

# **BULLYING AND DISCRIMINATION POLICY & PROCEDURE**

**May 2013**

POLICY TITLE	<b>BULLYING AND DISCRIMINATION POLICY &amp; PROCEDURE</b>		
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## 1. **INTRODUCTION**

- 1.1. The Trust recognises that discrimination and bullying can create a threatening and intimidating work environment, which can adversely affect the job performance, health and well being of employees.
- 1.2 The purpose of this code of practice and complaints procedure is to provide proper redress for individuals facing discrimination and bullying and to assist in identifying and dealing with these issues, in line with the Trust's Valuing Diversity in the Workplace Policy. This procedure will help to promote fair treatment and good working relations within the Trust workforce and therefore also promote the provision of good health care to the public.

The Trust expects all employees to demonstrate at all times behaviours that are commensurate with the values and principles of the Trust and the way we as an organisation operate, as a business, towards service users, members of the public and towards each other.

- 1.3. This policy and procedure will be made available to all employees and managers in the Trust. All employees and managers are required to comply with it. The Trust will not tolerate acts of bullying or discrimination (including harassment and victimisation) and disciplinary action, up to and including dismissal, may be taken against perpetrators.

## 2. **WHO THE POLICY APPLIES TO**

- 2.1 This code of practice and complaints procedure is designed to support all Trust staff who feel they have suffered from bullying or discrimination (including harassment and victimisation) from another Trust employee(s).
- 2.2 Direct and indirect discrimination (including harassment and victimisation) on the grounds of sex (including marital status, pregnancy and childcare responsibilities), race (including colour, nationality and ethnic origin), religion or religious or philosophical belief, disability, sexual orientation, age, gender reassignment, or fixed-term or part-time working status is prohibited under this policy, as is all forms of bullying.

## 3. **DEFINITIONS**

For the purposes of this policy:

- 3.1 "**Discrimination**" is defined as an act which has the effect of treating a person less favourably than another on the grounds of sex, race, religion, religious or philosophical belief, disability, sexual orientation, age, or part-time or fixed-term working status. Discrimination can also include harassment and/or victimisation, which are defined as follows:
- "**Harassment**" is defined as any conduct based on sex, race, religion, religious or philosophical belief, disability, sexual orientation, age, or part-time or fixed-term working status which is unreciprocated or unwanted or affects an individual's dignity at work or creates an intimidating, hostile, degrading, humiliating or offensive environment for an individual.
  - "**Victimisation**" is defined as an act of discrimination or harassment against a person because it is suspected or known that the person has made an allegation on any of the grounds stated in paragraph 2.2 or given evidence or information regarding the allegation.
- 3.2 "**Bullying**" at work is behaviour that is threatening, aggressive or intimidating; or abusive, insulting or offensive; or cruel or vindictive; or humiliating, degrading or demeaning. Bullying will inevitably erode the victim's confidence and self-esteem. It normally relates to negative behaviours that are repeated and persistent, and deliberately targeted at a particular individual. Bullying is often an abuse of power, position or knowledge, and may be perpetrated by the victim's manager, his or her peers or even by subordinates. The reasonable, legitimate and appropriate exercise of management responsibility does not constitute bullying.

**4. RELATIONSHIP WITH THE DISCIPLINARY PROCEDURE/OTHER POLICIES**

- 4.1 This policy is separate from the disciplinary process. It is to be used in all cases described above where an individual raises a complaint. If the individual raises a verbal or written complaint, effort should be made in the first instance to resolve the issues under the informal stage of the procedure. If this proves unsuccessful, or the complainant is not willing to attempt informal resolution, an investigation will normally be carried out, if appropriate. (Guidance on this is given in the procedure). The disciplinary procedure may then be used (if the complaint is proven), following the results of the investigation under this procedure. Alternatively, if a complainant is reluctant to raise a formal complaint and an incident is considered sufficiently serious, or has been witnessed personally by the manager, she/he may wish to go straight to the disciplinary process.
- 4.2 Where an individual makes a complaint in good faith, regardless of whether or not the complaint is upheld, the person raising the complaint, or any person giving evidence in respect of a complaint, must not be treated less favourably as a result of this. If, however, there is reasonable cause to believe that the complainant, or other, acted maliciously, or the allegation was vexatious, then where the complainant is a member of staff the matter may be investigated under the Trust's Disciplinary Procedures.
- 4.3 The procedure does not apply to the following issues or concerns:

