

CONTROLLED DOCUMENT

Dignity at Work Procedure (Prevention of Bullying and Harassment)

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Contents

| Paragraph | | Page |
|-------------------|---|------|
| 1 | Introduction | 3 |
| 2 | Informal Approach | 3 |
| 3 | Formal Stage | 4 |
| 3.1 | Investigation | 4 |
| 3.2 | Outcomes | 4 |
| 3.3 | Appeal | 5 |
| 4 | Facilitated Meeting or Mediation | 6 |
| 5 | Trust Support | 6 |
| 6 | Malicious Allegations | 6 |
| 7 | References | 6 |
| 8 | Associated Policy and Procedural Documentation | 7 |
| Appendices | | |
| A | Form for Formal Complaint of Bullying or Harassment | 8 |
| B | Examples of Bullying Behaviours | 10 |
| C | Examples of Harassment | 11 |

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1. Introduction

- 1.1. University Hospitals Birmingham NHS Foundation Trust (the 'Trust') aims to create a workplace free from bullying and harassment, in which each member of staff is treated with dignity and respect.
- 1.2. Staff will be aware of the effect that behaviours and activities can have on others. Managers will promote a professional and positive workplace, proactively identifying and addressing incidents of bullying or harassment.
- 1.3. Bullying is behaviour that leaves an individual feeling threatened, intimidated, humiliated, vulnerable or otherwise upset. It is offensive, intimidating, malicious or insulting behaviour, or an abuse or misuse of power through means that undermine, humiliate or injure the recipient. Examples can be found in Appendix B.
- 1.4. Harassment is unwanted conduct that, intended or unintended, violates dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment related to a protected characteristic (age, disability, gender reassignment, race, religion/belief, gender and sexual orientation). Examples can be found in Appendix C.
- 1.5. The impact of these behaviours on an individual is important. Confidence, self-esteem, job performance and the overall health and wellbeing of the individual/s are likely to be negatively impacted.
- 1.6. Constructive criticism from a manager about the behaviour or performance of an individual is part of a normal management routine, and is not defined as bullying.
- 1.7. Staff must not be victimised or treated less favourably for raising a bullying or harassment complaint.
- 1.8. The Trust has a duty to protect all staff. If a member of staff changes their mind after making a complaint, the matter may be investigated anyway. This would not happen without first talking to the member of staff.

2. Informal Approach

- 2.1 In most instances it helps develop positive working relationships and minimises stress if the member of staff speaks to the person they believe to be bullying or harassing them explaining how the behaviour is unwelcome, inappropriate or causing upset, and that it must stop. This offers a quick resolution if the behaviour is relatively minor, isolated or clearly unintentional. Often, the alleged perpetrator might not realise the effect it is having on the member of staff.
- 2.2 Sometimes it is difficult for the member of staff to speak with the alleged perpetrator, in which case they could write to the individual or ask their line manager to facilitate an informal resolution. If the issue is with the line

manager, it must be raised with the next level of management or Human Resources.

- 2.3 Behaviour previously accepted by a member of staff may become unwelcome; this must be made known as soon as it changes.
- 2.4 A manager will keep notes of any discussion and agreement where involved in facilitating a resolution.

3. Formal Stage

3.1 Investigation

- 3.1.1 A formal approach may be necessary where informal resolution has been unsuccessful, or if the behaviour is sufficiently serious. Staff must submit their complaint in writing to Human Resources using the form in Appendix A, and this will be acknowledged within 7 calendar days of receipt.
- 3.1.2 Human Resources will instigate an investigation. The alleged perpetrator will be notified in writing of the concerns raised against them, which will normally identify who the complainant is.
- 3.1.3 It may be necessary to separate the complainant and alleged perpetrator, to enable an uninterrupted investigation to take place and in the interests of staff wellbeing. This may involve a temporary transfer of either or both parties to another work area, changes to managerial arrangements, or the alleged perpetrator may be suspended on full pay until the matter is resolved.
- 3.1.4 Anyone who is required to attend an investigatory meeting will have the right to be accompanied by a trade union/ defence body (for medical and dental staff) representative or workplace colleague. Should the Trade Union/ defence body representative or workplace colleague be unable to attend a scheduled meeting, an alternative date must be provided which is within 7 calendar days of the original date of the meeting.
- 3.1.5 Investigation meetings will be digitally recorded and retained, and a CD copy can be provided to the member of staff upon request.
- 3.1.6 Those involved in the investigation must act in confidence, and any breach of confidentiality will be treated as a disciplinary matter.
- 3.1.7 The investigation process and feedback will be completed within 12 weeks unless there are extenuating circumstances, in which case the complainant and the alleged perpetrator will be kept informed.

