

<b>Bullying and Harassment Policy</b>	
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## **Executive summary**

This document sets out Leeds Community Healthcare NHS Trust (LCH) policy and procedure on acceptable standards of behaviour in the workplace, incorporating bullying, harassment and other behaviours which affect people's dignity at work.

This policy applies to all staff irrespective of their Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion and Belief, Sex and Sexual Orientation.

This policy applies to all staff working within the Trust which includes those who are within a Bank/Locum system or via an Agency. This Policy also extends to those who may hold an Honorary Contract with the Trust or are independent contractors to the Trust as well as service users.

Those external to the Trust who breach this policy may be subject to legal action.

This policy relates to conduct of medical and dental staff in those areas and circumstances not covered by Maintaining High Professional Standards in the Modern NHS Policy.

The Trust recognises that unacceptable behaviour may take place at work and outside work at work related social events. This policy and procedure applies equally in both circumstances.

This policy has been drafted to comply with statutory requirements and following professional body guidance. This must be read together with other relevant Trust policies, procedures and local guidance.

The Policy and Procedures may be reviewed at the request of Management or Staff Side by giving four weeks' written notice with reasons for the review.

## **Equality Analysis**

Leeds Community Healthcare NHS Trust's vision is to provide the best possible care to every community. In support of the vision, with due regard to the Equality Act 2010 General Duty aims, Equality Analysis has been undertaken on this policy and any outcomes have been considered in the development of this policy.

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## **1. Introduction**

Leeds Community Healthcare NHS Trust (LCH) is committed to eradicating unacceptable behaviour at work and securing a working environment in which everyone is treated with dignity and respect.

Bullying and harassment have a corrosive effect on the workplace and a potentially devastating effect on the individual. It can lead to physical and mental illness, affect work performance, increase absence rates and drive people from work. Such behaviour is contrary to the Trust's Values and the framework of "How We Work". It is unacceptable and will not be tolerated.

Bullying, harassment and other similar behaviours are potentially gross misconduct offences and the offender may be dismissed without notice under the Trust's disciplinary procedure if allegations are proven.

An allegation of behaviours such as bullying, harassment, victimisation and discrimination is very serious and must not be made lightly. Malicious, false or reckless allegations will themselves be disciplinary offences which could lead to disciplinary action being taken up to and including dismissal.

The formal process will follow the principles of the investigation process under the Disciplinary Policy and Procedure.

## **2. Aims and Objectives**

This policy will set out the process for ensuring that staff are able to report concerns relating to unacceptable behaviour. The Trust recognises that a balance needs to be struck between the rights and interests of the complainant and those of the alleged perpetrator. The Trust has a duty to provide a safe and secure environment for employees. Many incidents of unacceptable behaviour can be dealt with effectively in an informal way. Complaints will be taken seriously and investigated

## **3. Definitions**

Unacceptable behaviour can include:

**3.1 Discrimination** - When a person or group is treated less favourably than any other person or group because of their belonging to said group.

**3.2 Harassment** - Harassment is conduct directed at an individual but unwanted by them.

### **3.2.1 Racial Harassment**

Racial harassment can be defined as any abusive or other unwanted behaviour on grounds of a person's race, nationality, colour or ethnic origin, which is offensive / perceived to be offensive to the person involved and causes that person to feel threatened, humiliated, embarrassed or patronised. Such behaviour can interfere with a worker's job performance, undermine job security and create a threatening and intimidating environment.

### **3.2.2 Examples of Racial Harassment**

This includes, but is not limited to, the following types of behaviour:

- Racial physical abuse
- Racial verbal abuse
- Racist graffiti, slogans, political badges, etc.
- Offensive jokes or banter of a racial nature
- Using an offensive manner in communication, which is not used with other employees
- Isolating or excluding
- Denying opportunities for promotion or development

### **3.2.3 Sexual Harassment**

Sexual harassment can be defined as any unwanted, uninvited, unreciprocated or unwelcome behaviour of a sexual nature, which is offensive/perceived to be offensive to the person involved and causes that person to feel threatened, humiliated, embarrassed, or patronised. Such behaviour can interfere with a worker's job performance, undermine job security and create a threatening and intimidating work environment.

### **Examples of Sexual Harassment**

This encompasses a wide range of behaviour of a sexual nature and advances including:

- Unnecessary and unwanted physical contact, i.e. touching, patting/body contact in passing
- Verbal abuse, suggestive and unwelcome remarks, jokes, comments about appearance and private life
- Making requests or demands for sexual favours, including implied or overt promises of preferential treatment, or threats concerning present or future employment status
- The display of sexually offensive visual material in a workplace, such as pin-ups, calendars, books, videos, etc.
- Making comments or suggestions which are lewd and/or lascivious
- Denying opportunities for promotion or development

### **3.2.4 Homophobic Behaviour**

Homophobic behaviour is a form of discrimination, harassment or bullying, of an individual because of their sexual orientation.

#### **Examples of Homophobic Behaviour**

Treating a person less favourably on the grounds that they are lesbian, homosexual or bi-sexual, might encompass a wide range of unacceptable behaviours including:

- Making sexual threats and intimidation
- Making provocative, unnecessary and unwanted heterosexual physical contact
- Verbal abuse, suggestive and unwelcome remarks about appearance and private life
- Making offensive jokes, offensive name calling
- Denying opportunities for promotion or development
- Using an offensive manner in communication, which is not used with other employees

### **3.2.5 Harassment and the Equality Act 2010**

Disability is a protected characteristic under the Equality Act and therefore protected in law. Harassment includes comments, actions, jokes or suggestions which might create a stressful working environment for a person with a disability.

