

# Bullying and Harassment Procedure

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# Bullying and Harassment Procedure

## 1 Introduction

- 1.1 Employees have the right not to be subjected to bullying, harassment or victimisation in the course of their duties and that action needs to be taken to prevent it and address it where it occurs. Such behaviour will not be tolerated by the Tavistock and Portman NHS Foundation Trust (the Trust) in any form. For the purposes of simplicity, all such behaviour is referred to as harassment in the remainder of this document.
- 1.2 Harassment can take many forms, but in general, it refers to unwanted conduct that violates people's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment.
- 1.3 Harassment at work comes at high cost to both employees and employers. Employees may be subject to fear, stress and anxiety, which may put a strain on personal or family life. Harassment can lead to illness, increased absenteeism, an apparent lack of commitment, poor performance and even resignation. All these have a negative effect on organisational effectiveness.
- 1.4 These behaviours are often subtle and unobserved, and on some occasions, unintended. The Trust will not shy away from difficult investigations simply because it is one person's word against another. Where it is not possible to prove an allegation, the Trust expects its managers to use reasonable judgement to decide whether harassment has taken place, and to take appropriate action.

## 2 Purpose

- 2.1 The purpose of this procedure is to support a working environment and culture in which harassment is unacceptable. It provides a fair and user friendly procedure which ensures a swift, sensitive and effective remedy for victims of harassment, within a framework of protected confidentiality, with access to counselling, advice and support when required.

## 3 Scope

- 3.1 This policy applies to all staff employed, wholly or otherwise by the Trust, regardless of the site on which they work.
- 3.2 This process does not apply to issues that are being dealt with through another procedure nor do they allow for the same issue to be raised again through the grievance and collective disputes procedure.

## 4 Definitions

- 4.1 **Harassment** is conduct that is unreciprocated or unwanted and which affects the dignity of anyone with a protected characteristic. It includes behaviour that is unreasonable, offensive or hostile causing discomfort, distress, or exclusion, or constituting an infringement of the rights of any employee. It may be a single act or repeated inappropriate behaviour. Examples include:
- physical contact ranging from touching to serious assault
  - verbal and written harassment through jokes, offensive language, gossip and slander, sectarian songs, letters
  - visual display of posters, graffiti, obscene gestures, flags, bunting and emblems
  - isolation or non-co-operation at work, exclusion from social activities
  - coercion ranging from pressure for sexual favours to pressure to participate (or cease to participate) in political/religious groups
  - intrusion by pestering, spying, following
  - inappropriate emails, posts, Tweets or text messages.

4.2 **Bullying** is conduct or action that is persistent, offensive, abusive, intimidating, malicious or insulting. It makes the recipient feel threatened, humiliated or vulnerable, undermines their self-confidence and may cause them to suffer stress. It includes abuse of management authority. Examples include:

- repeated shouting, threats, obscenities
- spontaneous rages over trivialities
- constant humiliation or ridicule
- ignoring or excluding
- spreading malicious rumours
- displaying unkind messages, photographs or film clips on websites, e.g., YouTube or social networking sites
- removing areas of responsibility and imposing more menial tasks than for others
- excessive supervision and criticism
- setting people up to fail, constantly changing targets or setting unrealistic deadlines
- deliberately withholding work related information or supplying incorrect information
- blocking of applications for leave, training or promotion without good reason

4.3 **Victimisation** is where someone is treated unfavourably because they have made or intend to make a complaint or allegation, or have given, or intend to give, assistance or evidence to an investigation.

## 5 Duties and responsibilities

5.1 The **Chief Executive** has overall responsibility for this procedure.

5.2 The **Director of Human Resources** will be responsible for implementation, monitoring, reporting and review of this procedure.

5.3 **Managers** are responsible for ensuring that the working environment is free from any type of harassment and that they take action where appropriate. They must ensure that their staff are aware of this policy.

- 5.4 **Staff** have a responsibility to report incidents of harassment they experience or witness and to positively support individuals who experience harassment at work. Staff also have a responsibility to ensure that their own behaviour and conduct is respectful of others. Staff who are subject to harassment but do not feel able to talk about it at first, are encouraged to make notes, including dates and details, which will help them recall events clearly later.
- 5.5 The HR section on the intranet provides details of all the routes of **support and guidance** that staff can access if they wish to use this procedure.

## 6 Procedures

### 6.1 Representation

- 6.1.1 At all stages within this procedure, the complainant and the person complained about may be accompanied by a colleague employed by the Trust or a representative of a recognised trade union.

### 6.2 Confidentiality

- 6.2.1 Except in the most serious circumstances, extending the number of those who are aware of the alleged allegations will only be by agreement with the complainant.

