

### Frequently asked questions

These are provided for guidance or quick reference guide only, so always refer to the policy

## 1. General definitions

### 1.1 What is the definition of Harassment?

NHS Terms and Conditions define harassment as “any conduct based on age, sex, sexual orientation, gender identity/expression, disability, HIV status, race, colour, language, religion, political, trade union or other opinion or belief, national or social origin, association with a minority, domestic circumstances, property, birth or other status which is unreciprocated or unwanted and which affects the dignity of men and women at work.” In addition, the Equality Act 2010 describes:

- Direct discrimination
- Associative discrimination
- Discrimination by perception
- Indirect discrimination
- Harassment
- Harassment by a third party
- Victimisation

### 1.2 What is the definition of Bullying?

Persistent, offensive, abusive, intimidating or insulting behaviour, abuse of power or unfair penal sanctions which makes the recipient feel upset, threatened, humiliated or vulnerable, which undermines their self-confidence and which may cause them to suffer stress

### 1.3 What are the signs of Bullying?

Examples\* of bullying include:

- Attempting to impose one’s will on another individual in a threatening or offensive manner, perhaps through an abuse of power
- Unfavourable treatment, such as denying an individual equal opportunities, deliberate inappropriate application of NHSBT policies, or by exerting physical or verbal abuse on that individual
- Being openly aggressive, such as making threats, showing signs of abuse, the use of foul or inappropriate language
- Constantly humiliating or ridiculing others and belittling them in front of others.
- Persistent criticism or sarcasm, personal insults, name calling, spreading of malicious rumours about colleagues, freezing out, ignoring and isolation by developing ‘cliques’
- Treatment less favourable, or ridiculing and demeaning behaviour on the basis of a disability. Be aware that some disabilities are invisible including various forms of mental health
- Purposefully and repeatedly using incorrect pronouns or the wrong name to address or refer to a trans individual
- Spreading rumours or gossip about someone’s gender identity or sexual orientation

- The use of homophobic, biphobic or transphobic language – for example spreading harmful stereotypes about bi people
- Outing someone in the workplace as LGBT
- Rude or inappropriate comments about someone's partner or personal life
- Outing someone in the workplace as LGBT
- Ridiculing or demeaning behaviours focused at people because of their age or experiences
- Ridicule or less favourable treatment because of someone's gender identity, prior to, during and after any physical or other change
- Less favourable treatment, ridicule or exclusion on the basis of being married or being in a civil partnership regardless of their gender and the gender of their partner
- Treatment less favourable than other employees on the basis of being pregnant or being on maternity leave – i.e not being considered for a job
- Racially derogatory remarks or racist jokes
- The display of racially offensive written or visual material, physical threats, assault and insulting or abusive behaviour or gestures
- Unacceptable behaviour which fails to tolerate or acknowledge the rights or needs of people with different religious or philosophical beliefs and practices
- Non-verbal abuse such as mimicry, offensive gestures or body language
- Remarks made to the effect that a person's sexual orientation makes them less capable of executing professional duties and trying to block them from certain types of training or work assignments
- Sexually orientated jibes or abuse, unwelcome comments about dress or appearance, the display of pin-ups or pornographic pictures or sexually suggestive objects, unwanted physical contact or demands for sexual favours

\*This list is not exhaustive

#### **1.4 What is Direct Discrimination?**

Direct Discrimination occurs when someone is treated less favorably than another person because of a protected characteristic they have or are thought to have (see Perceptive Discrimination below), or because they associate with someone who has a protected characteristic (see Associative Discrimination below).

#### **1.5 What is Associative Discrimination?**

This is direct discrimination against someone because they associate with another person who possesses a protected characteristic (see Section 1.8).

#### **1.6 What is Perceptive Discrimination**

This is direct discrimination against an individual because others think they possess a particular protected characteristic. It applies even if the person does not actually possess the characteristic.

#### **1.7 What is Indirect Discrimination?**

Indirect Discrimination can occur when there is a condition, rule, policy or even a practice that applies to everyone but particularly disadvantages people who share a protected characteristic.

