situations. The growth of this unit will provide a valuable service to HMPPS with the caveat that these mediators must be viewed as independent and neutral by staff and accordingly continued care should be taken in choosing people for this post.

A trusted, seasoned, and skilled manager can also act as an informal mediator, and in many cases can prove even more effective than an independent mediator, particularly at dealing with issues at inception. Having a staffed mediation service should not preclude training investments as part of leadership development programmes to provide managers with the skills to perform mediation and resolve staff issues early on.

¹¹ 2023 Civil Service People Survey – HMPPS Results

¹² TUBU Headline Information Q1Q2 23-24

Unacceptable Behaviours Change Programme

The Unacceptable Behaviours Change Programme was launched in August 2022 and is delivered on a commission basis to teams or business units, where they specifically request the programme, over 9 to 12 months. The programme consists of the following modules:

- Introduction to Bullying, Harassment, Discrimination and Victimization, and Psychological Safety
- Microaggressions
- Gaslighting
- MoJ Innovations Team Psychological Safety to support team innovation

52 sessions were delivered between August 2022 to August 2023, to an estimated 3,000 employees. Future plans are to deliver 80 sessions to 4,800 employees between September 2023 and September 2024.

Investigation Service

The TUBU Investigation Service provides trained and dedicated investigators to support BHD cases.¹³ For a case to be supported by the TUBU Investigation Service, it must meet the following criteria:

- Involve allegations of bullying, harassment, discrimination or victimisation
- Has a degree of complexity, such as cases involving multiple strands or incidents, multiple complainants / witnesses, witnesses from other locations or those who have left the service and/or cases which took place over an extended period
- May require an independent focus/impartiality, such as cases involving a manager, the issue or incident is known among staff members or where there is another identified conflict of interest.

The referral is then assessed to determine whether the case can be supported. If taken on, the Investigation Team provides ongoing oversight for the full duration of the case. If the case does not meet the criteria, then TUBU signposts to other areas of support.

The service was launched in December 2023 and 10 investigators have been hired. As with the mediators, continued care should be taken to ensure that investigators have profiles that will allow employees to be confident in their independence.

As mentioned above, cases where an independent focus is required are targets for the TUBU Investigation Service. TUBU does not have the power to initiate an investigation of its own volition and can only be commissioned to investigate once a manager in HMPPS has taken the decision that an investigation needs to take place. The TUBU Investigation Service supports managers in delivering high quality investigations. Employees are not able to instigate a TUBU Investigation.

¹³ Tackling Unacceptable Behaviours Unit Investigation Service Referral Form

Recommendation

Continued care should be taken in hiring TUBU mediators and investigators with personal and professional profiles that reflect neutrality and independence.

BHD and the Cultural Landscape of HMPPS

While HMPPS should have robust policies and procedures for handling bullying, harassment and discrimination complaints, the culture must also reflect and support a robust approach. In this section, key themes of communication of acceptable behaviour, cultural dynamics, and opportunities for driving cultural change will be explored.

Communicating and Reinforcing Acceptable Behaviour

How do HMPPS employees know what is expected of them in terms of behaviour? While the organization communicates the right messages, there are opportunities to be more direct and to reinforce expected behaviour demonstrably both broadly and individually.

Organization-Wide Communication

There is good general awareness of the Civil Service Code. Closer to home and more accessible, the HMPPS People Promise, published in 2022, includes standards and expectations around decency, inclusivity, integrity and speaking up.¹⁴

The infographic features a purple header with a person icon and the title 'Your role in this'. Below this, a blue box contains the text: 'We will only succeed if everyone commits to making HMPPS a great place to work and so we expect you to:'. A list of seven expectations follows, each preceded by a blue checkmark icon. The expectations are: 1. Treat everyone with **decency** and **respect**. 2. Be **inclusive**, create a safe environment – treat people with kindness and compassion. 3. Act with **integrity** in line with our professional standards – be honest, trustworthy and consistent, even when no one is watching. 4. Model and promote **positive** and **acceptable behaviours** to all. 5. Do your job to the **best of your ability**. 6. **Challenge** and **report** where you see something that isn't up to our standards. 7. **Tell us** when we don't get things right, and when we do.

Your role in this

We will only succeed if everyone commits to making HMPPS a great place to work and so we expect you to:

- ✓ Treat everyone with **decency** and **respect**.
- ✓ Be **inclusive**, create a safe environment – treat people with kindness and compassion.
- ✓ Act with **integrity** in line with our professional standards – be honest, trustworthy and consistent, even when no one is watching.
- ✓ Model and promote **positive** and **acceptable behaviours** to all.
- ✓ Do your job to the **best of your ability**.
- ✓ **Challenge** and **report** where you see something that isn't up to our standards.
- ✓ **Tell us** when we don't get things right, and when we do.

¹⁴ "HMPPS People Promise: What our two-year strategy means for you", 2022

At one site, the People Promise was incorporated into a local poster, but these commitments do not seem to be part of a regular drumbeat of broad communication.

The establishment of TUBU has provided a focal point for commitments and communications around professional standards. Executive leadership communications, blogs, and other materials regularly signpost employees to TUBU. While TUBU represents a clear commitment from the organization, it must be coupled with visible outcomes and tangible measures of progress.

There is no lack of information and programming around BHD at HMPPS. In November 2023, HMPPS sponsored a wide variety of staff events around Speak Up Week and Anti-bullying Week, including sessions on sexual harassment awareness, psychological safety, reporting bullying, well-being conversations with line managers, and mediation. Employee networks like DAWN, PiPP and RISE play a significant role in supporting network members, communicating BHD challenges faced by the employees they represent, and hosting events to raise awareness. Networks must of course be handled with care and even-handedness recognising that employees with different viewpoints are entitled to a supportive network.

Against this backdrop of rich programming and clear verbal commitments, there is a substantial lack of trust and cynicism around the handling of BHD complaints. This is a recurring theme through the People Survey results, Climate Assessments, staff interviews and other sources. *“I did not believe that corrective action would be taken”* was the number one reason across Probation, Prison and HQ in the 2023, 2022, and 2021 People Surveys for not reporting a BHD incident. In the Climate Assessments, staff sentiments include *“unacceptable behaviour will be overlooked”*, *“lack of trust that the system will work”*, and *“an unwritten rule that unacceptable behaviour should not be reported.”*

Earlier in this report, we made a recommendation that formal grievance data be consolidated, reported, and monitored. Currently, the data that is captured for BHD complaints is not widely reported. Reporting on BHD matters and outcomes on a regular basis, for example quarterly or bi-annually, would provide HMPPS employees with a recurring proof point on the usage and efficacy of the process. The report can also be used to reinforce the process for reporting and provide anonymized case studies to bring to life what HMPPS considers unacceptable behaviour. Finally, reporting on BHD matters sends a clear, regular message on how serious HMPPS is about eradicating this behaviour and that there are consequences for BHD.