3.2 Outcomes

- 3.2.1 The Investigating Manager must confirm the outcome and the reasons to the complainant and the alleged perpetrator in writing within 14 calendar days of conclusion of the investigation.

- 3.2.2. The outcome may include recommendations for training, re-training, support structures, team building or disciplinary action, and consideration will be given to how those involved are going to work together.
- 3.2.3 If proven, disciplinary action will be taken against the perpetrator in accordance with the Trust's Disciplinary/ Maintaining High Professional Standards procedures. Bullying and harassment are considered by the Trust to be potential acts of gross misconduct and if proven could have a possible outcome of dismissal
- 3.2.4 Whatever the outcome, the Trust will seek to restore the working relationship between both parties. If that fails, it may be necessary to permanently minimise contact in which case the complainant would not ordinarily be moved except at their own request or in exceptional circumstances.

3.3 Appeal

- 3.3.1 If the investigation has found no case to answer, the complainant will be advised of their right to appeal against the decision. If they are dissatisfied with the outcome they must write to the Deputy Director of Human Resources within 14 calendar days of the written outcome. The reasons for the appeal must be clearly explained, and any evidence to be relied upon must be provided. The appeal will be acknowledged in writing within 7 calendar days of receipt.
- 3.3.2 An appropriate and impartial senior manager will be appointed to hear the appeal, supported by a Human Resources representative who has not previously been involved in the matter.
- 3.3.3 The appeal hearing will be organised by Human Resources to take place within one calendar month. If this is not possible the delay will be explained, with a proposed timescale for the hearing.
- 3.3.4 At least 14 calendar days' notice of the appeal date will be given. The complainant must take active steps to be available for the hearing. Cancellations on two or more occasions by the complainant without reasonable explanation will result in a decision being made in their absence based on the available evidence.
- 3.3.5 A written statement of appeal from the complainant and a written statement of case from management (investigating team) will be distributed at least 7 calendar days before the appeal hearing.
- 3.3.6 The appeal hearing will be held as set out in Appendix D. It will consider whether the Dignity at Work (Prevention of Harassment and Bullying) procedure has been adhered to, whether a proper and fair investigation has been undertaken as necessary, and whether the outcome was reasonable and fair.

3.3.7 The complainant will be advised of their right to be accompanied (see Section 3.1.4).

3.3.8 The outcome will be confirmed in writing within 7 calendar days of the meeting. The decision is final, with no further right of appeal.

4. Facilitated Meeting or Mediation

4.1 Facilitated discussions and mediation may be used at informal or formal stages as a confidential and voluntary process which brings together people who are experiencing problems with a work relationship. It empowers those involved to decide on the terms of the resolution. Human Resources will determine if facilitated discussion/mediation is appropriate.

4.2 A facilitated discussion will be the preferred option in most cases. The facilitator will be an appropriately skilled individual or Human Resources representative who acts neutrally to achieve a mutually acceptable outcome.

4.3 Mediation may be appropriate where a facilitated discussion has not achieved the desired outcome or where the matter is complex. A trained mediator will be appointed.

4.4 The facilitator/mediator will write to both parties confirming the outcome.

4.5 Whether or not there was a case to answer, damage to relationships and feelings may take time to be resolved. A facilitated meeting or mediation may be called upon anytime within 3 months of the outcome of the facilitated meeting/ mediation.

5. Trust Support

5.1 It is vital that all the members of staff involved have their health and wellbeing maintained and protected as far as possible. Staff can seek support from their manager, Trade Union/ defence body (for medical and dental staff) Representative Human Resources, the Freedom to Speak Up Guardian, Confidential Contacts or through Occupational Health who can provide access to counselling services.

6. Malicious Allegations

6.1 Where it has been found that allegations are proven to be malicious, disciplinary action will be taken against the individual who made the allegations.

7. References

ACAS

Equality Act 2010

Health and Safety at Work Act 1974

Protection from Harassment Act 1997

8. Associated Policy and Procedural Documentation

Employee Relations Policy

Disciplinary Procedure

Maintaining High Professional Standards in the Modern NHS Procedure

Raising Concerns Policy and Procedure

Appendix A

Formal Complaint of Bullying or Harassment

This form should be completed and sent to Human Resources – First Contact.

| Personal Details | |
|---|--|
| Name: | Job Title: |
| Department: | Division: |
| Contact Number: | Name of Representative/Work Colleague (if applicable): |
| Please specify a home/work address for any correspondence related to the complaint to be sent to: | |
| Please provide an email address: | |

| Formal Complaint of Bullying or Harassment |
|---|
| Please give the name(s) of the person who you believe has bullied/harassed you. |
| Please give details of the nature of the bullying/harassment (continue on a separate sheet if necessary). |
| Please give dates, times and location of this bullying/harassment. |

Please explain the impact of the behaviour and how it made you feel.