### 6.3 Anonymous complaints

- 6.3.1 Wherever possible we would like to encourage staff to address issues in an open and transparent way, however, we recognise that staff that have been harassed rarely want to invoke formal processes because the prospect of writing a statement, attending an investigation or even going to a hearing is a daunting process and can have more destructive outcomes than what is expected.
- 6.3.2 Because of the above, we want to ensure that we provide staff with several ways that they can share, confidentially, when they have experienced harassment. Details of a number of people that staff can chose to share what has happened can be found on the HR section of the intranet.

6.3.3 By sharing an experience in confidence the individual who the member of staff chooses will seek to understand the issues and ask if there are others who have experienced the same behaviours and encourage them to come forward. Where there are themes, in conjunction with the HR team, a plan will be developed for an appropriate person to talk to the individual to draw their attention to this procedure, acknowledge the issue may not have been raised previously and offer them a chance and support to change their behaviours. If, after a discussion like this happens there are continued reports of the behaviours then a formal process will be started.

## 6.4 Informal resolution

6.4.1 Most people who experience harassment do not wish to go through a formal process, they just want the behaviour to stop. It may be possible to resolve the problem by the complainant simply explaining to the person that their behaviour is not welcome or acceptable. The informal process can:

- clear up misunderstandings before the problem becomes difficult to resolve
- give each party a chance to explain their perspective on the issue
- allow both parties space and a chance to change and agree a way forward
- provide speedy and effective solutions
- minimise the stress caused to all parties and team members
- keep the matter confidential between all parties concerned

6.4.2 The complainant can consider talking to the person or writing to them to explain how they perceive their behaviour and ask them to stop. A sympathetic colleague may support an individual in making an initial approach. The harasser should be given an opportunity to explain themselves.

6.4.3 This will hopefully be the end of the matter, but in case it is not, the individual should keep a note of the names of those involved including witnesses, what happened and when, what was said, and any action taken.

## **6.5 Mediation**

6.5.1 Mediation can be helpful at any stage of the process, but is especially in the early stages if informal resolution has not worked. Mediation is where a third party, either another member of staff or a specially trained individual, facilitates a conversation between the parties. The aim is to help the parties come to a mutually acceptable resolution, which is summarised in a confidential, binding agreement. Both parties must agree to the involvement of a mediator, and the HR department will facilitate the appointment of one. Mediation may not be suitable for all cases.

## **6.6 Formal Process**

6.6.1 If the issue has not been resolved informally or through mediation, the individual can raise their complaint formally.

6.6.2 The individual should put their complaint in writing to their line manager, or the next senior manager if their line manager is involved. The complainant should include:

- date, time and place of incident(s)
- name(s) of the individual(s) involved
- what happened
- names of any witnesses
- what action, if any, was taken including attempts at informal resolution or mediation
- copies of any correspondence relating to the matter

## **6.7 Investigation**

6.7.1 The person complained about will be informed of the complaint and given details of the allegations against them. If they work in a different department, their line manager will also be informed.

6.7.2 A manager will be identified to investigate the complaint. In straightforward cases this will be the responsible line manager. In more complex cases, a manager from another department may be asked to investigate, and in exceptional cases an external, independent investigator may be appointed. The investigator will:



- interview the person raising the complaint to clarify the facts and details of the allegations
- interview the person complained about regarding the allegations
- interview any witnesses put forward by either party
- consider all the relevant circumstances
- keep details of all interviews in writing
- summarise their findings in a report
- recommend outcomes

6.7.3 During this stage of the complaint, consideration will be given as to whether the parties should remain on-site during the investigation. Management will consider temporary re-deployment, relocation or suspension on full pay if the circumstances of the complaint are such that for the parties to remain in their existing workplace will cause serious additional tension and problems. This may apply to either party.

6.7.4 Wherever possible, the investigation and report will be completed within 4 weeks. In more complex investigations the process may take longer and the complainant will be kept informed of progress and when an outcome is likely to be reached. Outcomes can include:

- No action, because the allegation has not been substantiated or there is insufficient evidence.
- A disciplinary hearing, where the findings warrant this.
- Alternative management action, because the findings do not justify formal disciplinary action. This could include:
  - facilitated discussion/informal advice for both parties, where both parties agree
  - redeployment of one or both parties, either on a temporary or permanent basis setting up arrangements to monitor the situation
  - required attendance on training courses (such as equality and diversity awareness training)
  - making arrangements for the complainant and alleged bully/harasser to work as separately as possible within the same workplace with regular monitoring from the line manager

- a period of special leave to enable working arrangements to be put in place.

6.7.5 Where allegations are found to be unfounded and not made in good faith, the investigator will consider what action is appropriate in those circumstances in respect of the complainant. Vexatious complaints may be subject to disciplinary action.

## **6.8 Reporting of findings and recommendations**

6.8.1 In straightforward cases, the investigating manager will meet separately with the person complaining, and then with the person complained about, to explain their findings and recommendations. In the more complex cases, or where an independent investigator has been used, the investigator will present their report and findings to a senior responsible line manager, and this person will meet with each of the parties.