This type of reporting could include:

- Brief cover note from leadership reinforcing commitment to Professional Standards with headline statistics on number of matters reported, matters closed, matters substantiated and disciplinary actions.
- Statistics on
 - How the matters were discovered
 - Types of concerns raised
 - Outcomes
 - Disciplinary actions
- Anonymized case studies
 - Type of allegation
 - Description of the situation
 - Outcome
 - Key takeaways (relating back to policies)

- Standard wrap-up
 - “When Should You Speak Up?”
 - Overview of the investigative process
 - “Talk to Us” (how to raise a concern)

Data in this report should also include statistics and outcomes of the TUBU mediation service.

Recommendation

HMPPS should consider reporting metrics on BHD matters and outcomes on a regular basis to all employees. Due to sensitivity, specific care should be taken to ensure anonymity of any cases reported.

There are many HMPPS leaders who are getting it right, driving meaningful change through difficult, hands-on work with their teams and getting signals back from their staff that they are experiencing the change. Identifying these leaders and publicly celebrating and showcasing the results of their hard work on tackling BHD will provide the organization with tangible proof points that change is possible, communicate blueprints for success, and incentive others (through healthy peer pressure) to step up to the challenge. It will also encourage collaborative work around good practice and what does or does not work in practical terms in the HMPS or Probation Service eco-systems.

Recommendation

HMPPS should publicly celebrate and showcase leaders who are driving meaningful change, including communicating the successful measures they deployed.

Communication through Training and Online Resources

HMPPS offers training to expose staff to what is considered professional and acceptable behaviour. As mentioned above, TUBU offers a robust package of training under the Unacceptable Behaviours Change Programme. At least one site, viewing the TUBU package as resource intensive, has developed their own inclusivity training based on a simple, conversational approach with a 2 to 3 hour time commitment. Several staff in HMPS spoke of a training programme called “Challenge & Change It” which they felt was highly effective and a relatively light touch, but this programme does not seem to be offered anymore. None of the unacceptable behaviour training is mandatory. In reviewing the induction training programme for Prison officers, there is no section covering acceptable behaviour and this might be an opportunity early on to set expectations.¹⁵ While ideally staff would be hired with values aligned to those of HMPPS, an intervention with new hires establishes the tone.

There is a wide variety of material related to acceptable behaviour and professional standards available online through the Ministry of Justice and HMPPS intranet sites. This material is

¹⁵ Foundation Training – Scheme of Work

decentralised and, as a result, there are just too many sources of information and advice for employees to easily locate a single source of truth.

Individual Communication and Reinforcement of Expectations

Staff at HMPPS, in alignment with MOJ policy, do not go through a formal annual or bi-annual performance review process. Employees and managers are asked to have “regular conversations” every 8 weeks or, in some circumstances, once a quarter.¹⁶ For select Probation staff, there are two forms of more formal discussions (Reflective Practice Supervision Standards and Competency Based Framework) but these are focused on complex case work and skills for progression. For the regular conversations, templates and guidance are provided for these conversations but there is no guarantee or evidence that they occur. Employee interviews indicated that they may not occur regularly and some could not remember having such a conversation at all. Managers are encouraged to make a record but it does not appear that these are captured centrally.¹⁷ The templates and guidance are heavily geared towards work and development objectives, with no prompts for constructive or challenging discussions on “how” an employee operates.

The 2023 People Survey provides some insights into the employee experience of receiving feedback. While 75% of HMPPS HQ staff and 72% of Probation staff say that they receive regular feedback, this was the case for only 54% of HMPS staff (19 points below the Civil Service benchmark).¹⁸ A similar pattern is observed in terms of the quality of feedback received.

| | HMPPS HQ | HMPS & YCS | Probation Service |
|---|-------------|---------------|----------------------|
| B14. I receive regular feedback on my performance | | | |
| Yes | 75% | 54% | 72% |
| No | 12% | 18% | 15% |
| Prefer Not to Say | 12% | 27% | 13% |
| | | | |
| B15. The feedback I receive helps me to improve my performance | | | |
| Yes | 72% | 54% | 70% |
| No | 19% | 26% | 20% |
| Prefer Not to Say | 9% | 19% | 10% |

As our review of completed Employment Tribunal cases revealed, there is an opportunity to improve documentation of performance conversations and provide specific feedback to employees. One way to achieve this would be to have formal documented performance discussions.

¹⁶ Ministry of Justice Performance Management Toolkit April 2022

¹⁷ Ministry of Justice Performance Management Procedure for Conversations – Step by Step Guide for Managers

¹⁸ 2023 Civil Service People Survey – HMPPS Results

There are many benefits to having a formal documented annual or bi-annual performance discussion that would support the communication and reinforcement of professional standards expectations including:

- A forcing function to ensure that discussions are held, particularly challenging discussions which less-skilled managers might avoid.
- A weighty moment to land constructive feedback and communicate that “how” an employee behaves is as important as “what” an employee does.
- Documented moments that constructive feedback was provided to support any future actions for those employees who do not exhibit professional standards behaviour.

Formal performance discussions would not replace the need for regular conversations, as those are important timely coaching moments and opportunities to catch and course correct any issues quickly.

While it is clear that the current approach is not translating into regular feedback for many HMPS employees, having only 75% of HQ staff and 72% of Probation staff receiving regular feedback is also not optimal. There is an opportunity to evaluate whether just holding “regular conversations” is meeting the needs of HMPPS and whether supplementing this approach with a formal documented annual or bi-annual performance discussion would bring a valuable tool to driving culture change and setting standards. Explicitly incorporating “how” an employee behaves is another opportunity to communicate and reinforce professional standards expectations.

Recommendation

HMPPS should assess the current approach to performance feedback, considering whether it is effective across all branches and where there are opportunities to improve on it to better support communicating, documenting and reinforcing expectations on professional standards of behaviour.

Cultural Dynamics

In the course of our data review and staff interviews, a number of cultural issues related to successfully handling BHD came through. Lack of trust in how BHD matters are handled, fear of retaliation, and BHD around protected characteristics.

Lack of Trust

Statistics around the lack of trust in how BHD matters are handled were provided above, along with one recommendation on how to start to establish trust in the process. The lack of trust is rooted in several inter-connected points:

- The current process for handling BHD hinges on the manager or others in the line management chain, creating a challenge when the manager or senior individuals are involved in the BHD (~42-44% of the time).¹⁹
- Climate assessments reveal a recurring theme of managers perceived as complicit in unacceptable behaviour.²⁰
- A highly networked, closed environment can make it challenging to ensure there is neutrality in assessing the grievance. This is true certainly in HMPS, but examples were also heard of networking as a barrier to impartiality in the other branches.
- Personal relationships in the workplace and across workplaces adds another layer of complexity to the above, including membership of external organizations like the Freemasons.
- There are perceived different sanctions based on seniority or relationships with senior staff.
- Employees cite a lack of accountability and visible outcomes with few examples of “zero tolerance.”

Breaking through the lack of trust will require meaningful and visible change.