Did you tell the person/people how it made you feel?

Please give the names of any witnesses to events.

Was this the first incident? If no, please give details of previous incidents.

Has any informal action been taken to stop the bullying/harassment? If yes, please give details.

What steps do you feel could be taken to rebuild working relationships with the person/people alleged to have harassed or bullied you?

Signed

Date

Examples of Bullying Behaviours

Bullying may take the form of physical, verbal or non-verbal conduct. The following are examples of bullying behaviour:

- shouting at someone, being sarcastic towards them, ridiculing or demeaning others;
- insensitive jokes and pranks;
- name-calling;
- abusive, threatening or insulting words or behaviour;
- physical or psychological threats;
- deliberately excluding someone from meetings or communications or conversations without good reason;
- inappropriate and/or derogatory remarks about someone's performance;
- abuse of authority or power by those in positions of seniority;
- demanding a greater work output than is reasonably feasible;
- blocking promotion or other development/advancement.

Distinction between bullying management behaviours and strong management

| Bullying Management Behaviours | Strong, Fair Management Behaviours |
|--|---|
| <ul style="list-style-type: none"> • Unjustified, excessive monitoring and/or supervision (micro-managing) • Making threats • Intimidating or threatening behaviour • Physical and verbal abuse • Aggressive communications • Humiliating people in front of others • Refusing to listen to concerns/opinions • Addressing people by their job title or grade rather than by name • Setting someone up to fail – e.g. setting a target/objective that cannot be achieved • Constant changing of targets for no justifiable reason • Withholding necessary information • Persistent, excessive, unfair or unjustified criticism • Persistent devaluing of a person's effort • Ignoring people for promotion • Unreasonably blocking requests for leave | <ul style="list-style-type: none"> • Setting and agreeing achievable tasks and goals • Consistent and fair actions • Giving constructive feedback • Managing performance by recognising good performance and constructively tackling poor performance • Sharing information freely • Realistic about strengths and development needs • Giving credit where credit is due. • Addressing someone by their name. |

These lists are not exclusive or exhaustive.

Examples of Harassment

The grounds for harassment are varied and can include:

- Race, ethnic origin, nationality or skin colour;
- Disabilities including physical disabilities, hidden disabilities, sensory impairments, learning disabilities, or mental health issues;
- Religious or political convictions;
- Sex, sexual orientation, sexual reassignment or gender identity;
- Age;
- Physical characteristics (e.g. weight, height);
- Real or suspected infection with HIV/AIDS;
- Past criminal record;
- Willingness to challenge people who harass or bully others which may in turn result in victimisation.

Marriage and civil partnership, pregnancy and maternity are not included as protected characteristics for complaints of harassment.

Racial harassment:

- Any incident which is perceived to be racist by the victim or any other person;
- Refusing to work with someone or deliberately isolating them because of their race, colour, nationality or ethnic origin;
- Displaying racially offensive material including graffiti, graphics, slogans, logos etc. that have racial undertones (e.g. on t-shirts, mugs);
- Racist jokes, banter, insinuations, insults and taunts;
- Verbal and physical abuse/attacks on individuals because of their race, colour, nationality or ethnic origin;
- Assaults motivated by race, colour, ethnic or national origins;
- Using language that is offensive or derogatory on the basis of race, or making racist remarks to or about a person.

Harassment of workers with disabilities:

- Asking inappropriate questions about a person's impairment such as how it occurred and what it is like to be disabled;
- Name calling, jokes, taunts and use of offensive language;
- Assuming that a physical disability means that the individual is inferior;
- Assuming that a mental disability means that the individual lacks intelligence;
- Banter relating to the disability of a person, or mocking a person with a disability;
- Excluding a person because of their disability;
- Using upsetting words about, or being offensive when describing, a person's disability, or when generally describing the person.

Harassment on the grounds of religion

- Making remarks about religions generally and their practices, or specifically mocking a person's religious beliefs;
- Making unwanted comments on dress;
- Making it unnecessarily difficult for people to conform to their religious beliefs;

- Exacerbating or causing arguments over religious differences between religious groups or people following particular faiths;
- Gossiping/chatting about a person's religious views or beliefs;
- Excluding a person because of their religious views or beliefs, or treating somebody differently because of their views;
- Sectarian views, beliefs and violence;
- Displaying symbolism and slogans that are offensive or could be interpreted as offensive.