**4.3.1 Misconduct, unsatisfactory attendance or poor performance.**

These matters will be dealt with in accordance with the Trust's Disciplinary Procedure/Capability Policy/Probation Policy/Managing Absence and Attendance Policy including the appeal processes set out therein.

If, in the course of a disciplinary/capability/probation/managing absence process, a Bullying and Discrimination complaint that relates to the case is raised, consideration will be given as to whether a neutral manager could deal with both matters under the process already being followed, whether a neutral manager could investigate the Bullying and Discrimination Policy complaint during the course of the other process, whether suspending the other process for a short time whilst the Bullying and Discrimination Policy complaint is dealt with under this procedure is appropriate or whether to deal with the complaint through the appropriate appeal process.

**4.3.2 Grading appeals or KSF framework and gateway appeals.****4.3.3 Reports of illegal activities, wrongdoing and/or malpractice within the Trust, which will be dealt with under the Raising Concerns at Work (Whistleblowing) Policy and Procedure.**

However, where the employee is aggrieved about their personal position and would like the matter dealt with as a grievance complaint, the employee should use this procedure or the Trust's Grievance Procedure.

**4.3.4 Any other matter for which a separate local/national procedure exists.****5. EXAMPLES OF BULLYING AND DISCRIMINATION (INCLUDING HARASSMENT AND VICTIMISATION)**

This list is neither exclusive nor exhaustive, and other forms of behaviour can also constitute discrimination, harassment, victimisation or bullying.

**5.1 DISCRIMINATION**

This can occur with or without the individual's awareness that it is taking place, and would include: giving unequal consideration or treatment to people in areas such as recruitment,

training or promotion; attitudes which ostracise or encourage others to ostracise; inducing or attempting to induce other employees to treat a person unfairly.

## 5.2 HARASSMENT

Examples of harassment include:

### 5.2.1 Verbal Harassment

Statements, remarks, jokes or innuendoes which are derogatory, or which ridicule or insult a person on the grounds stated; the use of threatening or obscene language; making verbal sexual advances; attempts to stir up hatred or discontent against particular groups. The victim of harassment does not need to possess the characteristic on which the harassment is based in order for it to constitute harassment (e.g directing homophobic comments towards a heterosexual person).

### 5.2.2 Physical Harassment

Assault, as in physical attack; actions which are intimidatory or which ridicule, discomfort or embarrass individuals including but not only, invasion of personal space, making sexual advances in a physical manner; making threats against an individual or group.

### 5.2.3 Offensive Materials

Displaying or distributing materials which degrade or offend or the writing/painting of insults, including pornographic pictures and magazines; badges or other insignia whose purpose is to create hatred or discontent; graffiti; the defacing of notices referring to the promotion of equal opportunities or related issues.

## 5.3 VICTIMISATION

Any type of unacceptable behaviour, which is directly in retaliation against the party or parties to a complaint, is victimisation. The examples listed in paragraph 5.1 and 5.2 would be included, as would complaints under the Trust's Raising Concerns at Work (Whistle-Blowing) policy.