One clear opportunity for signalling meaningful change is the forthcoming review of how discrimination incident reporting is handled within HMPS. Within prisons, when staff, visitors or prisoners experience discrimination they can file a Discrimination Incident Reporting Form (DIRF). The DIRF process expressly excludes staff on staff incidents, which follow the grievance process. The DIRF process is important for ensuring that prisoners and their visitors are treated fairly and with respect. With staff, the DIRF mechanism is also important, as it provides the same surety of fairness and respect from those in their charge, demonstrates management’s commitment to supporting their dignity, and can also promote allyship from colleagues.

A well-oiled DIRF process would be a valuable and visible force in addressing discrimination, supporting staff and prisoners alike, holding people accountable and building trust in “zero tolerance”. In 2022, an HMIP Thematic report identified challenges in the DIRF system, including issues in capturing, tracking and reporting DIRFs and a review process that should be assessed for

¹⁹ 2023 Civil Service People Survey – HMPPS Results

²⁰ Climate Assessment Prison Overview Report updated August 2023”, TUBU

consistency, independence and fairness.²¹ In response to this report, we understand that HMPPS is undertaking a review of the DIRF process.

Particular care should be taken in the process review to reflect the gravity of a DIRF through focus on rigorous data capture and reporting, timely response, and consistent and independent handling. We also think it would be helpful to assess the process through the separate lenses of staff, prisoner and visitor as complainant, as the context and power dynamics differ. Once the review is completed and changes implemented, HMPPS should use the moment as an opportunity to reinforce the organizational commitment to tackling BHD across the board.

Recommendation

The forthcoming review of the DIRF process being undertaken as part of the HMPPS response to the HMIP thematic review should include assessing rigour in data capture and reporting, timeliness of response, and consistent and independent handling of DIRFs. I also recommend assessing the process through the separate lenses of staff, prisoner and visitor as complainant to fully account for differences in context and power dynamics.

Fear of Retaliation

Responses to the 2023 People Survey indicated fear of retaliation as an employee concern in reporting BHD, with 45%-50% (depending on branch of service) citing “I did not want to be seen as a troublemaker” and “I felt it might jeopardize my job” as barriers to reporting BHD and 31%-42% saying that they felt punished for reporting an incident.²²

The same phrases appeared in interviews: “I don’t want to be seen as a grass”, “I don’t want to stick my head above the parapet”, “I can’t afford to lose my job”. Some staff expressed concerns about being isolated and excluded if they complain. A fear of retaliation has more serious implications in HMPS, where staff had concerns about colleagues not being there for them in situations requiring physical protection.

One way to address any fear of retaliation is to ensure appropriate confidentiality in the BHD reporting process. Unfortunately, all too often those we interviewed noted gaps in keeping confidentiality. These ranged from subtle situations (“it seemed like everyone knew”), to more tangible (“someone called me a grass”), to egregious failures including forwarding complaints to involved parties and leaving a hard copy of grievance documentation in a common area. Ensuring confidentiality is a combination of training and sanctions for those breaching confidentiality. There is a natural inclination to give greater weight to confidentiality where the employee has invoked the Raising Concerns Policy (e.g., whistleblowing), as opposed to when they raise a grievance even though the concerns are exactly the same. Proactive attention to the appropriate level of confidentiality, which may differ from case to case, should be given to all cases at the outset.

²¹ “The experiences of adult black male prisoners and black prison staff”, HM Chief Inspector of Prisons, December 2022

²² 2023 Civil Service People Survey – HMPPS Results

Fear of retaliation can occur for senior levels of staff. “Upward bullying” may occur where leaders challenge staff on performance or behaviour and then become targets for unsubstantiated grievances. Apart from the personal impact to the leader, over time upward bullying erodes the ability of the team and organization to achieve high performance as the leader becomes reticent to give feedback, fearing retaliation from staff.

Protected Characteristics

Through meetings with leaders of staff networks, one-to-one interviews with employees who report that they have been impacted by BHD, and review of comprehensive reporting particularly around race²³, it is clear that BHD at HMPPS occurs across race, sex, age, sexual orientation, disability and other protected characteristics.

Because so much work has been done in investigating BHD and some protected characteristics already, this report can add little and will instead comment on three areas where we heard particular opportunities not covered elsewhere: disability, age and sexual harassment.

Disability

As the review of completed Employment Tribunal Cases revealed (see below), there are a number of opportunities for managers to better handle adjustments that could support employees to perform their job well. Based on feedback from staff, the process to get a reasonable adjustment in place (where a duty to make one likely arises under s.20-21 Equality Act 2010) sometimes may not work as well as it should. In the best circumstances, managers handle these situations with care and sensitivity, but staff experiences appear to vary dramatically.²⁴ This has the potential to leave disabled staff feeling victimized for pursuing necessary accommodations for doing their job. While the situation is difficult for employees with visible disabilities, those with “invisible” disabilities including neurodiversity, dyslexia, mental health and PTSD report even tougher challenges in securing adjustments.

Variations in manager support are observed across branches of service, with 68% of Probation staff and 67% of HQ staff agreeing that “My manager supports me to ensure I have the workplace adjustments I need to reduce the barriers I face due to my conditions(s) or illness(es)”, compared to only 47% of HMPS staff.²⁵

Adjustments involving workload or work patterns are a particular point of friction in Probation. “Working pattern” was cited as the third highest reason for discrimination among Probation employees. Employees requesting these types of adjustments report tension with colleagues, stemming from perceptions that they are not doing their “fair share”. With continuing

²³ HMI Prisons “The experiences of adult black male prisoners and black prison staff”, 2022; HMI Probation “Race equality in probation: the experiences of black, Asian and minority ethnic probation service users and staff”, 2021.

²⁴ “Climate Assessment Probation Overview Report 2022”, TUBU

²⁵ “2023 Civil Service People Survey – HMPPS Results”

pressures on workload in Probation, the friction between overloaded managers and teams and employees requiring adjustments in workload or work pattern is likely to grow.

The Workplace Adjustment Passport does not appear to be a particularly effective mechanism for supporting employees in securing the adjustments they need. In the 2023 People Survey, among employees with a long-term condition, awareness, take-up and efficacy of the Workplace Adjustment Passport were low, particularly for HMPS.²⁶

| Having a Workplace Adjustment Passport | HMPPS HQ | HMPS & YCS | Probation Service |
|---|----------|------------|-------------------|
| Yes, but it doesn't help me to get appropriate workplace adjustments or support | 2% | 3% | 6% |
| Yes, and it helps me to get appropriate workplace adjustments and support | 12% | 5% | 18% |
| No, I do not have a passport | 66% | 55% | 54% |
| I do not know what this is | 20% | 37% | 23% |

The Workplace Adjustment Team is seen as a positive force by employees needing support, with most of their HMPPS work occurring with Probation. There is an opportunity to further promote their services in HMPS. We came across instances where it was said that their recommendations were not accepted and it's worth exploring whether, if this is happening, it is contributing to the low take-up and perceptions around efficacy of Workplace Adjustment Passports.

