

# CHALLENGING HARASSMENT & BULLYING IN THE WORKPLACE POLICY & PROCEDURE

Author:	Human Resources Manager
Owner:	Director of Human Resources
Publisher:	Compliance Unit
Date of first issue:	January 2001
Version:	7
Date of version issue:	October 2015
Approved by:	JNCC JLNC
Date approved:	September 2015
Review date:	September 2018
Target audience:	All staff of York Teaching Hospital NHS Foundation Trust
Relevant Standards	RMSAT

## Version History Log

This area should detail the version history for this document. It should detail the key elements of the changes to the versions.

Version	Date Approved	Version Author	Status & location	Details of significant changes
1	January 2001	Human Resources Manager (D Preece)		New policy
2	July 2006	Senior Human Resources Manager (D Preece)	Horizon	<ul style="list-style-type: none"> <li>* Clearer procedure for dealing with complaints of harassment and bullying</li> <li>* Introduction of a monitoring system</li> <li>Inclusion of a Best Practice Guide for Managers</li> <li>* Inclusion of guidance on "Are You Being Harassed or Bullied?"</li> <li>* Inclusion of guidance on "If You Are Accused of Harassment or Bullying"</li> <li>* Inclusion of Mediation option</li> </ul>
3	May 2008	Senior Human Resources Manager (D Preece)	Horizon	Section 15 strengthened to comply with NHSLA Risk Management Standards
4	May 2010	Human Resources Manager (Z Ritz)	Horizon	Added Section 11 – 'Training' to comply with RMSAT
5	February 2011	Senior Human Resources Manager (M Wayt)		<ul style="list-style-type: none"> <li>* Changed name to York Teaching Hospital</li> <li>* Changed Appendix H and added Appendix J and K. This is to provide accurate and up to date evidence for RMSAT and make the procedure for</li> </ul>

				<p>reporting and recording allegations more robust. Appendix J is a flowchart of the new procedure</p> <ul style="list-style-type: none"> <li>* 3.5 Is new section detailing the Recording Cases of Bullying and Harassment</li> <li>* Included references to the Equality Act in External References and Appendix B</li> <li>*Included a new paragraph in Appendix G on how to access mediation.</li> </ul>
6	2014	Senior Human Resources Manager (D Barnes)		*Integration of York and Scarborough policies (Dignity at Work).
7	2015	HR Manager Alison Meads/ Zinnia Ritz		Amended references to appendices as incorrectly referenced throughout document Changed references to reflect CiC service

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# 1 Introduction & Scope

## 1.1 Introduction

The Trust is committed to ensuring that all staff do not feel bullied or harassed within the workplace. We recognise that being subject to such behaviour can lead to stress, anxiety, sickness and poor performance.

The vast majority of staff in the Trust work in a way that is consistent with the Trust's core values, and this is reflected in the way we interact with each other.

However, there may be occasions at work when the way that another employee has treated you feels like bullying and / or harassing behaviour. If this is the case, this Policy is designed to reassure you that there are various ways to resolve matters, and to inform you of the many areas of support which are available.

### **What do I do if I feel bullied or harassed?**

The Trust is committed to challenging harassment and bullying in the workplace and you should never feel inhibited from making a complaint.

Although the situation may feel very difficult and you may believe that it cannot be resolved, often this is not the case. The earlier you begin to address the unwanted behaviours of another member of staff (either directly, or by seeking help and advice from the people listed below) the easier it will be to resolve and the sooner the situation will begin to improve for you.

If you feel that you are being bullied or harassed, you can report the matter to any of the following:

- Your line Manager (if appropriate) or other manager
- A member of Human Resources
- A Staff Organisation Representative
- A Fairness Champion

These individuals will be able to advise you on how to approach the matter and whether the incidents merit further action. The Trust has a duty of care to you, as well as a legal duty to take action on

harassment and bullying in the workplace, and your concern will be taken seriously by the person you raise it with.

### **Where can I get support and advice?**

All the individuals above can provide you with support and advice regarding bullying and harassment. In addition, the Trust offers other support:

- Trained **Mediators** who are available to help resolve issues. Information is available from your managers or HR. See also Appendix G.
- A confidential **Staff Counselling Service** which is available for staff who have any concerns or worries, including staff suffering the distress of bullying or harassment.

### **Useful Contacts**

**Human Resources**                      01904-725312 or 01723-385247

**Occupational Health**                01904-725099 or 01723-342168

**Confidential Care Staff Counselling**    0800 085 1376 or 020  
7938 0963

### **Fairness Champions**

via email: [Fairness.Champions@york.nhs.uk](mailto:Fairness.Champions@york.nhs.uk)

**Staff Representatives**            Contact details are available from your union website, or from the HR Department.

For more advice, see Appendix E "*Are You being Harassed or Bullied?*"

### **What if I am not happy with a colleague's behaviour, but it might not be defined as bullying or harassment?**

Whilst this policy refers to bullying and harassment, there may be real or perceived behaviours that occur, or difficulties in working relationships that exist, which do not strictly meet the definition of either bullying or harassment. Nevertheless, the principles of this policy and the options available to resolve those situations should

be followed in such cases. Further advice is available from the Human Resources Directorate.