#### **1.8 What is Conscious/Unconscious Bias?**

Bias is a prejudice in favour of or against one thing, person or group compared with another usually in a way that's considered to be unfair. Biases may be held by an individual, group or organisation and can have negative or positive consequences.

Unconscious bias occurs when people favour others who look like them and/or share their values. For example, a person may be drawn to someone with a similar educational background, from the same area, or who is the same colour or ethnicity as them.

Behaviour which reinforces the bias is noticed whilst behaviour which does not is ignored. This is how decisions based on unconscious bias are justified.

Unconscious bias at work can influence decisions in recruitment, promotion, staff development and recognition and can lead to a less diverse workforce. When unconscious bias is against a protected characteristic it can be discriminatory.

### **1.9 What are the nine protected characteristics, covered by the Equality Act 2010?**

- Age
- Disability
- Gender Reassignment
- Marriage & Civil partnership
- Pregnancy & Maternity
- Race
- Religion & Belief
- Sex (gender)
- Sexual orientation

### **1.10 What is Age Harassment?**

Ridiculing or demeaning behaviour focused at people because of their age or experiences.

### **1.11 What is Harassment against People with Disabilities?**

Undignified treatment or ridicule or exclusion of people because of their disability, vulnerability, or actual or perceived reduced independence.

### **1.12 What is Harassment on the basis of Gender identity?**

Ridicule or less favourable treatment because directed at a trans person or transphobic behaviour based on the grounds of someone's identity. This is inclusive of all trans people, including non-binary people.

### **1.13 What is Harassment on the basis of marriage or civil partnership?**

Less favourable treatment, ridicule or exclusion on the basis of being married or being in a civil partnership, regardless of someone's gender and the gender of their partner

### **1.14 What is harassment on the basis of Pregnancy or Maternity?**

Treatment less favourable than other employees on the basis of being pregnant or being on maternity leave. The Maternity and Support for Parents Policies provide detail of the support provided in these situations.

### **1.15 What is Racial Harassment?**

Racially derogatory remarks or racist 'jokes', the display of racially offensive written or visual material, physical threats, assault and insulting or abusive behaviour or gestures.

### **1.16 What is Religious or Philosophical Belief Harassment?**

Unacceptable behaviour which fails to tolerate or acknowledge the rights or needs of people with different religious or philosophical beliefs and practices.

### **1.17 What is Sexual Harassment?**

Sexually orientated jibes or abuse, unwelcome comments about dress or appearance, the display of pin-ups or pornographic pictures or sexually suggestive objects, unwanted physical contact or demands for sexual favours.

### **1.18 What is Harassment on the Basis of Sexual Orientation?**

Biphobic or homophobic behaviour which condemns or ridicules people because of their sexual orientation.

## 2. Raising a Complaint

### 2.1 What do I do if my complaint is about my manager?

As the policy states, you should wherever possible try to speak to the person, about how you feel and about the impact of their behaviour on you. Often there will be a simple explanation for their behaviour or a misunderstanding, which hopefully you can move on from. Always think about the outcome you are trying to achieve, and remember that you need to try to build a normal working relationship wherever possible. Should this not be possible, you should speak with your manager's manager for them to support you in this situation. You can also speak with HR Direct, who will be able to talk to you about your options.

You may wish to speak to somebody you trust at work such as a work colleague, friend or Staff Side representative.

One of your options will be to submit details of your complaint in writing (form). This will then be referred to a joint panel made up of senior management, HR and Staff Side representative group for a decision on next steps e.g. facilitation, investigation etc

You may wish to speak to somebody you trust at work such as a work colleague, friend or staff side representative. If you feel affected by this issue, you can also seek additional support from the EAP

In all cases, you need to be able to demonstrate wherever practicable, that you have made the necessary attempts to resolve the issue between you, before a formal complaint is made.

In all cases, you need to be able to demonstrate that you have taken the necessary steps to resolve the issue between you, before a formal complaint is made.

### 2.2 What do I do if a group of us have experienced inappropriate behaviour from our manager?

The same process as detailed under 2.1 would apply.