In cases involving disability, employees may not feel comfortable discussing their underlying medical conditions with their manager. In addition to Occupational Health and the Workplace Adjustment Team, there is an opportunity for Human Resources to have more structured involvement in the process. For example, a Human Resources partner could serve as an intermediary between Occupational Health and the manager to protect the confidentiality of the employee's medical information. Moreover, a trained Human Resources professional is likely to be better equipped to navigate the complexities in the law.

Best in class organizations have clear and streamlined procedures. The employee approaches Human Resources to facilitate a referral to Occupational Health. Occupational Health prepares the assessment and a recommendation with any relevant input from the manager obtained through Human Resources. In many cases, the manager is simply told that due to underlying health conditions certain adjustments are required to be made which are set out and can be reviewed from time to time. In these organizations, the employee then also recourse to Human Resources if the

²⁶ "2023 Civil Service People Survey – HMPPS Results"

manager fails to honour the adjustments in a timely manner. This type of process reduces the opportunities for grievances.

Recommendation

HMPPS should review the process for handling workplace adjustments, including addressing inconsistencies in the application of managerial discretion, the appropriateness of disregarding recommendations from Occupational Health and the Workplace Adjustment team, and providing more confidential channels for the assessment of medical information and communication of adjustments.

Age

Age discrimination surfaced at both ends of the age spectrum and similar challenges faced across Prison and Probation. In the Prison setting, older employees reported feeling targeted as they approached retirement, often with some intersection with the onset of health conditions or disabilities arising. In these cases, staff say that they are denied access to adjustments, including for conditions like PTSD which are job-related, to pressure them to leave the organization.

Younger employees report feeling excluded and disregarded or denigrated for their lack of experience. At the most extreme, young employees were told by senior colleagues that they would not bother to learn their names as they would not last in the job. In the Prison setting, there is some intersection here with gender, with young women reporting BHD based on their youth, gender and appearance.²⁷

In the Climate Assessments, age was the protected characteristic most commonly drawing offensive comments and most likely to be deemed “acceptable”.²⁸

Sexual Harassment

We noted instances where it would appear, from what we were told and read, sexual harassment / assault had taken place. Unfortunately, it appeared to us, that these allegations were not handled with the sensitivity that this type of personal incident warrants. This is another area where a lack of training in those handling the situations surfaces.

Given the very personal, sensitive nature of sexual harassment, a manager may not be a comfortable choice for reporting. It is important that other channels for reporting continue to be highlighted, particularly those which are trained in handling and supporting such complaints. In the absence of other channels for reporting, we heard examples where the union representatives stepped in to support. That does not however address the vacuum of pastoral care from the organization.

²⁷ “Climate Assessment Prison Overview Report updated August 2023”, TUBU

²⁸ “Climate Assessment Prison Overview Report updated August 2023”, TUBU; “Climate Assessment Probation Overview Report 2022”, TUBU

Consideration should also be given as to how to handle cases in which a criminal investigation is ongoing and what to do where the alleged perpetrator and victim are working in proximity to each other with a view to ensuring safeguarding processes and fairness.

As in other areas, the burden of dealing with such matters should not fall solely on the employee (e.g., by raising a grievance).

Recommendation

In the process of finalizing the working draft of the Sexual Harassment Guidance, HMPPS should consider including information on sexual assault and rape, as well as addressing the provision of pastoral care to the victim. The specific considerations around sexual harassment and assault should ordinarily trigger an investigation without the need for a grievance to be raised.

Additional Opportunities for Driving Professional Standards

Apart from TUBU, there are a number of functions that can play a supportive role in driving culture and reinforcing professional standards, including HMPS New Colleague Mentors and Standards Coaching Team. New Colleague Mentors and members of the Standards Coaching Team are meant to represent the best of the best in terms of expertise and role modelling. In the case of New Colleague Mentors, they provide important early career and pastoral support to new joiners in the prison service. The Standards Coaching Team are tasked with providing targeted training for seasoned prison staff at specific sites. Both functions have the opportunity to weave messages of positive professional standards into their work and provide feedback and coaching where needed.

Senior managers play a significant role in setting a culture of professional standards and much hinges on their leadership skills and visibility. A recurring theme in the Climate Assessments for prisons is the importance of senior manager visibility.²⁹ Employees feel that increased visibility of senior managers would allow them to better understand staff dynamics and pressures. As one governor observed, line managers need to spend time with their teams to experience firsthand the culture and banter, and to be able to shape and influence the dynamics, yet workload and high spans of control can get in the way. In Probation settings, employees look to managers to set the tone of the workplace and establish a positive, inclusive climate.³⁰ Consistency and clarity of values as communicated by managers is important, and this is where leveraging a common, well-publicized manifesto like the HMPPS People Promise is an opportunity.

Employees themselves make or break a culture and the idea of working for an organization that shares your values is becoming increasingly important, particularly for Generation Z. This cohort generally has high standards for inclusivity and diversity, but extreme views like misogyny have also found a footing among young people. Social media provides platforms for influencers who can quickly build a following. In interviews, several senior leaders expressed concerns about the checks done on new hires and whether they were sufficient to catch, for example, followers of misogynist

²⁹ Climate Assessment Prison Overview Report updated August 2023

³⁰ Climate Assessment Probation Overview Report 2022

influencers. One leader commented that HMPPS should recruit people who already share the values versus trying to manage the values into them once they have joined. It's worth considering whether there are opportunities to further bolster hiring assessments to improve surety that new hires share the values of HMPPS. An example of an organization that is actively addressing values on recruitment and during appraisals is the NHS in the "Fit and Proper Persons" regime.

Recommendation

HMPPS should assess whether current hiring practices enable sufficient assessment of a candidate's alignment with HMPPS values prior to hiring.

Finally, there is an opportunity to support employees broadly in having difficult candid conversations. Across HMPPS, we heard repeatedly that the ability to have an early conversation with a colleague about a BHD issue could quickly resolve the situation, but too often these discussions are avoided as uncomfortable to have. Some employees mentioned moving to a formal process when an apology is really all that they wanted. Learning to gracefully give and receive difficult feedback is a soft skill that HMPPS should consider inserting into employee training.

Review of HMPPS Policies and Procedures

There is an abundance of written policy and procedure within HMPPS some of which has been subject to relatively recent and ongoing review. We acknowledge that the concerns raised by interviewees refer to the current suite of policies and procedures. All references to procedures in this report are therefore to the policies and procedures in force at the time of this commission unless expressly stated otherwise. In carrying out this work we have been at pains to understand not just that which is written in policy and procedure but how it is applied in practice i.e. real-life scenarios from the perspective of both complainant and respondent to the complaint. It is the application of policy and procedure that is the driver of culture. Nonetheless we also record concerns about the policy and procedures themselves.

Our focus was looking at how HMPPS could improve the application of its policies and procedures to ensure better practice in line with the purpose of this review, and an improved experience for those working for HMPPS, rather than on the formal requirements of employment law as to which HMPPS takes its own privileged legal advice on an ongoing basis from time to time. The Terms of Reference required us to understand how policies and procedures were working in practice with a view to making recommendations where appropriate.