Whilst breach of this policy could render an individual liable for disciplinary action, the aim of the policy is to draw attention to and thereby prevent all forms of offensive behaviour.

This document supports part of the Trust's Equality and Diversity Strategy.

## **1.2 Scope**

The scope of this policy and procedure is about workplace and employment issues. It is not to address unacceptable behaviour from the public, volunteers, contractors, agency staff etc. Please refer to the Human Resources Directorate for further guidance.

This Policy and Procedure applies to all employees of York Teaching Hospital NHS Foundation Trust.

## **2 Definitions**

### **2.1 Harassment**

In the Equality Act 2010 harassment is defined as 'unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual'.

The protected characteristics are:

- Age
- Disability
- Gender Reassignment
- Marriage and Civil Partnership
- Pregnancy and Maternity
- Race
- Religion or Belief
- Sex
- Sexual Orientation



Harassment means unwanted conduct that is offensive to the recipient. Harassment does not refer to behaviour of a mutually acceptable nature; it refers to behaviour that is unsolicited, that is personally offensive and that fails to respect the rights of others or fails to recognise the impact that such behaviour might have.

The following are examples of the type of inappropriate behaviour covered by the policy:

- **Physical Conduct:** unwanted physical conduct, including unnecessary touching or brushing against another employee's body, assault, coercing sexual intercourse, insulting or abusive behaviour and gestures.
- **Verbal Conduct:** physical threats, unwelcome advances, propositions or remarks, innuendoes, lewd comments or abusive language, which is sex based or race based or which refers to a person's age, disability, sexual orientation, religious beliefs or any personal characteristic of the individual.
- **Non-Verbal Conduct:** the display of pornographic or suggestive pictures, objects or written materials; making offensive or abusive gestures; display of offensive written or visual material, including graffiti, or other unacceptable non-verbal conduct which denigrates a person for whatever reason.

## 2.2 Bullying

Bullying is not specifically defined in law, but in their advice leaflet for employees<sup>1</sup>, Acas give the following definition: 'Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient'.

Bullying is a form of harassment, which may occur for reasons other than a protected characteristic. Bullying at work involves repeated negative actions and practices that are directed at one or more workers. The behaviours are unwelcome to the victim and undertaken in circumstances where the victims have difficulty in

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<sup>1</sup> ACAS. (2013) *Bullying and harassment at work: guidance for employees*. London: Acas. Available at: <http://www.acas.org.uk/index.aspx?articleid=797>

defending themselves. The behaviours may be carried out as a deliberate act or unconsciously. These behaviours cause humiliation, offence and distress to the victim. Negative behaviours most frequently identified with bullying fall into four main groups:

- **Personal insults:** e.g. humiliation, personal criticism, ridiculing or demeaning comments
- **Intimidation** e.g. threats of physical violence or psychological intimidation, misuse of power or position, shouting/raising voice inappropriately
- **Work related harassment** e.g. withholding information, having one's responsibilities removed, work overload, misrepresenting your work as their own
- **Social exclusion** e.g. isolation, scapegoat, victimisation

Bullying normally relates to negative behaviours that are repeated and persistent. While it is unpleasant to be the target of someone's occasional aggressive behaviour, occasional behaviours are not normally defined as bullying.

Further examples of bullying are detailed in Appendix C.

### 3 Policy Statement & Aims

#### 3.1 Policy Statement

It is the policy of the Trust to make every reasonable effort to provide a working environment free from harassment and bullying, and any other form of unacceptable behaviour that is personally offensive. In this respect the Trust will not condone harassment or offensive behaviour of any description.

The Trust is committed to working towards creating a working climate in which all employees are treated fairly and with dignity and respect.

#### 3.2 Policy Aims

- To ensure that all employees are aware of the types of behaviour that may constitute harassment or bullying and their responsibilities for preventing such behaviour

- To ensure that all employees understand that harassment and bullying are intolerable and unacceptable and that disciplinary action may be taken against offenders.
- To provide arrangements whereby complaints can be investigated in a manner that recognises the sensitivity of the issues raised and the rights of both parties involved.
- To ensure that all allegations of harassment and bullying are responded to positively and with the complainant's confidentiality protected as far as possible (see Appendix A).
- To promote a climate in which employees feel able to raise complaints of harassment and bullying without fear of victimisation.

### **3.3 General Principles**

The following general principles will underpin the way in which the Trust responds to complaints of harassment or bullying:

- Complaints will be dealt with promptly and fairly
- Allegations of harassment and bullying will be taken seriously and be properly addressed
- Complaints that are subsequently found to have been made maliciously will be investigated and disciplinary action may result
- All efforts will be made to guard against victimisation of the complainant.
- Appropriate records of formal complaints will be kept
- Where appropriate a reasonable attempt will be made to resolve the matter informally, without recourse to formal action.
- Where the allegation warrants it, formal procedures will be instigated and disciplinary sanctions applied in accordance with the Trust's Disciplinary Policy.
- The Trust recognises the stress, anxiety and distress that harassment and bullying can cause and appropriate confidential support and counselling will be made available to the victims of harassment and those accused of harassment at all stages of the procedure.