### **3.2.6 Examples of Disability Discrimination**

The harassment of people with disabilities might be:

- Verbal, including use of derogatory statements which are found objectionable and offensive; offensive jokes, comments about appearance or ability
- Physical, including jostling, mistreating or assaulting, gestures, or offensive correspondence
- Through isolation or exclusion
- Denying opportunities for promotion or development

### **3.3 Victimisation**

When a person or group receives less favourable treatment than others because they have preferred to have asserted their rights under anti-discrimination legislation or Trust policies including philosophical belief and processes involving union activity.

### **3.4 Bullying Behaviour**

Bullying is a form of harassment, which may occur for reasons other than a person's race, gender or disability. The Trust will not permit or tolerate this form of behaviour. Bullying can be defined as offensive, aggressive, violent, abusive, intimidating, malicious or insulting behaviour, which makes the recipient feel upset, threatened, humiliated or vulnerable. This behaviour undermines their self-confidence and may cause them to suffer stress.

#### **3.4.1 Examples of Bullying**

Bullying may include:

- Threat of assault
- Actual assault
- Mockery
- Persistent shouting at a colleague or service user / client
- Persistent unjustified negative attacks on a colleague's personal or professional performance
- Undervaluing a colleague's contribution, such as ignoring a colleague's opinion
- Public criticism of a colleague / employee
- Persistently setting objectives with impossible deadlines or setting unachievable tasks; placing unreasonable demands on a colleague
- 'Cyber bullying' where detrimental texts are sent via mobiles or images posted on external websites
- Removing and replacing areas of responsibility with lower status, menial or trivial tasks

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- Unjustifiable over-monitoring a colleague's performance, e.g. unreasonable fault finding, nagging, watching over the person's every move
- Withholding information with the intent of deliberately affecting a colleague's performance
- Spreading malicious rumour / making malicious allegations, including unwarranted allegations of harassment
- Isolation or exclusion
- Open hostility to a colleague, service user or employee

### 3.4.2 Types of Interactions where Harassment or Bullying may Occur

Harassment may occur between individuals at all levels in the Trust and from many different groups, e.g.

- Colleague to colleague
- Manager to employee
- Employee to manager
- Employee to patient/service user
- Patient/service user to employee
- Patient/service user to patient/service user
- Other agency or organisation employee to Trust employee and vice versa
- Contractor to Trust employee and vice versa

Harassment may occur in any situation, including the investigative process.

### 3.5 Violence

Any incident in which a person or group is verbally and / or physically abused, threatened or assaulted.

### 3.6 Facilitation

Where both parties agree the issue and the solution internally based on common ground.

### 3.7 Mediation

Where both parties agree to be supported in resolving their differences by a trained mediator.

### 3.8 Direction

Where there is no common ground the manager will direct the outcomes, with advice from human resources staff.

Refer to Appendix 2 for examples of unacceptable behaviour, this list is not exhaustive. Any behaviour which the complainant finds abusive, hurtful or damaging may be the subject of a valid complaint.

#### 4. Responsibilities

All staff employed by Leeds Community Healthcare NHS Trust must work in concordance with the Leeds Safeguarding Multi-agency Policies and Procedures and local guidelines in relation to any safeguarding concerns they have for children or adults they are in contact with.

- 4.1 Chief Executive** will ensure that LCH has robust policies and procedures in place for managing any allegations of unacceptable behaviour. In practice this responsibility is delegated to Heads of Service and Operational Managers.
- 4.2 The People Director** is responsible for, so far is reasonably practicable, a working environment that ensures staff are treated with dignity and respect.
- 4.3 Staff** are required to treat all colleagues with dignity and respect, to be aware of the effects of their own behaviour on others and be receptive to issues which are raised informally in an attempt to resolve them. Employees are required to report any incidents of unacceptable behaviour to management or to the HR Team. Comply with their professional code of conduct where applicable. Maintain strict confidentiality throughout the investigation, including witnesses.
- 4.4 Line Managers** are required to treat employees with dignity and respect and to ensure that others do so. Management must take complaints of unacceptable behaviour seriously and ensure they are investigated and dealt with. Complaints may be dealt with under this procedure or the Disciplinary Procedure if necessary. Maintain strict confidentiality throughout the investigation, including witnesses.

Managers have the right and duty to manage. This can be in the way of advice, instruction, direction, control and discipline.

- 4.5 Professional Bodies and Trade Union organisations** accept the responsibility of working together on issues in good faith and with goodwill with

the shared intention of facilitating good working relations. They will support the right of all staff to work without an atmosphere of bullying or intimidation and have the right to a fair process

**4.6 The People Partnering Team** will work in partnership with Managers and Employee Representatives to ensure employees are treated fairly and consistently within the framework of the policy.

They will advise managers of options available should an employee be managed under this policy.