The three main concerns we have are:

1. There is no independent route for raising a grievance; it all falls within the line of management which may be where the problem is located or where the employee does not wish to present a grievance at a time of vulnerability.
2. There is no dedicated Human Resources (HR) support for employees who raise or are the subject of a grievance; HR support is not embedded into the process and appears as an optional item for managers who drive the process throughout and
3. Managers appear not to be trained sufficiently to be able to handle BHD grievances which are by their very nature complex and demanding in terms of time and analysis and must undertake this work on top of demanding day jobs.

Where an employee of HMPPS wishes to make a complaint about BHD there are several potential ways in which this can be raised:

- i. An informal complaint or grievance can be raised within line management;
- ii. A formal grievance can be raised within line management;
- iii. A corruption prevention intelligence report can be raised with the local corruption prevention manager;
- iv. A complaint can be raised with counter corruption and wrongdoing and
- v. A disclosure can be made within the HMPPS whistleblowing procedure.

For those working for HMPS and the Probation Service, excluding those who are expressly stated to be outside the scope of the policy, the expected formalised procedural pathway is the grievance policy and procedure.

As the primary route for making a BHD complaint, at least as envisaged by HMPPS, is the grievance policy and procedure, we start by considering this.

We have been cognisant of the future reviews of the policies and procedures, and general direction of travel in this regard and have taken them into account in considering whether to make recommendations. Ultimately, we acknowledge that the future changes to policy and procedure may not be made or may evolve before being approved. They have not yet been the subject of consultation with relevant stakeholders let alone ratified. We have had the opportunity to make comments separately in relation to the proposed changes and as noted above this stream of work was separate and was and is subject to legal professional privilege.

HMPS Grievance Procedure

The grievance policy and procedure in place for HMPS is contained in Prison Service Order (PSO) 8550. The version in existence as at the date of writing was implemented on 31 March 2009.

It is stated in terms that *“this PSO does not apply to those policies where dismissal is a potential outcome, where there are already separate appeal procedures”* which might be intended to say that procedural concerns about other processes, in which a right of appeal is included, should not be raised as grievances, though this is highly confusing wording.

It also states that *“where bullying, harassment and discrimination issues are prevalent, reference should be made to PSO 8010 – Equal Opportunities.”* PSO 8010 no longer exists. This was replaced by “Equality of Treatment for Employees” (AI 11/2010, PSI 33/2010) in April 2011, which, though stated to have expired on 13 April 2015 is, as we were made aware, still being used almost nine years later. The document itself is very brief and contains headline points rather than any procedural information and invites the user to peruse the internal intranet for further guidance. It is not clear what is meant by the threshold of prevalence of BHD issues in this context and the reference to the expired document PSO 8010 needs to be reviewed in any event.

The grievance procedure is meant to operate firmly within the line of management. Paragraph 3.4 of PSO 8550 reads as follows:

“Where it would be inappropriate for the line manager (or the manager outlined in para. 3.3) to hear the grievance, the member of staff should initially raise the grievance with the manager’s manager to decide whether they should hear the grievance at stage 1. However, the expectation is that the Stage 1 grievance will be managed wholly within the establishment/group from where the grievance originated. A Stage 1 grievance should only be heard outside of the establishment/group where it is clear that the grievance concerns the direct actions/decisions made by the Area Manager/Director or where the grievance originated from a Governing Governor/Head of Group (further guidance on hearing Stage 1 grievance can be found on My Services.”

On the face of this, an employee sexually assaulted by a colleague at work, within the same line of management, would have to go to their line manager to make any complaint about it within the anticipated policy and procedure. This may well be the very line manager they are trying to impress to gain a promotion. The information that would have to be shared would be personal and potentially medical and once known cannot be unknown. They may not wish to present in such a vulnerable state to someone with whom they wish to have a professional and business-like working relationship. An employee subjected to a period of insidious bullying by his line manager would have to go that person’s line manager, despite knowing they socialise together, for example, at a club or Masonic lodge. We heard many examples of the fear of reprisal and actual allegations of

victimisation for having made a complaint. The immediate potential for a chilling effect in raising a complaint is obvious without providing further examples.

Informal resolution and mediation are encouraged in the policy though there are plainly circumstances in which neither may be appropriate, particularly where the complaint is one of BHD or where the categorisation of the complaint as BHD is of itself misconceived and a push-back to normal line management.

The formal grievance should be put in writing and submitted to the employee's line manager even where the grievance is about the line manager exercising discretion within the framework set by a Governor's Order or other HMPS policy or procedure.

There is no triage process and once a formal grievance is submitted, the procedure requires the manager handling the grievance to set up a meeting within 20 working days of receipt and to provide a written outcome within 10 working days wherever possible.

There is a right of appeal to a local appeal panel chaired by a more senior manager than at stage 1. The same timescales apply (20 days for a meeting; 10 for a decision).

Where a local agreement exists between management and a trade union then the manager will be supported by a local trade union representative who will normally be a staff member at the originating establishment or group. A member of HR should also be on the panel; there is no requirement for HR input or advice at any earlier stage. The employee who is raising the appeal can object to the trade union representative's attendance but in that case the panel will consist of two people rather than three. A short and basic national protocol (issued 5 December 2008) exists for grievance appeals. This in turn refers to PSO 8010 for guidance on Equal Opportunities issues, which is a further redundant reference.

The lack of an express mechanism for triaging and keeping a grievance under review is a weakness in our view.

In particular, we are concerned about the following:

- i. The possibility for informal resolution or mediation once a process is already underway is not emphasised – there is no “off ramp” set out;
- ii. There is no formal HR involvement to triage a grievance at the outset or to provide advice at stage 1 – advice is optional not mandatory which creates risk and uncertainty for all concerned including HMPPS;
- iii. There is no HR support available to a complainant at stage 1 as a matter of right or procedure and this is not signposted either – this creates an imbalance of support and information;
- iv. The timescales are not realistic in complex cases and could lead to cursory or inappropriate investigations before the stage 1 meeting is held or thereafter, which is compounded by the ambiguity in the written procedure as to when investigations are to be carried out i.e., before, during and / or after the stage 1 meeting, and whether more than one stage 1 meeting might be warranted in especially complex cases;
- v. There is no requirement that a manager should have attained a certain level of experience and training e.g. in trauma led investigations, in assessing credibility, in managing competing accounts and in obtaining evidence and assessing it neutrally but critically, which are important skills that do not develop overnight on attaining a certain level within the organisation; some managers required to hear grievances are very poorly equipped to do so;

- vi. There is no reference to immediate measures which may be necessary where a serious allegation of BHD is made e.g., for someone to be temporarily redeployed or asked not to come within a certain distance of someone or to work from home neutrally etc.
- vii. There is no reference to what should happen where the grievance is effectively a complaint about something which may be a criminal offence and / or which is the subject of a police investigation or may be.
- viii. There is no explicit reference to policies on discipline and conduct and how they interrelate with the grievance policy and procedure or whose responsibility it is to escalate a matter to disciplinary action either at the outset because the allegations are so serious that they should be considered as a disciplinary matter or once the grievance is heard and determined. Given that the disciplinary policy and procedure mandates that in the interests of fairness all matters relating to disciplinary action must have handled as speedily as possible (paragraph 2.9 in each of PI/2014 and PSI 06/2010) the potential for severe delay if disciplinary action is not considered until the end of a grievance or grievance appeal process is self-evident especially if a disciplinary investigation is then to be commenced. Further, it is the disciplinary policies and procedures that expressly refer to discrimination, harassment, victimisation and bullying because of a protected characteristic though the full list contained in the Equality Act 2010 is unhelpfully not cited.
- ix. A grievance depends on the person raising it to drive forward the complaint and the burden effectively rests on him or her. In a disciplinary, it is HMPPS as the employing / managing entity which carries the burden. There is therefore a substantial distinction, and we have reservations about the burden of stamping out BHD, sometimes of a particularly egregious nature, falling on the shoulders of those affected by it.