As the policy states, you should wherever possible try to speak to the person, about how you feel or and the impact of their behaviour. COIN is useful tool to use to help you:

- ✓ C – Context – What was the context?
- ✓ O – Observation – what you observed
- ✓ I – Impact – what impact their actions had on you/how it made you feel
- ✓ N – Next steps – tell them what you would like to happen next e.g. "I would like the behaviour to stop"; "in future, I would appreciate it if you did not xxxx". It may be useful to remind them of our Values and core behaviours, and that the behaviour displayed was not in line with this.

If you feel confident to do so, it may be that one of you takes the lead on this to put across the group's views, and should not normally be more than two of you. Think about how the person would feel if all of you were to approach them. Often there will be a simple explanation for their behaviour or a misunderstanding, which hopefully you can move on from. Always think about the outcome you are trying to achieve, and remember that you need to try to build a productive working relationship wherever possible.

Often in this situation, it may be appropriate for you to speak with your manager's manager or another senior manager outside of your team or department for them to support you in this situation. You can also speak confidentially with HR Direct, who will be able to talk to you about your options.

You may wish to speak to somebody you trust at work such as a work colleague, friend or staff side representative. If you feel affected by this issue, you can also seek additional support from the Employee Assistance Programme (See 'Health and Wellbeing' in People First), in complete confidence.

One of your options will be to submit details of your complaint in writing using the 'Formal Complaint Form' (See HR/Dignity at Work/Forms in People First). This will then be referred to a joint panel made up of senior management, HR and staff side group for a decision on next steps e.g. facilitation, investigation etc

In all cases, you need to be able to demonstrate that you have made the necessary attempts to resolve the issue between you, before a formal complaint is made.

### **2.3 What do I do if a group of us have experienced inappropriate behaviour from other team members?**

The same process as detailed under 2.1 would apply.

As the policy states, you should wherever possible try to speak to the person, about how you feel or and the impact of their behaviour on you. If you feel confident to do so, it may be that one of you takes the lead on this to put across the group's views and should not normally be more than two of you. Think about how the person would feel if all of you were to approach them. Often there will be a simple explanation for their behaviour or a misunderstanding, which hopefully you can move on from. Always think about the outcome you are trying to achieve, and remember that you need to try to build a normal working relationship wherever possible.

Often in this situation, it may be appropriate for you to speak with your manager or manager's manager for them to support you in this situation. You can also speak with HR Direct who will be able to talk to you about your options in complete confidence.

You may wish to speak to somebody you trust at work such as a work colleague, friend or staff side representative. If you feel affected by this issue, you can also seek additional support from the Employee Assistance Programme. (See 'Health and Wellbeing' in People First).

One of your options will be to submit details of your complaint in writing using the 'Formal Complaint Form' (See HR/Dignity at Work/Forms in People First). This will then be referred to a joint panel made up of senior management, HR and staff side group for a decision on next steps e.g. facilitation, investigation etc.

In all cases, you need to be able to demonstrate that you have taken the necessary steps to resolve the issue between you, before a formal complaint is made.

### **2.4 How should I note or log examples of inappropriate behaviour?**

If you are concerned about someone's behaviour, you should make some notes about this including date, time, what was said, by who, any witnesses etc. For any one off issue, you should be taking steps to resolve this with the person. However, by noting it down, this means that you will be able to be specific about the situation later on, if it becomes necessary.

If the behaviour is repeated, you should again note this down; however, you must raise this with your manager, manager's manager or HR Direct. They will be able to advise you further of your options, and how you should note this down. If a formal complaint is made, this information will be required, and useful when establishing the facts. You must ensure that you take a common sense approach to this; therefore you should capture the incidences of repeat behaviour towards you, and also note the steps you have taken to make them stop. Do not fall in to the trap of trying to 'catch them out' or noting everything that you do not 'like' about that person, as it is important to be as objective as possible and provide factual information in support of your claims. Be aware of the timeliness of reporting a situation, this should be as soon as you feel able, and be no more than 3 months after the last issue arising.