Information of how to access this support is available from the People Team, and leaflets provided to Trust sites

## 5. Seriousness

Unacceptable behaviours of the types covered by this policy may be criminal offences for which the perpetrator could be prosecuted. If directed at:-

- sex, sexual orientation, marital status or pregnancy,
- race,
- disability,
- religion or belief, or
- age.
- philosophical belief

It may be unlawful discrimination for which the perpetrator could be made to pay damages. **Note** - all of these terms should be given a wide interpretation however the scope of the policy is to cover all harassment, intimidation and bullying even if it is not considered to be a criminal action

## 6. Police Investigations

The complainant may, under relevant legislation, choose to make a formal complaint to the Police. If this route is chosen, the complainant must inform their line manager who will then seek advice from a member of the People/HR Team. The Trust investigation would only commence on agreement with police that it would not affect their investigation

In such situations:

- any Police investigation will take priority over internal investigations.
- investigation officers must not hamper the Police investigation.
- internal investigations may continue if appropriate during Police investigations. (Police advice must be taken as to whether it is appropriate to continue an investigation).

## **7. Right to be accompanied**

An employee, whether making a complaint or the alleged perpetrator, has the right to be accompanied by a trade union representative or work colleague not acting in a legal capacity at all stages of the procedure.

Nothing in this policy will affect the right to any reasonable adjustments needed to help the employee. In some circumstances this may be in addition to a Trade Union representative or official (e.g. an interpreter).

Any request to be accompanied must be reasonable. The employee should let the People/HR Team know if they are being supported / represented by a Trade Union or professional body representative as soon as is practicable if a hearing is to take place, as well as the name of the companion.

The employee is responsible for involving their supporter initially, and ensuring that the dates of the investigation meetings / hearing are passed on to the supporter. Once the supporter is identified, they should normally be included in all correspondence with the employee, either in hard copy or electronically.

It is the responsibility of the employee to ensure that any case materials are prepared, sent and received within the timescales contained in this policy. Making such arrangements should not cause undue delay to the process as it is in everyone's interest to proceed promptly.

If the supporter is unavailable at the date and time of the hearing, the supporter and employee can suggest an alternative date or time provided a) the reason the supporter is unavailable is reasonable, and b) all panel members are available on the proposed date /

time. This should usually be within seven working days of the original date, although in exceptional circumstances this may be extended by mutual agreement.

The role of the supporter in any meeting / hearing is to assist and support the employee. The supporter is allowed to present the employee's case, sum up the employee's case, and respond to any view expressed on the employee's behalf. They should also be given the opportunity to ask questions of presenting managers and witnesses on the employee's behalf. The supporter is entitled to request a short adjournment to confer with the employee during the meeting / hearing as needed. The supporter may not answer questions on behalf of the employee, disrupt the process, or prevent the Trust from explaining their case. The supporter is not allowed to address the panel if the employee does not wish them to do so.

## **8. Suspension from Work**

In certain circumstances, it may be necessary to separate both parties or to suspend one of the individuals. This may also include relocating one of the parties if requested or if the work of one of the individuals can be carried out in another location more easily. Separating the parties does not indicate any level of blame to either side but should be viewed as a practical solution to support both parties whilst the investigation continues. Whilst best practice dictates the person against whom the concerns have been raised should be moved this is not always possible or practical dependant on service need.

The Manager should take advice from the People / HR Team before making a decision. The decision will be made taking into consideration both the needs of both parties and the needs of the service.

Suspension is not a disciplinary sanction and will be on full pay. Alternatives to suspension, such as a transfer to other duties will be considered first. However, if suspension is decided, any equipment etc. will be removed from the individual suspended.

If an employee is suspended the suspension will be reviewed throughout the investigation. Whilst it is expected that suspension will remain in place for the duration of the investigation, should evidence come to light that suggests the suspension should be lifted the employee will be notified and arrangements will be made for the employee to return to work. On occasion this may be to another location.

If an employee is not available, or refuses to attend the suspension meeting, and all reasonable enquiries fails to contact them then they will be informed of their suspension in writing and instructed not to commence duty but to contact a named manager.

During suspension the employee will:-

- remain contactable during normal working hours in order that they can report for duty or attend meetings.
- notify the People / HR Team immediately of any changes of address/telephone number.
- not under any circumstances have contact with or seek to influence anyone or anything associated with the allegation.
- comply with Trust rules in relation to confidentiality.
- return any Trust equipment, for example; keys or key entry cards, mobile phones and / or laptops. The Trust email account will also be suspended.
- not access Trust premises without obtaining permission from the investigating manager. This should not preclude the employee from accessing any Trust premises for their own healthcare needs.

The manager will:

- in exceptional circumstances and in consultation with the Lease Car Department and a People representative, it may be necessary to suspend the use of a Trust lease car. This decision will take into account the nature of the allegations.
- confirm in writing, with the employee, a summary of the reasons for the decision to suspend.

**Managers authorised to suspend are Heads of Service, Departmental Managers or a senior member of staff 8a or above.**

## **9. Procedure**

### **9.1 Informal Procedure**

- Employees should raise their concerns with their line manager, or their line manager's manager if their concern is about their manager, if they perceive bullying behaviour
- Every attempt will be made to resolve the issue informally in the first instance unless the allegations are serious enough to warrant going straight to the formal process (e.g. physical assault, racist comments etc. where witnesses were present)

## 9.2 Formal Preparation

The employee must set out in writing:

- personal details i.e., name, home address, base, line manager and contact numbers
- the nature of the complaint – what was said or done (the facts).
- the name and position of the person against whom the concerns are raised alleged perpetrator
- dates and times of incidents
- what each incident is said to be (bullying/harassment/victimisation etc.)
- the names of any witnesses
- what steps have been taken to resolve the issue informally
- what is wanted as an outcome

An employee who is a trade union member is encouraged to seek advice from the union for the completion of the letter and to arrange for representation at the formal fact find investigation meeting(s).