## 5.4 BULLYING

Examples of bullying include:

### 5.4.1 Physical conduct

Intimidating, threatening behaviour, shouting and uncontrolled anger, abuse and humiliation in public or in private, blocking promotion possibilities

### 5.4.2 Verbal conduct

Persistent negative attacks on personal or professional performance, unreasonably criticising a colleague in the presence of others, spreading malicious rumours or making malicious allegations, refusal of reasonable work requests

### 5.4.3 Non-verbal conduct

Exclusion from work information with the intent of deliberately affecting a colleague's performance, setting objectives with impossible targets or deadlines, unreasonably taking credit for ideas and work, over-monitoring a colleague's performance without good reason, isolation or exclusion

## 6. RESPONSIBILITIES UNDER THIS POLICY

6.1 All managers have a responsibility to maintain a working environment free from bullying and discrimination and will be responsible for ensuring that they do not occur in work areas for which they are responsible. Managers are also responsible for ensuring that all employees and third parties are informed about this policy and that any breach is a disciplinary offence. All managers should take prompt action to stop bullying and discrimination as soon as it is identified. If a victim

does not wish to raise a complaint about their treatment, it may be incumbent on the manager to deal with the matter as soon as they have a reasonable belief that that an employee is being subjected to bullying or discrimination.

- 6.3 All employees of the Trust have a personal responsibility to ensure a working environment free from bullying and discrimination and to ensure that they do not breach this code. Any member of staff who witnesses behaviour that they do not consider to be aligned with the values and principles held by the Trust has a duty to report this behaviour to their line manager or another appropriate person. Alternatively, concerns may be raised under the Trust's Whistleblowing Policy, which is available on the Trust intranet.

## **7. WHEN THIS PROCEDURE SHOULD BE USED**

- 7.1 This procedure should be used by all individuals or groups who consider themselves to be suffering from any acts of bullying or discrimination (which includes harassment and victimisation) or who are offended by acts which may not be personally directed towards them e.g. pin-ups. This also includes all forms of discrimination in recruitment, training and promotion, salaries, wages and other conditions of employment. Employees are urged to seek early advice from their accredited trade union representative.
- 7.2 If a manager witnesses an incident of bullying or discrimination, they should challenge the individual/s concerned as soon as possible after the event and then follow the disciplinary procedure.
- 7.3 This procedure is intended for use by employees suffering bullying or discrimination in the workplace from other employees of the Trust. It is not intended for use in relation to complaints from members of the public concerning service delivery and related matters. Neither does it apply to discrimination or bullying of employees by patients/service users.

## **8. ADVICE, SUPPORT AND UNION REPRESENTATION**

- 8.1 It is recognised that being the subject of discrimination or bullying and making a complaint can both be extremely distressing experiences. No employee needs to suffer in silence and all employees are urged to seek help, support and advice available within the Trust.
- 8.2 Employees are recommended to seek advice from their accredited trade union in the first instance. In addition, the Trust's free and confidential counselling and advisory service People at Work (support@peopleatwork.co.uk), may be accessed for additional support.
- 8.3 The employee may have a workplace colleague or an accredited trade union representative present at all formal stages of this procedure. This does not preclude the ability for an accredited trade union representative to attend at the informal stage, if all parties agree that this is in the best interests of all concerned.
- 8.4 At all informal and formal stages of the procedure, staff are encouraged to seek advice and support from their Trade Union.

## **9. PROCEDURE FOR MAKING A COMPLAINT OF BULLYING OR DISCRIMINATION**

If an employee suffers an incident or incidents of bullying or discrimination, they should follow the procedure outlined below.

It is recommended that cases are dealt with as soon as possible after an incident takes place.

### **9.1 KEEPING A RECORD**

To make sure that it is possible to be accurate later on, it is important that anyone who feels they have suffered from bullying or discrimination makes a note of the details as soon as possible after an incident, including for example:

- date of incident
- time of incident
- place of incident
- name of person who is harassing them
- what actually happened
- how person being harassed felt at the time
- name of anyone else present at the time, including witnesses.
- record should be made of action taken, including whether the matter was reported to management.
- any correspondence relating to incidents/subsequent complaints.