6.8.2 The outcome will be confirmed to each individual in writing, within 7 days of the meetings.

## **6.9 Appeals**

6.9.1 If the individual is not satisfied with the outcome of the formal process, they can appeal. The individual should write within 10 working days to the Director of Human Resources.

6.9.2 An appropriate senior manager will convene an appeal hearing within 5 weeks of receiving the written request. They will be supported by a senior member of the HR team.

6.9.3 The following points will be considered:

- Whether the complaint was adequately investigated
- Whether the Trust's procedures were correctly and fairly implemented
- Whether the action taken by the manager concerned was reasonable

- 6.9.4 All documents to be relied on at the hearing by either party should be lodged with the HR department as soon as possible. They will be circulated to the panel members and both parties 5 working days before the hearing.
- 6.9.5 The management statement of case should include the investigation report, and any action taken.
- 6.9.6 The appealing person's case statement should include their grounds of appeal, and any written statements from witnesses.
- 6.9.10 The appeal panel may, at their discretion, adjourn the appeal in order that further evidence may be produced by either party, or for any other reason.
- 6.9.11 During the appeal hearing the appellant will present their case first, and can be questioned by the management representative and panel. The management representative will present second, and can be questioned by the appellant and panel. Each party can sum up their case if they wish. The appellant may sum up last.
- 6.9.12 Once the parties have completed their summing up statements, the panel will deliberate in private. The panel's decision will be confirmed in writing to both parties within 7 working days of the appeal hearing. This decision will be final.

## **6.10 The Grievance Procedure**

- 6.10.1 The appeal stage is the final stage to address harassment issues. Staff are not permitted to raise a grievance when the same issue has been dealt with through this procedure

## **7 Training Requirements**

- 7.1 The Human Resources team offer a range of management development training sessions; this includes training in the application of this procedure.

- 7.2 HR Business Partners will coach managers in the application of this procedure and offer bespoke team or one to one training, where appropriate.

## **8 Process for monitoring compliance with this Procedure**

- 8.1 The Human Resources team will record all informal and formal cases on the Trust's HR and payroll system. Data will be reported annually to Executive Management Team, and where necessary, via the annual equality and diversity reporting process and through the workforce race equality standard.
- 8.2 The annual staff survey provides an analysis of bullying and harassment cases and appropriate action plans will be implemented to address areas where bullying and harassment is a cause of concern.

## **9 References**

- Equality Act (2010)
- Health and Safety at Work Act (1974)
- Health & Safety at Work Regulations (1999)
- Protection from Harassment Act (1997)
- Civil Partnership Act (2004)
- Public Interest Disclosure Act (Whistle Blowing) (1998)
- <http://www.acas.org.uk/index.aspx?articleid=797>
- NHS Employers (<http://www.nhsemployers.org/> )
- <https://www.equalityhumanrights.com/en>
- <https://www.equalityhumanrights.com/en/search?text=protected+characteristics>

## **10 Associated documents<sup>1</sup>**

- Disciplinary Procedure
- Equal Opportunities Policy
- Grievance Procedure
- Raising Concerns and Whistleblowing Procedure

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<sup>1</sup> For the current version of Trust procedures, please refer to the intranet.

## Appendix A : Equality Analysis

Completed by	Craig de Sousa
Position	Director of Human Resources
Date	04 January 2018

The following questions determine whether analysis is needed	Yes	No
Is it likely to affect people with particular protected characteristics differently?	Yes	
Is it a major policy, significantly affecting how Trust services are delivered?	Yes	
Will the policy have a significant effect on how partner organisations operate in terms of equality?	Yes	
Does the policy relate to functions that have been identified through engagement as being important to people with particular protected characteristics?	Yes	
Does the policy relate to an area with known inequalities?		No
Does the policy relate to any equality objectives that have been set by the Trust?		No
Other?		

If the answer to *all* of these questions was no, then the assessment is complete.

If the answer to *any* of the questions was yes, then undertake the following analysis:

	Yes	No	Comment
Do policy outcomes and service take-up differ between people with different protected characteristics?		No	There is evidence that BME staff pan- London experience higher levels of Bullying & Harassment compared to white staff.
What are the key findings of any engagement you have undertaken?		No	Not applicable though trends in staff survey or local surveys inform staff engagement initiatives
If there is a greater effect on one group, is that consistent with the policy aims?		No	
If the policy has negative effects on people sharing particular characteristics, what steps can be taken to mitigate these effects?		No	
Will the policy deliver practical benefits for certain groups?		Yes	Those with protected characteristics will not be disadvantaged
Does the policy miss opportunities to advance equality of		No	

opportunity and foster good relations?			
Do other policies need to change to enable this policy to be effective?		No	
Additional comments			

If one or more answers are yes, then the policy may unlawful under the Equality Act 2010 –seek advice from Human Resources.