## 9.3 Formal Fact Find Investigation

A nominated Investigating Manager will be chosen to investigate the allegations raised by the Commissioning Manager who will be a Senior Manager (8a or above) within the service. The Investigating Manager must be a Band 7 or above. The Investigating Manager will, where possible, be accompanied by a member of the People / HR Team and a Staffside representative. Failure to find a suitable HR / Staffside representative will not delay the investigation process which may proceed even if HR and / or Staffside representatives are absent.

The Investigation Manager will:

- interview both parties (more details can be found in appendix 1.2)
- interview any witnesses raised by either party
- consider any evidence provided by either party or the witnesses
- consider any evidence identified by themselves during the investigation process
- ensure that the evidential information provided is factual

Once the investigation is completed the Investigation Manager will write a report detailing their findings and submit their report to the Commissioning Manager.

Wherever possible the Investigating Manager will attempt to complete the formal fact find investigation and the investigation report within 6 weeks after being nominated to avoid unnecessary stress to both parties

#### **9.4 Failure to Attend**

Where failure to attend is with prior notice the formal fact find investigation meeting will be reconvened.

Where failure to attend is not notified prior to the formal fact find investigation meeting the Investigating Manager will write to the employee requesting a reason for their non-attendance. The meeting will be reconvened.

Where failure to attend is due to sickness absence an occupational health referral may be required to advise if the individual is fit to attend the formal fact find investigation meeting.

Repeated refusals / failures to attend by either party will be deemed as an unreasonable refusal to comply with the Trust's policy and disciplinary action may be taken

## **9.5 Outcome Meeting**

Wherever possible the Commissioning Manager will meet with both parties individually to give them the outcome of the formal fact find investigation. In normal circumstances the individual who has raised concerns will be met first. In these meetings both parties will be given a letter informing them of the outcome and a copy of the investigation report. This will not include any appendices but may include recommendations.

A full report, including appendices, will be issued to the person who raised the concerns if they choose to appeal against the decision. Instructions on how to proceed with this option will be found in the outcome letter.

Should inappropriate behaviour be proven this case would then be referred to a disciplinary or capability panel using the formal fact find report. A copy with appendices will be sent to the person against whom the concerns have been raised.

## **10 Appeals**

Employees have the right to appeal against the outcome. Refer to Appendix 1, Section 1.3 Outcome meeting for clarification

## **11 Records**

Managers are responsible for keeping records of all investigation interviews. The records will usually be notes of meetings rather than a verbatim record.

Investigating managers should return all documents / notes made as part of the investigation to the relevant HR representative at the end of the investigations / appeals process.

## **12 Risk Assessments**

Refer to comprehensive assessments, including risk assessment, and reporting incidents as relevant. Refer to equipment, resources and training needs, advice and support for patients and carers relating to risks involved if relevant.

‘Risks identified with the implementation of this policy (and procedure) have been assessed and mitigated as far as possible, in line with the Trusts risk appetite. Should any further risks be identified following implementation, these will be assessed and consideration will be given to an urgent review/revision of the policy (and procedure)’.

**13. Monitoring Compliance and Effectiveness**

Explain how you will monitor compliance with, and effectiveness of, the policy, this may include auditing. Give clarity on who is leading with what and how actions will be implemented.

Complete the table below which needs inserting into your policy

Minimum requirement to be monitored / audited	Process for monitoring / audit	Lead for the monitoring/audit process	Frequency of monitoring / auditing	Lead for reviewing results	Lead for developing / reviewing action plan	Lead for monitoring action plan

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#### **14. Approval and Ratification process**

The policy has been approved by the appropriate body and ratified by SMT on behalf of the Board.

#### **15. Dissemination and Implementation**

Dissemination of this policy will be via the Clinical and Corporate Policy Group/Work force policies to services and made available to staff via the intranet.

Implementation will require:

- Operational Directors / Heads of Service / General Managers to ensure staff have access to this policy and understand their responsibilities for implementing it into practice
- The Quality and Professional Development and People Directorate will provide appropriate support and advice to staff on the implementation of this policy

Additionally you may want to explain how the information in your policy will be conveyed to staff and how the policy will be implemented e.g. by a launch event, raising at meetings, induction sessions. Also, include any training requirements for staff.

#### **16. Review arrangements**

This policy will be reviewed following ratification by the author or sooner if there is a local or national requirement.

#### **17. Associated documents**

Provide a list of documents that are associated and of relevance to the policy.

*See below*

#### **18. References**

- Disciplinary Policy
- Appeals Policy
- Managing Attendance Policy
- Managing Concerns with Performance Policy

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- Agenda for Change Terms and Conditions of Employment (Section 32 - Dignity at Work)
- ACAS – Advice and Guidance (Bullying and Harassment)
- ACAS – what does bullying look like?
- Protection of Harassment Act 1997
- Chartered Institute of Personnel and Development (CIPD) – Bullying and Harassment at Work Factsheet
- Equality Act 2010
- Records Management Policy
- Employee records – guidance for managers

## 19. Appendices

### Appendix 1

#### The Procedure

##### 1.1 Procedure – informal

See appendix 4 for flow chart

A solution to many issues can be found at this point, as the facts are established, any misunderstandings cleared up or relationship problems resolved in a round the table meeting.