### **9.2 STAGE 1: INFORMAL RESOLUTION**

- 9.2.1 Every effort should be made to resolve the issue informally in the first instance, if this is appropriate.
- 9.2.2 As soon as possible after an employee considers that an incident of bullying/discrimination has occurred, the employee should make it clear to the offender(s) that s/he does not like the behaviour and if possible ask the offender(s) to stop behaving in this way. This should be done verbally or, if the employee feels too embarrassed or upset to speak to the offender, it could be done in writing. Alternatively, s/he could arrange for his/her line manager, or another suitable colleague, to be present when the matter is discussed if s/he does not wish to be alone with the offender. A note should be kept of the action taken and a copy of any letter(s).
- 9.2.3 If an employee being bullied/discriminated against and feels unable to take action personally; or wishes to consider making a formal complaint immediately; or has asked the offender to stop their behaviour yet it continues, s/he is advised to meet with her/his line manager (if appropriate) to discuss the alleged bullying or discrimination. If the complainant's line manager is the person alleged to have carried out the bullying or discrimination, the matter should be reported to the next-in-line manager above her/him. Alternatively, advice can be sought from the HR department.
- 9.2.4 The employee may also wish to contact their accredited trade union representative or People at Work (support@peopleatwork.co.uk) for additional support.
- 9.2.5 The employee should be given a copy of this procedure and it should be explained to her/him.
- 9.2.6 The employee will then decide whether they wish to pursue one of the following options:
- To take no further action at this stage but to keep a record of any further incidents and to keep the situation under review, enabling the employee to seek further advice in the future if necessary.
  - If this has not already been attempted, either the employee, or someone acting on her/his behalf (e.g. their manager or a colleague), should ask the offender to stop the offending behaviour and to keep the situation under review, enabling her/him to seek further advice in the future if necessary.
  - To pursue some other form of informal resolution, for example, a facilitated meeting
  - To make a formal complaint (this option remains open if attempts at informal resolution fail or the offending behaviour continues).

### **9.3 STAGE TWO: MAKING A FORMAL COMPLAINT**

- 9.3.1 Any individual suffering bullying or discrimination is entitled to request managers to instigate formal investigation proceedings where appropriate.
- 9.3.2 If the individual wishes to make a formal complaint, the details of this should be put in writing to his/her line manager. If the line manager is involved in any of the incidents, then the complaint should be given to the next-in-line manager. Alternatively, the complainant can raise the issue via the Human Resources department, who will advise the individual on what steps should be taken next.
- 9.3.3 The letter should make it clear that it is a formal complaint under this procedure and should be fully explicit stating dates, times etc, of incidents. The letter should be marked "confidential" and preferably be delivered by hand to either the relevant manager or member of the human resources department. The employee is advised to seek early contact with her/his accredited trade union to obtain advice and support in presenting a formal complaint.
- 9.3.4 The individual making the complaint should be made aware of the process of investigation and their role in disciplinary proceedings, if instituted.
- 9.3.5 Employees need to be advised that, once a formal complaint is made, management will investigate the circumstances and take appropriate action. In general, proceedings based on the individual's complaint will not be instituted unless s/he wishes. However, in certain

circumstances, the manager may wish to proceed with action against an alleged offender even where the complainant does not give evidence if the situation is of a serious nature (e.g. physical assault). In such cases, the manager will need to take into account any other evidence/witnesses in deciding whether or not they have sufficient evidence to proceed.

- 9.3.6 Where an allegation is upheld and formal disciplinary action is subsequently taken against a registered professional, consideration should be given to making a referral to the relevant professional body.

## **10. POLICE INVOLVEMENT**

In cases of alleged assault or alleged behaviour that is considered to be a criminal offence, the Trust will contact the Police for their appropriate action if the complainant so wishes and/or if the incident is considered to be a serious criminal matter.

## **11. PRIVACY/CONFIDENTIALITY**

At all times both parties' right to privacy will be respected and no information about the complainant will be imparted unless absolutely necessary, and will always be discussed with the parties involved prior to the release of information. It is recognised that confidentiality is essential, and those investigating complaints will make arrangements to ensure secure storage of papers etc. The complainant and the person against whom the complaint is made will have the right to see all the relevant evidence gathered, including notes of meetings, regardless of the outcome.