### **3.4 Procedure for Dealing with Complaints of Harassment & Bullying in the Workplace**

See Appendix A

### **3.5 Recording of Complaints of Harassment & Bullying in the Workplace**

Information received from Directorates about complaints will be kept securely on a spreadsheet on the Human Resource 'X' Drive and will only be available to individuals within the HR Team.

The spreadsheet will keep details of the specific allegation and the outcome ie. No case to answer, managed informally or formal.

If a case is investigated formally then the recording of this will be in line with the disciplinary policy and the investigation file will be kept securely within the HR Directorate for a period of 7 years, after this time it will be destroyed.

If an individual receives a formal sanction then a copy of the outcome will be placed on their personal file and will only be considered in any other investigation if the sanction is 'live'

## **4 Equality Impact Assessment**

The Trust aims to design and implement services, policies and measures that meet the diverse needs of our service, population and workforce, ensuring that none are placed at an unreasonable or unfair disadvantage over others.

In the development of this policy, the Trust has considered its impact with regard to equalities legislation.

See Appendix H for the Equality Impact Assessment

## **5 Accountability**

### **5.1 Employees**

The Trust would expect all employees to demonstrate our values as part of their day to day working lives:

#### **Values, drivers and motivators:**

- Caring about what we do.

- Respecting and valuing each other
- Listening in order to improve (always seeking to improve)
- Always doing what we can to be helpful

**Providing support by:**

- Working in partnership and responding to local needs
- Respecting Differences: Building on similarities.
- Empowering people to be involved in decisions about how we provide care
- Encouraging others to behave respectfully in line with our values
- Suggesting 'Values Behaviours' to influence and perform efficiently in line with our brand.

**All** individuals are therefore responsible for their own actions at work. It is the responsibility of all employees to:

- Ensure they treat fellow employees, patients and relatives/visitors with courtesy, respect and dignity.
- Not harass or bully anyone while at work or at a work-related social function. Please refer to the Human Resources Directorate for guidance on what may constitute a work-related social function.
- Report both personal experiences of harassment or bullying and any incidents witnessed in the workplace immediately to their Line Manager, however minor they may seem

## **5.2 Employees with Managerial/Supervisory Responsibilities**

Employees holding managerial or supervisory posts have a particular responsibility to make every effort to ensure that harassment and bullying does not occur within their areas and, if it does, to deal with it swiftly and sensitively in accordance with this Policy and Procedure. Failure of a Manager/Supervisor to act on a complaint of harassment or bullying will be treated as a failure to fulfil the responsibilities of his/her position.

Managers and supervisors must comply with the Best Practice Guide detailed in Appendix D.

Without detracting from the seriousness of harassment and bullying at work, it is accepted that managers/supervisors have to

make decisions and give instructions that may not be popular. This does not amount to harassment or bullying. Managers/supervisors are, however, responsible for communicating such instructions in an acceptable and appropriate manner. Therefore, if a member of staff has concerns with the way their manager behaves towards them, they should follow the steps for raising this as detailed in the policy.

### **5.3 Human Resources**

The HR directorate are responsible for providing advice and guidance in relation to this policy to staff, managers and union representatives. In doing so, they will embed the principles of openness, transparency, sensitivity and confidentiality.

## **6 Consultation, Assurance and Approval Process**

### **6.1 Consultation Process**

Senior Managers, Executive Board members, Joint Management Staff Committee members and Joint Local Negotiating Committee members have all been formally consulted about the development and review of this Policy and Procedure.

### **6.2 Quality Assurance Process**

Following consultation with stakeholders and relevant consultative committees, this policy has been reviewed by the approving committee to ensure it meets the NHSLA standards for the production of procedural documents.

### **6.3 Approval Process**

Following completion of the Quality Assurance Process, this policy, and any subsequent policy revisions will require approval by the Executive Board

## **7 Review and Revision Arrangements**

This Policy and Procedure will be reviewed in accordance with the date stated on the front page of the document, following consultation with Managers and Staff Organisation Representatives.

Subsequent changes to the policy will continue to require the approval of the appropriate committees and changes will be detailed on the version control sheet at the front of the policy.

## **8 Dissemination and Implementation**

### **8.1 Dissemination**

Once approved, this policy will be brought to the attention of all staff of York Teaching Hospital NHS Foundation Trust. This will include inclusion in Team Brief and discussion in meetings with line managers. It will also be published on the Intranet in the Policies and Procedures area.

This policy is available in alternative formats, such as Braille or large font, on request to the author of the policy.

### **8.2 Implementation of Policies**

Most staff and managers are already familiar with the principles of the Challenging Harassment & Bullying in the Workplace Policy and Procedure, therefore the main object for implementation is raising awareness of any changes to the policy. This will be an integral part of the dissemination as outlined above.

Additional support and advice are always available from the Human Resources department and are embedded in many parts of this procedure.

## **9 Document Control including Archiving Arrangements**

### **9.1 Register/Library of Policies**

This policy will be stored on the Trust's electronic portal, the Intranet, on the policies and procedures site and will be stored both in an alphabetical list as well as being accessible through the portal's search facility. All policies will be registered and a library kept by the Compliance Unit.

### **9.2 Archiving Arrangements**

The Compliance Unit will manage the archiving arrangements of all policies.