Everyone involved in this process has the responsibility of being receptive to the other person's point of view as there is always the possibility that any alleged offense was not intended.

Both parties may wish to discuss this with their trade union representative or from a member of the HR Team.

In some cases the severity of the allegations indicates that informal resolution is not the appropriate forum to address the issues and the matter is therefore allocated to a formal investigation process.

Where possible, the employee should try to deal with issues informally by:-

- discussing with their immediate line manager, or
- if the issue is about their line manager, by raising it with their line manager's manager or People / HR Team.
- requesting a "round the table meeting" to discuss the issues with all parties
- consider facilitation, mediation or direction for informal resolution
- record all informal action discussions and agreements and ensure everyone has a copy of the written agreement
- Copies of the agreement will be placed in the personal and personnel files of both parties
- The manager will inform the employee who they would need to raise the issue with further if they are not satisfied at this point or in the future

If a resolution cannot be reached within the informal process or the allegations are serious enough to warrant excluding this step in the policy then the formal stage will be introduced

## 1.2 Formal Fact Find Investigation

When a matter is referred to the formal stage, either due to the employee feeling the issue/s is still unresolved or that the matter is serious enough that informal stage is not appropriate, an independent manager will be identified and asked to investigate the concerns.

The Investigating Manager's role is to carry out a thorough, objective investigation into the concerns raised by establishing the facts as quickly and efficiently as possible. To ensure the Investigating Manager remains focused on the issues a Schedule of Allegations will be written prior to the meeting with the employee and amended or agreed at the formal fact find investigation.

A letter will be sent detailing the concern/s and arrangements for the fact find investigation to the employee against whom the concerns are raised, giving a minimum of five working days' notice and confirming their rights to representation.

The Investigating Manager will gather and collate evidence from both parties and take statements from witnesses as appropriate. All members of staff have the right to be accompanied at these meetings and should be invited to the meeting in writing no later than five working days before the date of the formal fact find investigation meeting. The Investigating Manager should make all witnesses aware that the information they provide may be viewed in some circumstances by the employee concerned.

All notes taken at the formal fact find investigation meetings will be given to the individual for any correction or amendment purposes. Should the employee/witness amend the content of the notes they need to ensure that the amendment is clear and visible i.e. either in a different colour on a hard copy or track changes on the electronic version. On occasion both parties may need to be seen more than once as information is uncovered. The investigating manager may wish to identify a further meeting date with both parties to ensure there is no delay should a further meeting be necessary. This meeting can be cancelled later if no new information has arisen from the investigation.

Any witnesses who agree to be seen but are not employed by the Trust should be treated in the same manner as an employee. The investigating manager should speak to a member of the HR Team if there are concerns relating to process in these cases.

At the end of the process, the Investigating Manager will produce a report setting out their findings on the case.

The Investigating Manager should aim to complete the fact find investigation within 6 weeks of being appointed and to support them in this aim, both parties are required to co-operate fully in the fact find process and not cause any unnecessary delay.

In cases where further information is required there may, in some circumstances, be an extension to the original completion date of the investigation. Whilst every attempt will be made to ensure delays are kept to a minimum it is important to ensure all allegations are explored fully and completely.

The fact find investigation should not be delayed whilst the employee seeks advice or representation.

If the fact find investigation involves employees from a local partner who provides services to LCH then the investigation may be carried out jointly and / or fact find documents shared.

### **1.3 Outcome meeting**

The Commissioning Manager will, based upon the facts and evidence gathered as part of the fact find investigation report prepared by the Investigation Manager, decide if there has been behaviour that is bullying and / or harassing in nature.

When reaching this conclusion, it is not the intention of the alleged perpetrator that is the key to deciding whether such behaviour have taken place. The defining principle in reaching such conclusions is whether the behaviour was unacceptable when considered against the Trust's Values, its framework of "How We Work" and reasonable normal standards of behaviour and is disadvantageous or unwelcome to the person/people subjected to it.

Whilst the perception of the complainant is an important factor, which will be taken into account when making the decision, it is NOT the deciding factor. It will always be acknowledged that, whatever the outcome, the individual may perceive that they have been bullied.

On conclusion of the fact find investigation the Commissioning Manager will send a letter outlining arrangements for separate outcome meetings to both parties, giving at least five working days' notice.

At the meeting, the Commissioning Manager will present a summary of the findings, their conclusion, their rationale for the decisions and the right of appeal to the employee who raised the concerns. If the Commissioning Manager considers that the evidence suggests there is no case to answer then there will be no right of appeal for the employee against whom the concerns were raised unless it is found to have been a malicious complaint. This will then be confirmed in writing and a copy of the report, minus the appendices, will be provided.