We do not consider PSO 8550 to be fit for purpose in the HMPPS so far as the handling of BHD concerns is engaged by it. As we note above, these criticisms are made with the intention of setting out how HMPPS could improve the application of its policies and procedures to ensure better practice in line with the purpose of this review.

Our recommendations reflect our concerns.

Probation Service Grievance Procedure

The grievance policy and procedure in place for the Probation Service, Prison Service Instruction (PSI) 42/2014 is more recent having been implemented on 1 June 2014 and revised on 16 October 2015. It post-dates the coming into force of Equality Act 2010 unlike PSO 8550. It is extremely similar in form and substance to PSO 8550 and shares the same weaknesses as we set out above.

We do not consider PSI 42/2014 to be fit for purpose in the HMPPS so far as the handling of BHD concerns is engaged by it. Again, as noted above, this assessment is with a view to the improvement of policies in line with the purpose of this review.

Our recommendations reflect our concerns.

Counter Corruption Reports

We heard of instances of BHD being raised via corruption channels i.e., making a corruption prevention intelligence report to a local prevention manager or by contacting counter corruption (which routes to the local prevention manager as well). We do not consider this appropriate not least because it will be far less likely that concerning patterns of behaviour will be picked up, noted and acted upon where different channels or processes are being used to raise complaints of BHD.

Corruption is defined on the HMPPS intranet as “a crime that takes place when a person in a position of authority or trust abuses their position. This could be for financial, emotional, sexual or work-related gain.” It does not appear to cover BHD.

On the other hand, within the same policy, “wrongdoing” is said to be “any behaviour that falls short of professional standards expected from HMPPS staff” and an example cited is bullying and harassment. It is no wonder, therefore, that some staff thought that the way to report BHD was via counter corruption. Additionally, reports under the corruption process can be made anonymously which may be attractive to someone concerned about reprisal or detriment by raising their head above the parapet, but where BHD is reported anonymously it is nigh impossible to investigate this fairly.

There are no dedicated policies, procedures, protocols or guidance documents which govern the handling of BHD complaints as matters of “wrongdoing”. These matters would ultimately be funnelled back to line management to be investigated or dealt with accordingly at which point counter corruption would have no knowledge of outcomes.

Whistleblowing Policy and Procedure

The Raising a Concern Policy Statement including whistleblowing (MoJ, February 2021) sets out that personal complaints about management decisions or concerns about individual treatment, including complaints of bullying, harassment and discrimination should be raised as a grievance and not under the Raising a Concern (whistleblowing policy). Generally, we agree that this is not the right channel for such complaints. Most cases of BHD are unlikely to be in this category. Further as the policy allows for a complainant to request anonymity and emphasises this should be honoured; a fair investigation of BHD may be hampered if done through the Raising a Concern process.

We do not therefore comment further on the whistleblowing procedures in HMPPS save to say that they are not the correct channel for BHD complaints to be progressed in our view.

We also had some concerns about the whistleblowing policy which have been passed on to HMPPS, these are subject to legal professional privilege.

In finalizing policy and procedure revisions, my input should be considered before the policies are subject to consultation and final sign-off.

Recommendation

In finalizing policy and procedure revisions, my input should be considered before the policies are subject to consultation and final sign-off.

Review of HMPPS Tribunal Cases

We conducted a review of HMPPS Tribunal cases and legal advice, protected by legal privilege, has been provided to HMPPS. I set out some general comments below.

Employees with Disabilities

For employees with disabilities / differently abled employees or those needing reasonable adjustments, delays or mishandling of the process can leave them feeling targeted or discriminated against.

There were several cases where it appeared that managers should have given more consideration to the specific adjustments that might assist disabled employees at work. This included cases where it would seem that managers had not taken steps in securing occupational health advice at any of the following stages:

- Informal stage of managing the employee
- Early stages of an internal process
- When an employee's disability came to light part-way through the process or between hearing and appeal.

Managers need to take prompt action when occupational health reports recommend a change to an employee's working pattern or where there is a proposal to change an existing working arrangement.

In related points, managers need to obtain and implement appropriate recommendations arising from risk assessments or occupational health reports in relation to reasonable adjustments for disabled employees. And these recommendations need to be acted upon in a timely manner.

There were instances where the HR function could have provided a helpful bridge between occupational health and sensitive medical information and line management. This would ensure employees have a choice about who to share sensitive personal health information with, particularly if they felt uncomfortable sharing it with line managers.

Bullying and Harassment

A number of cases included significant direct criticisms by employees of the time it took for managers to undertake grievance processes.

In terms of manager training, there is an opportunity to improve record keeping for complaints of bullying and discrimination, response to those complaints, pre-existing performance concerns or important meetings with employees. While there were some cases where managers were praised for their record keeping, a consistent theme emerged of it being said that complaints were not being recorded correctly and particularly in cases where those complaints were likely to be escalated. Multiple cases highlighted the importance of making notes of oral complaints and the need to make notes of any agreements established following mediation, including the withdrawal of any grievances. Finally, there is the opportunity to improve recording performance issues. As we noted above, this could be an improvement to the performance management process.

There were multiple cases that indicated opportunities to improve training for investigating officers on how to conduct internal procedures and being aware of how HMPPS policies work. Specific gaps included how to establish witnesses relevant to the complaint (in relation to serious allegations) and to ensure that all necessary individuals are interviewed in order to establish the facts of the case.

Providing support to individuals who report wrongdoing is critical. Managers should ensure that they do not discourage individuals from making complaints about their colleagues' behaviour. One case also highlighted the need to support individuals who have reported wrongdoing after the fact. For example, managers should ensure that they can evidence compliance with the reporting wrongdoing policy, including documenting steps taken to protect staff who report wrongdoing from detrimental treatment.

Finally, there continues to be an ongoing need to reinforce the use of appropriate, professional language. While HMPPS has made progress in addressing unacceptable language, there is still work to be done in educating employees around transgender terminology and more broadly language used to discuss protected characteristics. Particular areas for improvement identified through the case review include sensitivity around language used to describe mental health, disabilities and age.

Sensitive language should be used during the grievance process. Managers should be trained on the need to remain neutral and use considered language, as there is a high risk of employees bringing additional harassment claims in this context.