### **9.3 Process for Retrieving Archived Policies**

To retrieve a former version of this policy from the Intranet, the Compliance Unit should be contacted.

## **10 Monitoring Compliance With and the Effectiveness of Policies**

### **10.1 Process for Monitoring Compliance and Effectiveness**

In order to fully monitor compliance with this policy and to ensure that the minimum requirements are met, the policy will be monitored as follows:

The Human Resources Directorate will be responsible for monitoring the effectiveness of this Policy.

It is essential that information gathered about the incidence and nature of harassment and bullying cases is analysed, which will be recorded by HR in the Bullying and Harassment spreadsheet so that the Trust can increase its awareness of the issues and identify any common themes to inform development of employment policies, procedures and practices.

To check compliance with the procedures outlined in this policy (e.g. duties, statement by the organisation that harassment and/or bullying are not acceptable, process for raising concerns, process to be followed once a concern has been raised, process for supporting those involved in or affected by bullying and/or harassment) the following information will be monitored and appropriate action taken:

- The number of Harassment and Bullying cases that arise will be monitored on a yearly basis,
- Monitoring the number of Harassment and Bullying cases against which stage of the procedure they reach through the spreadsheet
- Monitoring the outcome of the Harassment and Bullying cases to ensure consistency through the spreadsheet
- Monitoring all of the above information against the reason for the allegation of Harassment and Bullying, to establish any trends in causation.

The results of the monitoring will form part of the annual HR Performance Report which goes to the JNCC, Executive Board, and Board of Directors.



## **10.2 Standards/Key Performance Indicators**

This policy conforms to the requirements identified in the NHSLA Risk Management Standards

## **11 Training**

Support and advice on the application of this policy can be sought from Human Resources.

## **12 Trust Associated Documentation**

This Policy and Procedure will need to be read in conjunction with other Trust Policies/Procedures e.g.

- Disciplinary Policy Procedure
- Performance Management Policy and Procedure
- Whistleblowing Policy
- Grievance Policy and Procedure
- Procedure for Responding to Violence against Staff 2010

## **13 External References**

- Equality Act 2010
- Protection from Harassment Act 1997
- Criminal Justice and Public Order Act 1994.
- Health and Safety at Work Act 1974.
- Employment Rights Act 1996
- Human Rights Act 1998

## **14 Appendices**

Appendix A – Procedure

Appendix B – Harassment & Bullying – The Legal Position

Appendix C – Examples of Bullying Behaviour

Appendix D – Best Practice Guide for Managers

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Name of policy: Challenging Harassment & Bullying in the Workplace

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Version Number: 7

Issue Date: October 2015

Appendix E – Are you being harassed or bullied?

Appendix F – If you are accused of harassment or bullying

Appendix G – Mediation

Appendix H - Equality Impact Assessment

Appendix I – Flowchart of Procedure

## Appendix A - Procedure

All employees have the right to have allegations of harassment or bullying explored, providing there are reasonable grounds for this belief. Employees will be assured that their complaint will be dealt with promptly and sensitively and in strict confidence. "Strict confidence" should not be confused with people making allegations and requesting to remain anonymous, as this would undermine the Trust's ability to act on the information received. No employee will be penalised for making allegations of harassment or bullying, unless these are found to be malicious.

For further guidance please refer to Appendix E – 'Are you being harassed or bullied?' and Appendix F – 'If you are accused of harassment or bullying.'

### 3.4.1 Stage 1 - Initial Steps

In the first instance, wherever possible, the employee should ask the alleged harasser or bully to stop, or should make it clear that their conduct is unwelcome, offensive or interfering with work. This can be done either verbally or in writing

In circumstances where it is too difficult or embarrassing for the individual to do this themselves, they may ask a work colleague to raise the issue with the alleged harasser or bully on their behalf.

As difficult as this initial step may be, **staff are encouraged to take this approach at the earliest opportunity, even after a single occurrence of unwanted or unwelcome behaviour** by another member of staff. The other person may be unaware of their behaviour and / or the impact it is having on you.

By taking this approach, you are demonstrating **Personal Responsibility** and giving the other member of staff the opportunity to do the same and modify their behaviour.

For further guidance please refer to Appendix E – 'Are you being harassed or bullied?' and Appendix F – 'If you are accused of harassment or bullying'.

### 3.4.2 Stage 2 - Informal Process

There is a general consensus that **the most effective way to tackle harassment and bullying at work is informally and quickly, saving time and not damaging relationships by following a formal disciplinary route.** This should be recognised by all staff involved in this process: the individual feeling bullied or harassed, the alleged bully / harasser, and all parties involved in trying to resolve the situation. A commitment to resolving matters at this stage is expected by all.

If Stage 1 has no effect or is not possible, the employee should raise the matter with their immediate Line Manager. If the individual does not feel able to discuss the matter with his/her Manager (this may be the case if the Manager is the person committing the act), then the next in line Manager, or a Human Resources Manager/Adviser, a Fairness Champion or Staff Representative should be contacted.