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There are a number of outcomes for both the employee who raised the concerns and the employee against whom the concerns were raised as detailed below:

The employee who raised the concerns:

If the concerns are not upheld and they decide to exercise their right of appeal, they will be provided with a copy of the report's appendices to enable them to prepare their appeal

If the concerns are not upheld and, furthermore, are deemed to be malicious, they will be advised that they will be referred to a formal disciplinary hearing. The referral to a formal disciplinary hearing will be held, if the employee decided to appeal against the outcome

If the concerns are upheld, they will be advised that the Trust will consider the report's findings and conclusions and take any action as appropriate. This could be a variety of options which may include mediation (with both individuals agreement), potential redeployment for the employee against whom the concerns were raised and a disciplinary or capability panel. The employee who raised the concerns may likely be required as a witness at a disciplinary panel.

The employee against whom the concerns were raised:

If the concerns are upheld, they will be advised that they will be referred to a formal disciplinary hearing. They will be provided with a copy of the report's appendices to enable them to prepare their case for the hearing

If the concerns are not upheld and, furthermore, are deemed to be malicious, they will be advised that the Trust will consider the report's findings and conclusions and take action as appropriate against the employee who raised the concerns

The employee against whom the concerns have been raised may only appeal if the concerns are not upheld but are not deemed to be malicious, they will be advised of their right of appeal. If they choose to appeal, they will be provided with a copy of the report's appendices to enable them to prepare their appeal. They must be clear on their grounds of appeal

If the concerns are not upheld but the employee against whom the concerns were raised is unhappy with the process they are entitled to raise a grievance

Whether or not the complaint is upheld, the Commissioning manager has a range of options including:-

- if both parties are willing, arrange supervised reconciliation/mediation between them
- arrange training in a required field.
- refer the matter for a disciplinary investigation if the evidence and conclusion indicate that the original concerns are either
  - malicious (the action will be taken against the employee raising the concerns)
  - or supported by fact and evidence (the action will be taken against the employee against whom the concerns were raised)

The Commissioning manager will confirm the decision in writing to the employee and their representative. The letter will set out the decision, the reasons for it and notify the employee of the right of appeal unless there is evidence that the allegations were malicious. In this case the employee will be referred to a disciplinary panel.

#### **1.4 Appeals**

All appeals will be dealt with in accordance with the Trust's Appeal Policy and should be lodged with the People Director within 15 working days of the date of the outcome letter.

## **Appendix 2**

### **Clients, Patients and Members of the Public**

Often clients and their carers may be experiencing considerable anxiety and uncertainty which may result in unacceptable behaviours.

#### **Process for raising Concerns**

In the first instance, it may be possible and sufficient for the employee to explain to the person that their behaviour is unwelcome, offensive and unnecessary. The incident and the way it was managed must be reported to the line manager, formally documented as required under the Trust's Datix process and documented in the Patient's notes. If the behaviour persists, or the employee was unable to approach the issue at the time, a further report should be made to the line manager, as it may be necessary to take further action.

Repeated incidences of unacceptable behaviour from non-employees towards employees will be taken very seriously by the Trust and may lead to:-

- legal action
- exclusion from services
- other appropriate sanctions.

Advice must always be taken from the People / HR Team before taking action.

#### **Other agencies and independent contractors**

In the first instance, it may be possible and sufficient for the employee to explain to the person that their behaviour is unwelcome, offensive and unnecessary.

The incident and the way it was managed must be reported to the line manager and formally documented via the Datix® system as required under the Trust's Incident Reporting Policy.

The line manager will liaise with the person responsible for contractor and agency staff to identify the appropriate way to address the issue with the contractor or agency as appropriate

### **Appendix 3**

#### **Questions and Answers**

##### **Question**

What happens if either one or both of the parties is off work sick?

##### **Answer**

It depends on the reason for their sickness for example if it wasn't a serious illness there should be minimal disruption to the process. The individual, if they can't see you on the agreed date, should be able to see you within the next week or so. If the illness is serious or they are off with work related stress then refer them to OH to see if they are fit to attend the meeting.

##### **Question**

What happens if a witness goes off long term sick?

##### **Answer**

If they cannot see you then ensure that the report is clear that you attempted to meet with the witness but they were unavailable. The investigation and outcome report should not be delayed unnecessarily