## **12. PRINCIPLES OF INVESTIGATING A COMPLAINT UNDER THIS PROCEDURE**

### **12.1 IN GENERAL**

- 12.1.1 A complaint under this procedure presents a particularly sensitive problem for those responsible for investigating the allegations. The investigator is required to protect the rights of the member of staff about whom the complaint has been made as well as protecting the rights of the individual making the complaint. Both employees are entitled to a full and fair opportunity to put their version of the events.

- 12.1.2 All managers are expected to co-operate in releasing staff from their normal duties to participate in the investigation as required.

### **12.2 TIME LIMITS**

12.2.1 The investigation should normally be completed within 28 calendar days of the formal complaint being made, where practicable. On occasions it will not be possible to keep within the timescale. In such cases the complainant and the person against whom the complaint has been made must both be kept informed of the likely timescale for completion.

## **13. PROCEDURE FOR INVESTIGATING A COMPLAINT**

### **13.1 STEP ONE: INITIAL RESPONSE**

- 13.1.1 Having received a formal complaint from an individual, the manager (or next-in line manager, if the complaint is against the manager) will arrange for the matter to be investigated by a neutral manager, assisted by a member of the HR Department. Those investigating the complaint should not be connected with the allegation in any way.

- 13.1.2 The person against whom the complaint is made should be informed at the outset of the complaint against them, given this policy and, if appropriate, a copy of the letter of complaint.

### **13.2 STEP TWO: POSSIBLE SUSPENSION OR REDEPLOYMENT DURING THE INVESTIGATION**

13.2.1 The relevant manager should give consideration as to whether or not action needs to be taken for the duration of the investigation to relieve the stress and pressure on one or both parties to prevent the risk of further incidents occurring. The manager must also take steps to prevent any victimisation of the complainant or alleged harasser. Such action should not be taken without HR advice and can include the following:

- Suspension of the alleged harasser may be considered where a manager feels that it is in the interest of either the individual or the organisation or both. It may be appropriate in some cases for both parties to be suspended. It will be made clear at all times that suspension under this procedure does not constitute part of the Trust's Disciplinary Procedure. Suspension will be on full pay.
- Temporary redeployment of one or both parties can also be considered. In normal circumstances, it is appropriate that the alleged harasser should be redeployed rather than the complainant. The complainant could, however, be offered the option of redeployment where appropriate. In some circumstances both parties may be redeployed.

### 13.3 **STEP THREE: MEETING WITH THE COMPLAINANT**

The investigating manager and Human Resources representative will meet with the complainant and will take a detailed written statement of the incident. The complainant may be assisted by their accredited trade union representative or an appropriate workplace colleague. The complainant should be given the opportunity to nominate witnesses that have witnessed or can corroborate the matters complained of and whom the complainant wishes to be interviewed. The complainant should explain the relevance of each witness in order for the investigating manager to consider the appropriateness of interviewing each witness.

### 13.4 **STEP FOUR: MEETING WITH THE PERSON AGAINST WHOM THE COMPLAINT HAS BEEN MADE**

The investigating manager and Human Resources representative will then meet the person against whom the complaint has been made and hear what she/he has to say about the alleged incident(s) - having been previously informed of the allegation against them. They may be assisted by an accredited trade union representative or an appropriate workplace colleague. Notes will be taken of the meeting. The person against whom the complaint has been made should be given the opportunity to nominate any witnesses whom they wish to be interviewed and who witnessed or can corroborate their defence of the matters complained of. The person about whom the complaint has been made should explain the relevance of each witness in order for the investigating manager to consider the appropriateness of interviewing each witness.

### 13.5 **STEP FIVE: MEETING WITH ANYONE PRESENT DURING INCIDENT(S)**

The investigating manager and Human Resources representative will meet anyone else who was present when the alleged incident(s) took place and should supply them with a copy of this policy. Employees will be able to be assisted by their accredited trade union representative or an appropriate workplace colleague. Notes will be taken of the meeting.