The Manager/Human Resources/Fairness Champion/Staff Representative will listen to the employee and subject to appropriate information/examples to support the allegations they will discuss options and outline the possible outcome

Options at this stage may include:

A) Intervention by a third party acting on the complainant's behalf, for example, someone to have a 'chat' with the alleged harasser or bully to attempt conciliation,. This should always be done as soon as possible after the matters are raised, and the individual encouraged to reflect and helped to understand the impact their behaviour is having on the other staff member. It should be noted that when the concerns are first raised with the alleged bully / harasser, this may be the first time that these behaviours and their impact have been brought to their attention, and they may need skilled support to recognise this. However, there is an expectation that they demonstrate a willingness to engage with this process and to resolve matters.

B) Mediation (see Appendix G)

C) Other interventions for either party, e.g. coaching, Occupational Health referral, access to Confidential Care Staff Counselling. These options do not imply any fault or blame on either party, but

are ways to help individuals be better able to face and resolve the difficult situation.

Every attempt should be made to help the two parties to resolve matters at this stage. Only if there is very clear evidence of bullying and harassment (e.g. specific examples) with no recognition, insight or willingness to resolve matters from the alleged bully / harasser, should the matter proceed directly to the Formal Stage (Stage 3)

Managers must ensure that all informal discussions with the complainant and alleged harasser or bully are recorded on file and a copy given to that individual and the basic details of these discussions must then be referenced in their monthly report which is sent to HR

For further guidance please refer to Appendix E – ‘Are you being harassed or bullied?’ and Appendix F – ‘If you are accused of harassment or bullying’.

### **3.4.3 Stage 3 - Formal Process**

If stage 1 and 2 has been unsuccessful or is deemed an inappropriate stage the formal process (stage 3) will be activated. This will be determined by the alleged perpetrator’s Senior Manager and a HR Manager.

Initially, a short fact-finding exercise will be undertaken to summarise the concerns, the strength of allegations and the steps taken to resolve the matter so far. A brief report should be produced and submitted to the Senior Manager and HR Manager. The report may include recommendations.

Based on this fact-finding report, the Senior Manager and HR Manager will determine the appropriate outcome, which may include:

**A) No evidence to support the allegations.** In this case, the individuals may be able to continue to work together, possibly with some continued support and adjustments (e.g. additional management supervision, or arranging work so they have minimal contact, especially on matters which may have led to

the initial allegations) However, it should be recognised that there are situations which develop with working relationships which are not possible to resolve to everybody's satisfaction, e.g. a personality clash, or a deep-rooted misperception of a situation by an individual or individuals. In exceptional circumstances a decision may be taken to ensure that the individuals do not work together at all, e.g. redeployment of one or both staff members. If staff continue to work together, both parties should be reminded of their personal responsibility to act professionally and civilly, and to follow the Trust's Code of Conduct and Values.

**B) Initial fact-finding identifies evidence that the allegations warrant further formal investigation.** This should be dealt with through the Trust's Disciplinary Policy and Procedure. This approach may be appropriate where previous stages have been exhausted and inappropriate behaviours continue, or when the alleged perpetrator is unwilling to engage with earlier stages of this process.

C) The investigation may conclude that there is a **capability rather than a conduct issue** to be addressed. In such cases action will be taken under the Trust's Performance Management Policy

**D) Evidence of false or malicious claims made by the complainant.** False or malicious claims should be dealt with through the Trust's Disciplinary Policy and Procedure. In determining whether claims may be malicious, it should be remembered that, in cases where there is no evidence to support the claim, the individual may still genuinely feel bullied or harassed. That does not constitute a malicious claim, and such individuals should be treated sensitively and with ongoing support.

In determining whether the individual accused of harassment or bullying should be suspended whilst an investigation takes place, reference should be made to the guidelines on suspension as detailed in the Trust's Disciplinary Policy.

The Senior Manager of the alleged harasser/bully will determine the action required following the disciplinary investigation, with

guidance from a Human Resource Manager. Possible action could be:

A) The allegations have no substance and no further action will be taken. The fact that a claim is not substantiated does not necessarily mean that the complaint was made for false or malicious motives. An employee whose complaint is not substantiated must be informed of the decision in a sensitive and non-judgemental manner. They should also be offered support and counselling in coming to terms with the decision. In this situation, the complainant will not have access to the full investigation report and/or statements but will receive a summary of the conclusion. Even though the allegations have not been founded there still may be learning outcomes highlighted to either party. These learning outcomes would be recorded and a copy given to the individual and a copy placed permanently on their personal development folder.

B) The allegations have substance and a disciplinary hearing will be convened in accordance with the Trust's Disciplinary Procedure.

C) The investigation may conclude that there is a capability rather than a conduct issue to be addressed. In such cases action will be taken under the Trust's Performance Management Policy.

D) The allegations have no substance and have been made for false and malicious motives. This will be investigated in accordance with the Trust's Disciplinary Procedure and disciplinary action may be taken against the complainant.

### **3.5 Recording cases of Bullying and Harassment**

In order to achieve greater awareness of Bullying and Harassment cases in the Trust and to be able to monitor these cases and their progress effectively it is important for Directorate Managers and Line Managers to communicate with HR regarding any cases of Bullying and Harassment which they are approached about, both formally and informally.