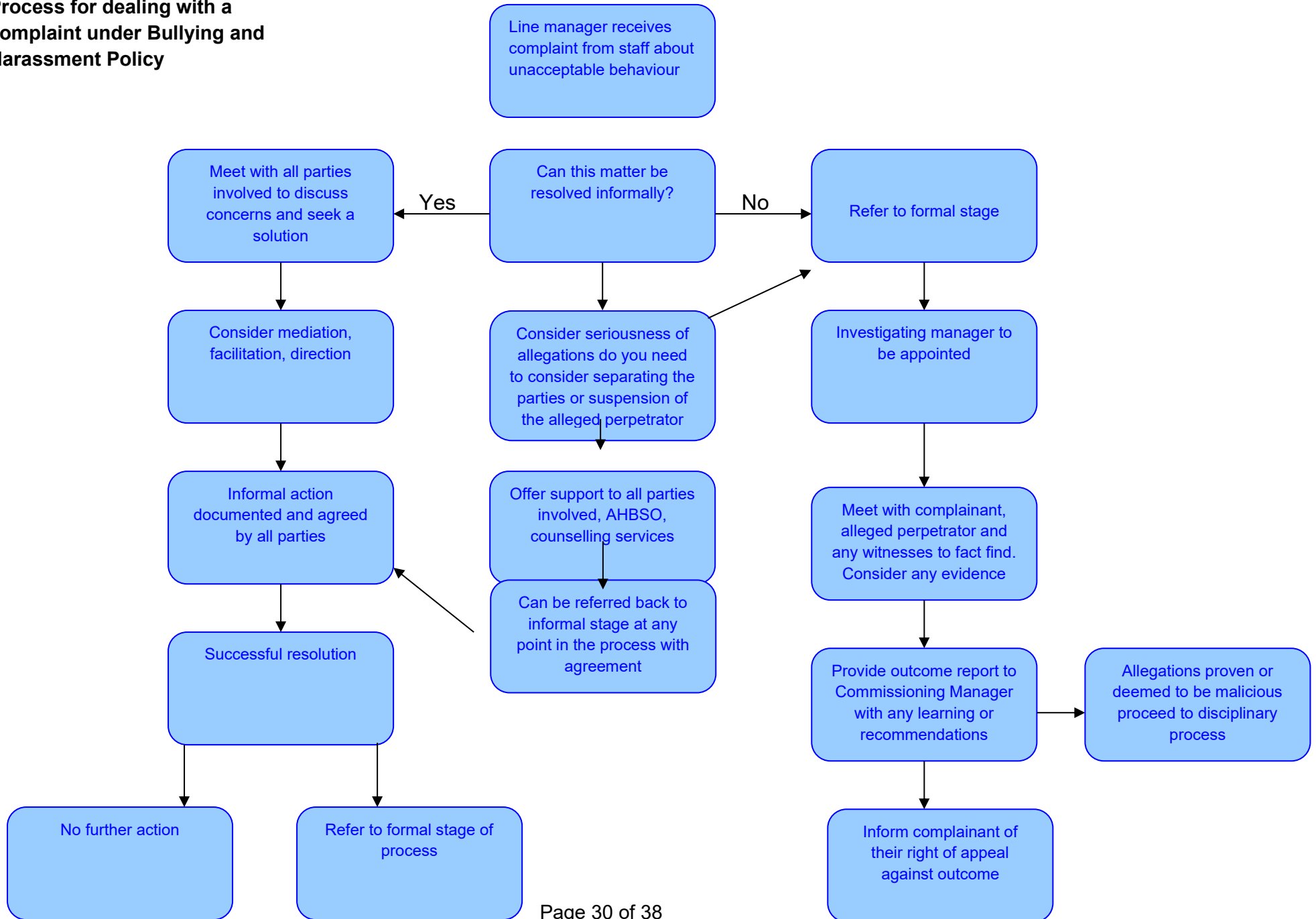
##### **Question**

What happens if the person who the concerns are raised against says that they have been bullied by the person who has raised the concerns?

##### **Answer**

This is referred to as counter claiming. A separate formal fact find investigation with a new investigating manager will proceed however this needs to wait until the first formal fact find investigation has been concluded

**Process for dealing with a complaint under Bullying and Harassment Policy**



## Policy Consultation Responses

Complete this template when receiving comments at various draft stages of the Policy.

Responder (including job titles and organisation)	Version, Comment and Date	Response from Author
Kadi Bah	Needs to include the paragraph in executive summary “This policy applies to all staff irrespective of their Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion and Belief, Sex and Sexual Orientation”	Agreed, implemented
Farah Hameed	Add “Maintain strict confidentiality throughout the investigation, including witnesses.” To employee responsibilities	Agreed, implemented to employee responsibilities plus manager’s responsibilities
	Add “Mediation, Freedom to Speak Up Guardian, Stress Reduction Course.” To risk assessment	Agreed, implemented
Emma Holford	Should we have a bullying and harassment form like the grievance form so it keeps everything together? (point 10.2)	Reluctant as often the letter can be very long and its agreed at the meeting what it is you are looking in to. However we could have a header template

		which covers the pertinent parts such as name, address etc. and leave the individual to continue in letter format with allegations and evidence
	<p>Someone has put a point about who decides to investigate it (10.3). Should we have some kind of commissioning manager role so it is along the same lines as the disciplinary policy?</p> <p>Does the investigation manager need to be of a certain band?</p>	<p>Agreed, implemented however it is important to remember that it is the individual who instigates the process and it is their B&amp;H investigation</p> <p>Agreed, implemented - Band 7 &amp; above in line with Disciplinary Policy</p>
	<p>There are two points in the policy about the formal fact find investigation – 10.3 and appendix 1.2. Maybe under 10.3 it should mention that there are further details in the appendix?</p>	<p>Agreed, implemented</p> <p>Understood, however an employee who raised the allegations is entitled to the full report with appendices ONLY in the event that they appeal against the outcome of the investigation</p>
	<p>Point 8 – right to be accompanied, the word used is supporters, is this in line with the Disciplinary Policy</p>	<p>Acknowledged, amended to companion</p>
	<p>I would be nervous that an investigating manager is doing the whole process themselves without any help / support from HR</p>	<p>Acknowledged, HR advice is on hand as with any policy and process and to align to the rest of the policies it is more appropriate that the investigating manager does this alone</p>
Anne Cherry (& Staffside)	<p>3.3 - would like “and consultation of or activity in a Trade Union”</p>	<p>Acknowledged, have added “and processes involving union activity”</p>