### 13.6 **STEP SIX: FURTHER CLARIFICATION**

The investigating manager and Human Resources representative may then wish to meet any of those in steps 3-5 again to clarify or gain further information. They will also need to ensure that they have collected any relevant written materials or other evidence. This may include asking for additional written statements from relevant parties.

### 13.7 **IMPORTANT NOTES**

- **Note 1** - The purpose of the meetings is to establish the facts. They are not a disciplinary hearing of any sort. All those giving information to the investigating manager will do so not in the presence of any other person involved in or present during the alleged incident(s).

- **Note 2** - Whilst the investigating manager will seek to resolve the matter as quickly as possible, the meetings with all those involved will not necessarily follow immediately after each other and the manager or designated investigating officer may at any time adjourn.
- **Note 3** - Notes taken at any of the meetings will be available to those involved in their particular meeting upon request.

### 13.8 **STEP SEVEN: CONSIDERATION OF INFORMATION**

13.8.1 Having obtained all the information possible, the investigating manager and Human Resources representative will review this information. The manager and Human Resources representative will decide whether the complaint is substantiated.

13.8.2 In some cases there will not be any witnesses and it will be one person's word against another's. In these cases the manager and Human Resources representative will consider whether on the balance of probabilities the incidents/actions occurred.

### 13.9 **STEP EIGHT: FURTHER ACTION**

13.9.1 The investigating manager and will consider the facts, taking HR advice and will decide either:

13.9.2 To take no action, that is the allegation has not been substantiated.

**or**

13.9.3 To initiate the Trust's Disciplinary Procedure from the point at which it has been decided that there is a case to answer in respect of disciplinary allegations.

**or**

13.9.4 To take management action other than to initiate the Trust's agreed disciplinary procedure. This could include:

- Setting up arrangements to monitor the situation;
- Required attendance on training courses (e.g. equal opportunities, diversity awareness, communication or people management courses).
- Making arrangements for the complainant and alleged harasser to work as separately as possible within the same workplace with regular monitoring from the line manager, if this is a feasible option and the parties involved understand that they will be required to have professional contact with each other.
- A recommendation for redeployment of one or both parties, either on a temporary or permanent basis. Redeployment will only be done with the individual's consent and where a suitable alternative post is known to exist. In cases where formal disciplinary action is taken, redeployment will be considered as a possible sanction under the Disciplinary Procedure;
- Exploring the possibilities for a facilitated meeting (e.g. formal mediation) or other meeting to attempt to reconcile the two parties.

13.9.5 Both the complainant and the alleged perpetrator should be offered the opportunity to attend a meeting for the investigating manager to feed back the outcome of the investigation.

### 13.10 **STEP NINE: KEEPING MANAGEMENT RECORDS**

The arrangements for storing information after a complaint should be as follows: Where the matter proceeds to a disciplinary hearing, the disciplinary policy should be followed for keeping a record and subsequently removing the record from the file. Where a complaint has been made and not substantiated by an investigation, no record will be kept on the alleged offenders file.

## 14. **ACTION WHEN THE COMPLAINANT IS DISSATISFIED**

If the complainant disagrees with the decision taken above, they have the right to raise this matter under the Trust's Grievance Procedure, which would normally be heard at Stage 2 (the appeal stage) of the Grievance Procedure.

## 15 **THE DISCIPLINARY PROCESS**

- 15.1 If the manager has decided that a disciplinary hearing is necessary, s/he should consider how to deal with this matter sensitively knowing the nature of the allegations. Managers should follow the normal disciplinary procedures but take the following points into account:
- 15.2 The complainant will normally be required to attend the disciplinary hearing as a witness.
- 15.3 If it is necessary to call the complainant as a witness to the hearing, s/he should be allowed to bring along her/his accredited trade union representative or a workplace colleague. This individual will be present solely as support to the complainant and will not be permitted to take part in the hearing.

**17. REVIEW**

Review of this policy and procedure should be carried out every two years by Human Resources in partnership with accredited trade union representatives.