Communication and Documentation of Decisions

In addition to the points above on improving record-keeping and documentation of complaints and performance issues, there is a further need to strengthen documentation on decisions. There were some cases where employees on long-term sick leave had to be dismissed because the absence could not be sustained further. It may have been better if the manager had documented the decision process and explained to the employee more clearly exactly why the absence couldn't be sustained further. Decision makers should take care to document the objective reasons why a particular individual's role is no longer sustainable. Managers should also document consideration of alternative options such as ill-health retirement with applicable employees.

Building on the point about documenting decisions, there is an opportunity for managers to ensure that they provide specific feedback to employees on employment-related matters like promotions and internal job applications. The lack of specific feedback leaves space for candidates to misinterpret disappointing decisions as a reflection of their protected characteristics.

Insights

The opportunities for improvement identified through the review of the completed Tribunal Cases highlight the challenges of keeping managers appropriately trained to handle situations that they may rarely encounter in the course of their career. Some of the training needs are fundamental to how a manager operates – giving specific feedback, documenting decisions, taking notes on difficult conversations and situations, using appropriate language. But the question this review raises is whether it is feasible to keep managers sufficiently trained to expertly handle grievances, investigate grievances, and manage potentially complex requests for reasonable adjustments.

The time limit for bringing most BHD complaints in the Employment Tribunal is very short which may force employees to enter into litigation early on, in the absence of reassurance that the matter is being dealt with appropriately in the workplace. The chance to resolve matters fairly and possibly amicably at an internal level evaporates fairly quickly. This further highlights the importance of highly trained, experienced individuals handling BHD complaints.

Conclusions and Recommendations

As I mentioned in the introduction, I was commissioned by HMPPS to conduct a review to identify any specific recommendations for improvement to deliver positive change in how HMPPS addresses BHD. My recommendations following the review are set out in full below.

While all of the recommendations are designed to create lasting change, the most impactful change could come from establishing an independent channel for reporting, investigating and decisioning BHD complaints.

There are 6 key reasons for this recommendation:

1. The high percentage of employees (indicated in the 2023 People Survey) who say that they experience BHD from their manager or other senior individuals. Having an independent channel would make it easier for employees to feel confident in finding a trusted, safe party to report such a complaint.
2. The highly networked nature of the Prison service, further compounding HMPS employees' reported concerns about finding a safe, neutral party and getting a fair hearing.
3. The perceived fear of retaliation for reporting a complaint, which may be exacerbated by the first 2 points.
4. The challenges of keeping HMPPS managers sufficiently trained to be consistent, highly effective and expert at handling BHD grievances which are often, by their nature, very complex.
5. The time burden that having managers handle these matters places on an already strained workforce. There is an inherent inefficiency in having large numbers of managers attempting to upskill themselves, reading policy and guidance as they go, to handle a grievance.
6. The potential ramifications for employees, impact to the reputation of HMPPS, and the costs to taxpayers if cases are mishandled.

An independent channel is an accepted practice, with grievances handled outside the line management, by Human resources or a dedicated Employee Relations team, in many corporate settings. As a result, our recommendation is that HMPPS move to establish an independent channel outside of the line management structure for reporting, investigating and decisioning BHD complaints where a dedicated team of well-trained personnel / experts can handle matters in a ring-fenced, confidential, and standardized process.

I believe that my 12 recommendations will support HMPPS' ongoing commitment to a culture with high levels of trust, respect and psychological safety. Apart from the benefits to HMPPS in employee engagement and morale, improvements in handling BHD can take cost and inefficiency out of the system, including reducing absences from work, unlocking unproductive time for staff and managers, and reducing turn-over.

I would like to close by once again acknowledging the commitment and work done to date by HMPPS leadership and staff to drive meaningful change in this sphere, particularly the establishment of and progress made by the TUBU team.

Recommendations:

Policy and Procedure Recommendations

1. HMPPS should move to establish an independent channel outside of the line management structure for reporting, investigating and decisioning BHD complaints where a dedicated team of well-trained personnel / experts can handle matters in a ring-fenced, confidential, and standardized process.
2. The forthcoming review of the DIRF process being undertaken as part of the HMPPS response to the HMIP thematic review should include assessing rigour in data capture and reporting, timeliness of response, and consistent and independent handling of DIRFs. I also recommend assessing the process through the separate lenses of staff, prisoner and visitor as complainant to fully account for differences in context and power dynamics.
3. HMPPS should review the process for handling workplace adjustments, including addressing inconsistencies in the application of managerial discretion, the appropriateness of disregarding recommendations from Occupational Health and the Workplace Adjustment team, and providing more confidential channels for the assessment of medical information and communication of adjustments.
4. In the process of finalizing the working draft of the Sexual Harassment Guidance, HMPPS should consider including information on sexual assault and rape, as well as addressing the provision of pastoral care to the victim. The specific considerations around sexual harassment and assault should ordinarily trigger an investigation without the need for a grievance to be raised.
5. In finalizing policy and procedure revisions, my input should be considered before the policies are subject to consultation and final sign-off.

Operational Recommendations

6. HMPPS should consolidate formal complaints into one database and regular reporting to senior leadership and key stakeholders should occur, including monitoring of KPIs related to employee experience and policy guidelines.
7. TUBU should review the objectives and approach to Climate Assessments to determine opportunities to improve impact, streamline output, and build credibility with staff.
8. Continued care should be taken in hiring TUBU mediators and investigators with personal and professional profiles that reflect neutrality and independence.
9. HMPPS should consider reporting metrics on BHD matters and outcomes on a regular basis to all employees. Due to sensitivity, specific care should be taken to ensure anonymity of any cases reported.
10. HMPPS should publicly celebrate and showcase leaders who are driving meaningful change, including communicating the successful measures they deployed.
11. HMPPS should assess the current approach to performance feedback, considering whether it is effective across all branches and where there are opportunities to improve on it to better

support communicating, documenting and reinforcing expectations on professional standards of behaviour.

12. HMPPS should assess whether current hiring practices enable sufficient assessment of a candidate's alignment with HMPPS values prior to hiring.

I look forward to receiving updates, in my role as Non-Executive Director, on HMPPS's progress implementing the recommendations it elects to adopt.

Appendix

Terms of Reference

Terms of Reference – HMPPS continued improvement of professional standards – the application of Bullying, Harassment & Discrimination policies, practice and procedures.