The process for communication will be as follows:

3.5.1 The HR Admin team will send out a monthly email reminding Directorate Managers and Line Managers to inform them of any Bullying & Harassment cases in the department/team (both informal & formal cases). This e-mail will include a template for Managers to fill in and send back. The informal cases may be recorded anonymously if the member of staff has requested this.

3.5.2 The HR Admin team will then collate this information on a central spreadsheet for all directorates

3.5.3 The HR Admin team will then provide a monthly report to HR Managers for their areas advising of new cases and the HR Managers will then enter a progress update of each case on to the same spreadsheet when appropriate.

### **3.6 Withdrawal of Allegation**

If the person who alleges harassment and/or bullying withdraws their allegation, and providing that there has been no pressure or coercion applied, the investigating officer may permit the withdrawal. However, in such instances advice must be sought from the Directorate of Human Resources.

### **3.7 Representation**

At the formal stage (Stage 3), a recognised Staff Organisation Representative or a colleague/friend (not acting in a legal capacity) may accompany complainants, witnesses and those who are under investigation for alleged harassment or bullying.

### **3.8 Support**

Employees who are victims, witnesses or accused of harassment or bullying should be advised at an early stage that they can contact their Trade Union, a Fairness Champion or access the Trust's Confidential Care Counselling Service on 0800 085 1376 or 020 7938 0963. It is also vital that his/her Manager, following any incident of harassment or bullying, gives the employee support.



## Appendix B - Harassment And Bullying – The Legal Position

The Trust has a “duty of care” to ensure that all staff are treated with dignity at work and are able to perform their duties satisfactorily within a safe environment.

It is important for both Managers and employees of all disciplines and professions to recognise that they could be breaking the law under the following legislation:

- Harassment may be considered to be discrimination under the Equality Act 2010. Both the Trust and individual employees can be held liable under this piece of legislation.
- Certain types of harassment, such as stalking, (whether in the workplace or elsewhere) are covered in criminal law by the Protection from Harassment Act 1997, and the Criminal Justice and Public Order Act 1994. This makes it a criminal offence to pursue a course of conduct, which amounts to harassment of a person, or which causes a person to fear that violence will be used against them.
- The Trust is under a duty to protect employees’ health, safety and welfare at work. This duty arises by virtue of an implied term in the employment contract. It also exists as a common law duty of care under the law of negligence and as a statutory duty under the Health and Safety at Work Act 1974.
- The Health & Safety Executive’s guidance on *Stress in the Workplace* includes advice that stress should be treated like any other health hazard and that employers have a “legal duty to take reasonable care to ensure health is not placed at risk through excessive and sustained levels of stress”.
- The Employment Rights Act 1996 incorporates an employee’s right to claim “constructive dismissal” and “unfair dismissal”. An individual may claim constructive dismissal where they feel they

were forced to resign on the grounds of maintaining their physical, mental, emotional or professional well being.

- The Human Rights Act 1998 stipulates that Health Service Bodies as “Public Authorities” will be behaving unlawfully if they act in a way which is incompatible with those rights and freedoms which the Act protects. The Act allows employees to use a Court of Law if they believe their human rights have been breached.

Managers in particular should be aware that the Trust could be held responsible for the actions of its employees regardless of whether or not they are aware of those actions. It is, therefore, essential that they take appropriate measures to ensure that harassment or bullying does not occur.

## **Appendix C - Examples of Bullying Behaviour**

- Withholding information that affects other people's jobs
- Humiliating or ridiculing others about their work
- Ordering others to work below their level of competence for no reason
- Removing areas of responsibility without consultation
- Spreading rumours or gossip
- Ignoring or sending others to 'Coventry'
- Making insulting or offensive comments about others
- Shouting and getting abusive with others
- Pointing your finger, invading personal space, shoving, blocking or barring the way
- Suggesting that others should resign
- Constantly highlighting errors or mistakes made by others
- Being hostile to others
- Constantly criticising others' work and efforts
- Ignoring the views of others
- Playing practical jokes on people you don't like
- Setting unreasonable tasks or deadlines
- Making false allegations against others
- Engaging in excessive monitoring of the work of others
- Removing the rights of others
- Threatening violence to others
- Physically attacking others
- Using malicious or insulting language

**N.B. This list is illustrative and not exhaustive**

## **Appendix D - Best Practice Guide For Managers**

Managers and supervisors have a duty to establish and maintain a safe working environment free from harassment and bullying. The most effective way to deal with bad behaviours in the workplace is to deal with them before they become regular or 'accepted' ways of behaving.

All reports of personal harassment and bullying must be treated seriously and compassionately and must be dealt with through the Challenging Harassment and Bullying in the Workplace Policy and Procedure.

In adhering to the Challenging Harassment and Bullying in the Workplace Policy and Procedure, managers must be aware of their responsibilities in order to ensure that the policy is effective.