Harassment on the grounds of sexual orientation

- Homophobic or biphobic comments, 'jokes' and name-calling made generally, or to or about a person based on their sexual orientation, or that of their partner or any relative;
- Dissemination of homophobic or biphobic materials;
- Repeated references to a person's sexual orientation;
- Spreading perceptions/rumours about somebody's sexual orientation, either actual or perceived;
- Outing a person without their consent or spreading rumours;
- Prejudiced views, such as that all gay men are HIV positive, bisexual people are attracted to everyone, lesbians don't have caring responsibilities or that they are a threat to children;
- Excluding a person from conversation and activities because of their sexual orientation;
- Excluding a same sex partner when opposite sex partners are included;
- Intrusive questioning about an individual's personal or sex life;
- Being offensive or making offensive gestures a person on their sexual orientation;
- Homophobic remarks or banter made.

Harassment of the grounds of gender identity (including transgender and non-binary)

- Transphobic or bi-phobic comments, 'jokes' and name-calling;
- Refusing to treat a person as the gender they identify as;
- Failing to address a person by their preferred name and correct gender pronouns;
- Denying people access to the appropriate single sex facilities such as changing rooms;
- Outing a person as transgender without their consent or spreading rumours (this may also be a criminal offence);
- Intrusive questioning.

Sexual harassment

- Unwelcome sexual advances and propositions;
- Physical contact such as the invasion of personal space and unnecessary touching through to sexual assault;
- Unwanted or derogatory comments about clothing or appearance;
- Asking questions of a sexual nature;
- Jokes, gestures and language of a lewd/sexual nature;
- Displaying sexually suggestive or sexually explicit material in the workplace or circulating such material in emails;

- Comments regarding an individual's appearance or body;
- Office gossip or detrimental speculation about private sexual activities;
- Treating a person less favourably because they have rejected, or submitted to, unwanted conduct that is related to sex or is of a sexual nature (including blocking promotion and refusal of training or other development opportunities).

Age harassment

- Derogatory comments relating to age made to or about a person e.g. 'old fogey' or 'still in nappies';
- Ageist jokes;
- Assumptions about a person based on their age;
- Being dismissive towards a person because of their age;
- Excluding a person from work social events because of their age
- Banter relating to the decline of a person's physical/mental abilities on account of age;
- Banter relating to the age of a person's partner, such as an older or a younger partner.

These lists are not exclusive or exhaustive.

PROCEDURE TO BE FOLLOWED AT A DIGNITY AT WORK APPEAL HEARING

1. Chair of Panel to introduce all present and confirm the role each will play in the proceedings.
2. Chair to ensure that any Appellant who appears at the hearing unrepresented or unaccompanied is happy to proceed with the hearing alone (this needs to be minuted).
3. Chair to confirm the reason for the Hearing i.e. "this is an Appeal Hearing convened at the request of xxx in response to their reasons for appeal following the outcome of xxx complaint".
4. Chair to clarify if either party intends to call any witnesses in support of their case.
5. Chair to confirm that this is not a re-run of the original investigation.

***NB No new evidence can be tabled at the hearing unless agreed by all parties**

6. Chair to explain the process to be followed, conducted in accordance with the Trust's Dignity at Work (Prevention of Bullying and Harassment) procedure.

7. **The Appellant**

- 7.1 The Appellant or their representative will state their case and provide reasons for appeal, presenting the witnesses they wish to call;
- 7.2 Management can question the Appellant, their representative and any witnesses called in support of their case;
- 7.3 The Panel can question the Appellant, their representative and any witnesses called in support of their case;
- 7.4 The Appellant or their representative may re-examine the witnesses before the witness leaves the hearing;

8. **Management**

- 8.1 Management state their response to the reasons for appeal, presenting any witnesses they wish to call;
- 8.2 The Appellant or representative can question Management and any witnesses called in support of their case;

- 8.3 Panel members can ask questions in relation to the Management case and question any witnesses called in support of their case;
- 8.4 Management can re-examine the witnesses before the witness leaves the hearing;
9. Chair to confirm with the Appellant and Management that they are satisfied they have had sufficient opportunity to state their respective case. If so, both parties should be offered the opportunity of a short adjournment to produce a summing up statement. A reasonable timeframe should be agreed to reconvene and hear their summing up statements.
10. **Summing Up**
 - 10.1. The **Appellant** or their Representative to sum up their case.
 - 10.2. **Management** to sum up their case.
11. **Decision Making**
 - 11.1. Adjournment for the Panel to deliberate and reach a decision.
 - 11.2. The hearing is re-convened for the Chair of the Panel to deliver the panel's findings and decision.
 - 11.3. The Appellant should be advised that this will be confirmed to them in writing within 7 calendar days.
12. **Additional Points**
 - 12.1. At any point during the hearing an adjournment may be called by the Chair to seek points of clarity, or as a comfort break.
 - 12.2. Management or the Appellant may request a short adjournment for a variety of reasons, and this should not be unreasonably withheld.
 - 12.3. Any other party present at the hearing must be identified and an explanation given as to the reason for their presence e.g. note taker.
 - 12.4. Witnesses are only present whilst giving their evidence.