	3.5 – would like clarity around physical aspects	Acknowledged, added “and / or physically”
	3.6 – would like more clarification on definition	Acknowledged, added “solution” before “internally based on common ground”
	Examples of unacceptable behaviour, would like it adding that list is not exhaustive. Any behaviour which the complainant finds abusive, hurtful or damaging may be the subject of a valid complaint	Agreed, implemented
	4.5 – would like “they also support the right of staff to work without an atmosphere of bullying or intimidation, but also the right of staff accused of bullying or harassment to a fair process” adding	Agreed, implemented to say “they will support the right of staff to work without an atmosphere of bullying or intimidation and have the right to a fair process”
	5 – would like adding “however the scope of this policy is to cover all harassment, intimidation and bullying even if it is not considered to be a criminal action”	Agreed, implemented
	8 – question if the alleged perpetrator should not be the one to move	Acknowledged, however sometimes not practical to do this. Have added “whilst best practice dictates the person against whom the concerns have been raised should move this is not always possible or practical dependant on service need

	9.1 – question what kind of allegation would warrant going straight to formal?	Acknowledged, have added examples such as physical assault, racist comments etc. where witnesses were present
	9.3 – Feel removing both HR & Staffside support from investigation will cause difficulties for the investigating manager	Acknowledged, have agreed that “where possible” the investigating manager will be accompanied by a member of HR and / or Staffside however the inability of both or either party to support the process will not delay the investigation and it will continue with only the Investigating Manager.
	9.5 – wants expansion around the outcome meeting around if allegations are proven etc.	Acknowledged, have added “should inappropriate behaviour be proven this case would then be referred to a disciplinary panel using the formal fact find report. A copy of the appendices will be sent to the person against whom the concerns have been raised”
	Appendix 2 – would like deliberate unfair allocation of shifts and duties to individual adding	Accepted “deliberate or unfair allocation of shifts or duties to an individual” added
	Appendix 2 – needs further sections on homophobia etc.	Accepted, added protected characteristics to list
Richard Worlock	Remove Appendix 2 and replace with sections 3.2.1 – 3.2.7 and 3.4 – 3.4.2 in the main body of the policy to comply with Stonewall Workplace Equality from the WDES Experts programme. This would give greater impact and understanding to the reader	Accepted – removed and added

## Appendix: 2

### Authors Guide for writing/Review and Approval of Procedural Documents

	Title of new/reviewed Document	Yes/No/Unsure	Comments
<b>1. TITLE</b>			
	Is the title clear and unambiguous?	Yes	
	Is it clear whether the document is a guideline, policy, protocol or standard?	Yes	
<b>2. RATIONALE</b>			
	Are there defined reasons for document development?	Yes	
<b>3. REVIEW PROCESS</b>			
	Is the method described in brief?	Yes	3 years from ratification
	Are individuals involved in the development identified?	Yes	
	Has a rational attempt been made to ensure the relevant expertise has been used?	Yes	
	Is there evidence of a consultation with stakeholders and users?	Yes	
<b>4. CONTENT</b>			
	Is the objective of the document clear?	Yes	
	Is the target population clear and unambiguous?	Yes	
	Are the intended outcomes described?	Yes	
	Are the statements clear and unambiguous?	Yes	
<b>5. EVIDENCE BASE</b>			
	Is the type of evidence to support the document identified explicitly?	Yes	

	Are key references cited?	Yes	
	Are the references cited in full?	Yes	
	Are all supporting documents referenced?	Yes	
<b>6.</b>	<b>APPROVAL</b>		
	Has the named Director had sight of the document?	Yes	
	Does the document identify which committee/ group will approve it?	Yes	
	If applicable have the joint Human Resources/staff side committee (or equivalent) approved the document?	Yes	
<b>7.</b>	<b>DISSEMINATION and IMPLEMENTATION</b>		
	Is there an outline/plan to identify how this will be done?	N/a	
	Does the plan include the necessary training/support to ensure compliance?	N/a	
<b>8.</b>	<b>DOCUMENT CONTROL</b>		
	Does the document identify where it will be held?	N/a	
	Have archiving arrangements for superseded documents being addressed?	N/a	
<b>9.</b>	<b>PROCESS to MONITOR COMPLIANCE and EFFECTIVENESS</b>		
	Are there measurable standards or KPI's to support the monitoring compliance with and effectiveness of the document?	N/a	
	Is there a plan to review or audit compliance with the document?		
<b>10</b>	<b>REVIEW DATE</b>		

	Is the review date identified?	Yes	
	Is the frequency identified? Recommend every 2/3 years or sooner if required.	Yes	
	Is this an acceptable time frame?	Yes	
<b>11</b>	<b>OVERALLRESPONIBLITY for the DOCUMENT</b>		
	Is it clear who will be responsible for co-ordinating the dissemination, implementation and review of the document?		
<b>12</b>	<b>FORMAT and CONTENT</b>		
	Arial font		
	Font size 12		
	Trust Logo on front page		
	Title of policy on front page		
	Policy control page completed		
	Is this a review of an existing document, if so have all changes/amendments been recorded in the table provided		
	Footer of each page details: name of policy, author and date of publication		
	Numbered sequentially		
	Appendices present (where required)		
	Impact assessment carried out		
	Glossary included as appropriate		
	Proof read the document		
<b>Author</b>			
If you are satisfied and want to approve this document please sign and date it			

<b>NAME</b>		<b>DATE</b>	
<b>SIGNATURE</b>			
<b>FINAL APPROVAL</b>			