Managers must:

- Ensure that all staff within their sphere of management are aware of the policy and of the various procedures referred to in this document.
- Be familiar with legislation governing harassment and bullying and they must ensure best practice for themselves and staff within their sphere of management.
- Set a good example by treating everyone with dignity and respect
- Foster openness and respect within staff teams
- Encourage and promote good working relationships
- Ensure staff know how to raise bullying & harassment concerns
- Deal with allegations of harassment and bullying within the framework set out in this policy
- Remember the impact of the behaviour determines harassment and bullying, not the intent
- Take corrective action if they witness harassment or bullying occurring
- Ensure corrective solutions are implemented and monitored
- Be vigilant of the behaviour of individuals within their teams, and be responsible for addressing actions, which might cause offence.
- Ensure that all informal and formal discussions with the complainant and alleged bully/harasser are recorded on file and a copy given to the individual as well as including this in their monthly report to HR.

- Seek initial advice from the Directorate of Human Resources where appropriate and involve that Directorate where the Procedure requires such input
- Ensure staff in their sphere of management who are involved in harassment & bullying procedures are properly supported, treated fairly with respect and dignity

**Managers must not:-**

- Assume that no complaints means no problems
- Try to dissuade people from making complaints
- Assume that complainants are over sensitive or troublemakers
- Accept “I didn’t mean any harm” as an excuse for harassment or bullying
- Allow retaliation or victimisation
- Allow any service area within their sphere of management to become receptive to harassment and bullying behaviours

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**What to do if someone reports harassment or bullying to you:**

- Listen carefully to the allegation
- Thank the individual for bringing the concern to you. Recognise that it may have been difficult for them to do so.
- Spend time getting a clear picture of what has led to the individual to seek help
- Listen without prejudice, making judgements and assumptions, or jumping into solutions before getting a clear picture
- Summarise your understanding of the situation
- Clarify what the individual wants? What is their preferred outcome? Is it realistic?
- Ensure the ‘complainant’ is offered emotional support
- Give them a copy of the Trust Policy on Challenging Harassment and Bullying in the Workplace
- Explain the three stages of the procedure
- Agree a way forward with the individual
- Clarify issues around confidentiality
- Discuss case with Human Resources Directorate

## **Appendix E - Are You Being Harassed Or Bullied?**

Many people subjected to harassment or bullying do not complain because they:

- Feel embarrassed
- Are worried that they will be victimised
- Don't want to get anyone into trouble
- Don't think anything will change

**The Trust is committed to challenging harassment and bullying in the workplace and staff should never feel inhibited from making a complaint.**

**Although the situation may feel very difficult and you may believe that it cannot be resolved, often this is not the case. The earlier you begin to address the unwanted behaviours of another member of staff (either directly, or by seeking help and advice from the people listed below) the easier it will be to resolve and the sooner the situation will begin to improve for you.**

In situations where you are unsure whether you have been subject to behaviour, which constitutes harassment or bullying, you may seek further guidance and advice from the following before deciding whether to take the matter further:

- Line Manager (if appropriate) or other manager
- Directorate of Human Resources, including Occupational Health
- Staff Organisation Representative
- Fairness Champions

These sources will be able to advise you on how to approach the matter and whether the incident/s merit further action. The decision as to whether or not to raise a complaint of harassment or bullying rests with you. However, the Trust has a legal duty to take action on harassment and bullying in the workplace and has a duty to do so even in cases where the person reporting the incident wishes to remain anonymous. This may mean in some cases proceeding with an investigation and/or corrective action against the wishes of the complainant.

If you feel you are being harassed or bullied it is imperative you keep a written diary of incidents, such as what happened, record of dates, times, any witnesses, your feelings. Bullying and harassment often

reveal themselves through patterns of behaviour and frequency of incidents.

### **What to do if you believe you are being harassed/bullied?**

You can:

- Talk to, or write to, the harasser/bully yourself
- You can explain that their behaviour is unacceptable to you
- You can ask them to stop
- You can refer them to the Challenging Harassment and Bullying in the Workplace Policy.

Making a direct approach is often effective in dealing with less serious harassment situations. Their behaviour may be unintentional and would stop if they were aware of the effect. If you do take this approach - take a calm and reasoned approach and make a note of what is said. You can do this immediately afterwards. Consideration should also be given to the environment when you make a direct approach (e.g. ensure approach is conducted in a private and appropriate place). Dialogue would not be conducive if the conversation takes place in front of colleagues or patients/visitors.

If the above is not appropriate you can: -

- Talk to your manager, a Fairness Champion or a Human Resources Adviser/Manager
- They will listen to you, discuss the options you can take and agree a way forward

When making a complaint about bullying and harassment the following information must be provided

- The name of the person(s) being complained about
- What the work relationship is (i.e. colleague, line manager)
- Details of most recent incident (what happened, where, date, time and any other information which may be helpful)
- Details of other incidents in chronological order (what happened, where, date, time and any other information which may be helpful)
- Whether anyone else observed the incidents, including names and which incident they observed
- Details of any action already taken to try and resolve the situation, when the action was taken and what was the outcome

- Any other information that may be relevant to the complaint

**Support:**

Support will be offered through:

- Your manager (where appropriate) and/or the Human Resources Directorate.
- Fairness Champions
- Occupational Health Services
- Confidential Care Counselling Service
- Staff Side Representative



## **Appendix F - If You Are Accused Of Harassment Or Bullying**

Many cases of alleged harassment are seen by the perpetrator as 'just a bit of fun' or 'not meant to be taken seriously'. However, the Trust believes that someone experiencing such incidents is often far more adversely affected by them than the alleged harasser thinks. Their work and their health may both be suffering. This policy is intended to stop any form of behaviour, which is felt by the individual involved to be unacceptable. What is acceptable to one person might not be so to another.