## 3. Investigation

### 3.1 Who decides on whether certain behaviour is inappropriate?

In all cases it will be for you to explain what you believe has been inappropriate behaviour. We will always treat this seriously; however, you are expected to participate fully in any facilitation, mediation and any potential investigation to ensure a quick resolution.

### 3.2 What do I do if I have a concern about the genuine nature of a complaint under the Dignity at Work Policy?

All approaches made will be taken seriously by management. They will have initial conversations with you and the person to establish the facts of an incident. They will then work with you and the person to establish whether a further investigation is required. If a complaint is found to be malicious or in collusion with others, it is possible that the individual making such claims will be investigated under the Disciplinary Policy.

## 4. Post Investigation

### 4.1 Should my concerns be taken further to a disciplinary hearing, will I have to attend the hearing at the same time as the person causing my concerns?

Under normal circumstances, you will be required to put your case in front of the person that has caused your concern. However, it is recognised that in cases of bullying or harassment it may be necessary to make changes to the normal procedures based on the seriousness of the complaint in relation to the giving of evidence and questioning where you believe that it would be too intimidating for you to confront the other person, it may be necessary to hold separate meetings. In this situation any questioning could be conducted through a colleague or staff representative. Any such request would need to be made to the panel for consideration prior to the hearing.

### 4.2 What are the potential outcomes of a bullying/harassment investigation?

Following any investigation, the person making the complaint, and the person who the complaint is about, will be notified of the outcome, and if any, advised of the next steps which may include:

- Inappropriate behaviour has taken place and a sanction will be considered
- There is a clear and genuine perception of bullying/harassment but no evidence of misconduct. Informal measures will be recommended to resolve conflict between both parties. This type of outcome would not normally proceed to a disciplinary hearing
- there is no evidence or a lack of evidence to support the allegation
- If there is evidence that the allegation is malicious, a disciplinary hearing may take place.

## 5. Support for employees

### 5.1 What support is available to me if I have an issue at work?

The Employee Assistance Programme is a telephone based resource, offering confidential information available 24 hours a day, 365 days per year. This service provides specialist information and counselling services including finance, emotional issues, law, education, health, work and family matters. You are able to access this service, but it is not accessible to family members independently. You can still receive help if family issues are a concern for you.

## 6. Outside of work

### 6.1 When socialising with work colleagues, would I still be covered by our Policies?

“At work” includes any place where the occasion can be identified with either the requirements of the employer, or with social events linked to the same employment. It includes any place where NHS care is delivered.”



## 7. Special Cases

### 7.1 How is the Dignity at Work Policy applied to those considered to be Special Cases?

The Policy applies to all employees however the following key considerations will be applied:

#### **Dignity at Work cases resulting in Disciplinary Action involving a Staff Side Representative**

If you are a Trade Union representative, then the same policy and process will be followed, however we will inform the National Officer within the union you represent, prior to commencing a formal investigation. However, a National or Full-Time officer does not need to represent the employee if they may not choose to. . In cases where the NHS Counter Fraud Office is investigating no prior discussion needs to take place. If disciplinary action is necessary, the HR Consultant supporting the case will discuss the case with the full-time officer. If suspension is seen as appropriate, this can take place immediately, with the HR Consultant informing the full-time officer as soon as practicable.

#### **Dignity at Work cases resulting in Disciplinary Action involving Medical Staff**

If you are a medical practitioner, then the same process will be followed however the Managing Concerns about Medical Practitioners Policy should be the first point of reference.

#### **Dignity at Work cases resulting in Disciplinary Action involving All Professional Staff**

In cases concerned with potential or actual acts of gross professional misconduct or competence, where following an investigation it has been established that misconduct is proven, we have a responsibility to notify appropriate professional bodies and will do so.

#### **Directors**

Dignity at Work issues relating to Directors of NHSBT will be dealt with by the Chief Executive and Chair of NHSBT; with the co-option of other Executive or Non-Executive Directors they may feel appropriate. Disciplinary issues with the Chief Executive will be dealt with by the Chair of NHSBT

## Policy approval & review

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