A. Background

1. HMPPS is committed to improving professional standards and behaviour including raising the confidence of staff to speak out where expected standards are not met. Since the establishment of its Tackling Unacceptable Behaviours Unit (TUBU) in 2020, HMPPS has been able to provide support to staff through its confidential staff helpline and mediation service, as well as undertaking climate assessments to understand how unacceptable behaviours present, barriers to reporting and areas for improvement.
2. This work has provided HMPPS with a richer understanding of the cultural issues we face and a vital source of intelligence, enabling us to better understand how unprofessional behaviours present, how we handle issues when they arise and where there is more work to do to accelerate the positive changes we have been able to bring about to date.
3. As part of its work, TUBU has heard examples of people who experience or consider that they have experienced unacceptable behaviour, bullying, harassment, discrimination, victimisation and there is evidence that some behaviours, attitudes and language have been normalised, tolerated and accepted over time, mirroring other public sector organisations. A further issue which has been raised is the reluctance of some staff to report it as they do not believe action will be taken. This is not aligned with the culture of respect and fairness which HMPPS wishes to foster in its workforce.
4. HMPPS is committed to bringing about lasting positive culture change and willing to think differently if necessary as an organisation to make this happen. Bringing in expertise and insight from outside HMPPS is an important part of this, to help us think differently and to challenge us to do more.
5. This is a pivotal moment for us as we properly uphold the high standards of professionalism that our vital work demands of us all; making sure that everyone behaves with the integrity, decency, inclusivity, fairness and humanity that we expect and need.

B. Purpose

6. HMPPS is commissioning this work to identify specific recommendations to deliver improvement and to help effect and deliver change.
7. HMPPS considers that it would be assisted by an experienced professional who has experience of delivering cultural change including in public sector organisations and who can offer a sufficiently independent view on how practically to deliver such changes (**'the NED Lead'**).

8. Recommendations are sought as to how HMPPS can improve the application of its policies and procedures in practice particularly in the area of bullying, harassment and discrimination (staff on staff) and how HMPPS can improve confidence in speaking out and continue its drive toward more positive and professional standards of behaviour. If and to the extent any relevant policies and procedures are considered to require amendment or revision to ensure better practice in line with the purpose of this project, then recommendations are also sought in this regard.

C. Scope of Commission / Methodology

9. Review, as appropriate:
 - i. relevant systems, policies or processes in HMPPS in relation to bullying, harassment and discrimination to understand whether they are appropriate for HMPPS and provide any recommendations to support future development;
 - ii. information gathered by TUBU including calls to the confidential helpline, and as part of the climate assessment process, including areas identified for improvement on a suitably anonymised basis so as to not to breach confidentiality / GDPR rights of those who have supplied such information to TUBU;
 - iii. information and evidence gathered directly by the commission through engagement with Trade Unions, focus groups and other avenues to be decided by the NED and KC.
 - iv. publicly available information or information that is not subject to confidentiality as to litigation or other disputes arising from cases in which bullying, harassment and discrimination (**BHD**) has been alleged by HMPPS staff members including court judgments or tribunal decisions.
10. Consider best practice across the public sector and private sector and to the extent helpful, if at all, examples from other countries, and make recommendations for improvements in policies and procedures from a cultural and practical perspective including:
 - a. ensuring professional standards are clear and maintained;
 - b. considering whether increased independence of reporting / handling / investigating / hearing of cases could support future improvements and identify any specific thresholds where a level of independence should be available;
 - c. the general priority order or proposed phasing of any recommendation steps or actions.
11. If appropriate, make overall recommendations for change by HMPPS in relation to addressing BHD including but not limited to:
 - a. Identifying potential changes to the application of policies and procedures from a cultural perspective that would increase the confidence of staff to report concerns

and ensure that HMPPS is adequately and robustly addressing BHD in a way that will help it to bring about positive changes;

- b. Identifying recommendations for ways to increase the confidence and competence of staff tasked with understanding, managing, investigating and addressing BHD at all levels: employees, managers, and senior leaders;
 - c. Identifying recommendations for ways to improve and enhance support for staff who report BHD; and
 - d. Any other proportionate recommendations arising from your review.
12. Adopt a review and report methodology which is as robust, time efficient and solutions focused as is reasonably achievable in the timescale envisaged and which centres proportionality in its objectives but is otherwise for the NED Lead to determine in consultation with the Commission Support Team (see below).

D. Proposed framework for the commission

13. A 4 month project with the potential for the NED Lead to seek to extend this for up to 2 further months if required.
14. The NED Lead will be of good standing and reputation with experience in running large organisations, particularly where cultural change is needed; have the ability to work in a team; and desirable, but not essential, expertise in and understanding of HM Prison Service and/or the Probation Service. They will be supported by officials in the Ministry of Justice or HMPPS (together 'the Project Team').
15. HMPPS has also appointed King's Counsel (KC) to provide legal advice in respect of any issues arising and the NED Lead will be able to and encouraged to seek legal advice where necessary or desirable. Any advice given by the KC to the NED Lead must be shared with the [Government Legal Department / HMPPS commission support team and TUBU] and must not be shared with any other party save with the express consent of HMPPS and then only in an appropriately confidential manner where required. HMPPS notes that the freedom and ability of the NED Lead to obtain privileged legal advice is an essential part of ensuring the appropriateness and robustness of the work done.
16. Any information and documentation provided to the commission support team by HMPPS will be provided on a confidential basis and is provided only for the purposes of conducting the project. All such information shall be handled, transmitted and stored in line with any protocols or requirements stipulated by HMPPS and as a minimum shall have regard to GDPR principles.
17. The NED Lead will provide regular updates to HMPPS and will share recommendations or interim recommendations at the earliest reasonable opportunity.

18. The NED Lead together with HMPPS will seek to provide a report that can be shared with Departmental Trade Unions, and, if appropriate be made public. The report will provide a suitable executive summary and will identify with care any information which is deemed to be sensitive or for limited circulation or distribution for any lawful reason or purpose.
19. These Terms of Reference may be updated at the discretion of HMPPS, in consultation with the Commission Support Team.

Dated: 14 December 2023

Information Underpinning the Report

In preparing this report, we had access to a wide variety of materials including internal documents (policies, toolkits, guidance and templates) as well as publicly available materials such as independent research and cultural reviews commissioned by other institutions.

We also spoke with a broad array of stakeholders both internal and external. These included members of staff, trade union representatives and leaders within external organisations, such as the National Fire Chiefs Council and White Ribbon. We are grateful to all of those who gave their time to support of this review.

I have received legal advice about the inclusion of legally privileged information in a draft of my report and I changed parts of that draft to safeguard that information. HMPPS have confirmed to me and wish to make clear that they do not waive privilege over any such privileged information which has inadvertently remained in my report despite those changes. HMPPS have confirmed this applies equally to any inadvertent waiver of legal privilege in respect of advice regarding materials that underpin the report and which has been referred to in this report.

Acronyms Used

- BHD – Bullying, harassment and discrimination
- DAWN – Disability, Advocacy, Wellbeing network
- DIRF – Discrimination Incident Reporting Form
- FAQ – Frequently asked question
- HMPPS – His Majesty’s Prison and Probation Service
- HMPS – His Majesty’s Prison Service
- HQ - Headquarters
- HR – Human Resources
- KC – King’s Counsel
- KPI – Key performance indicator
- MOJ – Ministry of Justice
- NED – Non-executive director
- NPS – National Probation Service
- PSI – Prison Service Instruction
- PSO – Prison Service Order
- PTSD – Post-traumatic stress disorder
- RISE – Racial Inclusion and Striving for Equality network
- SOP – Single Operating Platform
- TUBU – Tackling Unacceptable Behaviours Unit
- YCS – Youth Custody Service