If someone believes you are harassing or bullying them, informal action or formal action may be taken against you.

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### **Informal action:**

If a colleague or your manager speaks to you informally about your behaviour at work, it may be because you are unaware of its effect. Even if you think your intentions are well meaning, if someone is hurt by your actions they have the right to communicate that to you and ask you to stop.

If you are approached to have a meeting to discuss claims that you have harassed or bullied someone then you will be expected to: -

- Listen carefully to what is being said
- Consider the complainant's perception of what has happened
- Try not to be defensive and make counter-accusations
- Try to consider how you have behaved and how that might have affected the other person
- Aim to arrive at a mutual agreement on the way forward
- Fully cooperate with the Trust process and procedures for handling harassment and bullying

Often a simple discussion at this stage can resolve the problem, and identify more effective ways of communicating that is not threatening.

## **Formal Action:**

If the informal stage has been unsuccessful or is deemed inappropriate allegations of harassment and/or bullying would be dealt with under the formal stage of the Trust's Policy and Procedure on Challenging Harassment and Bullying in the Workplace.

- Formal complaints are serious. You are advised to ensure you have the support of a trade union representative, colleague or friend.
- The process will be fully explained to you and you will be given support
- As an employee you are required to co-operate with any Trust internal procedures
- You are entitled to support through Occupational Health and the Confidential Care Counselling Service should you require it
- Should any allegations against you be deemed false or malicious then the complainant will be dealt with under Trust procedures
- You should read the Challenging Harassment and Bullying in the Workplace Policy and the Disciplinary Policy to help you understand the process

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## **Support:**

The Trust recognises that people accused of harassment and/or bullying will also feel vulnerable. Support will be offered through:

- Your manager (where appropriate) and/or the Human Resources Directorate.
- Occupational Health Services
- Confidential Care Counselling Service
- Staff Side Representative

## **Appendix G - Mediation**

Conflict and disputes can happen to anyone in any workplace. If not resolved some disputes can be damaging to both the individuals involved and to the organisation e.g. high stress levels, low morale, disruption to team working and services to patients, sickness absence, resignations. These disputes are best resolved quickly and as locally as possible without the need for third party intervention. However, this is not always the possible and at these times mediation can be useful in helping to resolve differences.

### **What is mediation?**

Mediation is a process which brings people, who have a dispute that they cannot resolve themselves, together in the presence of an impartial third party, a mediator, who facilitates them to come to an agreement that has a win-win outcome. It is the individuals, not the mediator, who decide this agreement.

Mediation is a voluntary and confidential process. It is independent and impartial and the mediator does not take sides. Instead the mediator works with all those involved in the dispute to gain a clear understanding of the issues and how these can be resolved and facilitates the individuals to explore solutions.

### **When can mediation be used?**

Mediation is not suitable to resolve all workplace disputes but it can be used effectively where the individuals involved are willing and where there is room for manoeuvre and change.

The types of situations where mediation would be appropriate are:

- Interpersonal conflicts between people/teams who have difficulty working together
- Conflicts between people arising out of their relationship outside work
- Issues arising from different styles of working

The types of situation mediation would not be appropriate are: -

- Where an individual only wants to humiliate/express anger to another
- Where an individual is not genuinely interested in resolving issues
- Where another procedure would be more appropriate

### **How to access the Mediation Programme**

The Trust's Mediation Scheme is made up of a network of trained mediators based throughout the hospital. The scheme is totally independent of Human Resource or Management processes and is designed in such a way to ensure total confidentiality of case content. The mediators aim is not to necessarily to fix the problem, but to help facilitate effective communication between individuals in crisis, so that they can then resolve the problem themselves.

For more information, or to arrange a mediation session, please contact Helen Corcoran or Georgina Parkinson in the ODIL team.

## Appendix H – Equality Impact Assessment

<b>Harassment and Bullying Policy</b>
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		Yes/No	Comments
<b>1.</b>	<b>Does the document/guidance affect one group less or more favourably than another on the basis of:</b>		
	• Race	No	
	• Ethnic origins (including gypsies and travellers)	No	
	• Nationality	No	
	• Gender (incl transgender)	No	
	• Culture	No	
	• Religion or belief	No	
	• Sexual orientation including lesbian, gay and bisexual people	No	
	• Age	No	
	• Disability - learning disabilities, physical disability, sensory impairment and mental health problems	No	
<b>2.</b>	<b>Is there any evidence that some groups are affected differently?</b>	No	
<b>3.</b>	<b>If you have identified potential discrimination, are there any exceptions valid, legal and/or justifiable?</b>	N/a	
<b>4.</b>	<b>Is the impact of the document/guidance likely to be negative?</b>	No	
<b>5.</b>	<b>If so, can the impact be avoided?</b>	N/a	
<b>6.</b>	<b>What alternative is there to achieving the document/guidance without the impact?</b>	N/a	
<b>7.</b>	<b>Can we reduce the impact by taking different action?</b>	N/a	



## Appendix I – Flowchart of Procedure



