

# ***“NHS Organisation”***

## **Dignity at Work Process**

**Approved by:** Welsh Partnership Forum

**Issue Date:** September 2015

**Review Date:** September 2017

## Dignity at Work Process

### A process to manage complaints of bullying and harassment in the workplace

#### 1. Introduction

- 1.1 “NHS Organisation” is committed to providing a working environment free from harassment and bullying and ensuring all staff are treated, and treat others, with dignity and respect.
- 1.2 “NHS Organisation” will not tolerate any form of bullying and harassment which occurs at work and out of the workplace, such as on business trips, at work-related events, or on social media and will take all practicable steps to avoid and eliminate this. Behaviour which may be described as bullying and/or harassment is not conducive to the provision of effective healthcare services and can undermine the confidence and performance of employees. It can also affect their physical and mental health and wellbeing and lead to absenteeism. The effects of poor relations between individuals can be felt across the NHS Organisation and ultimately can have an impact on the care provided to patients.

- 1.3 Harassment is defined in the Equality Act 2010 as:

*Unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.*

The relevant protected characteristics are age, disability, gender reassignment, race, religion or belief, sex, and sexual orientation.

Harassment is unacceptable even if it does not fall within any of these categories.

Bullying may be characterised as:

*Offensive, intimidating, malicious or insulting behaviour involving the misuse of power that can make a person feel vulnerable, upset, humiliated, undermined or threatened. Power does not always mean being in a position of authority, but can include both personal strength and the power to coerce through fear or intimidation.*

For further information and examples of bullying and harassment, please see Appendix 1.

Bullying and harassment may also occur on a collective basis e.g. where a group of employees feel the impact of the actions of an individual, or where a group of individuals' actions impact on an individual. Patterns may also occur in relation to bullying and harassment by an individual. Effective monitoring will be essential in identifying and acting upon these instances, on an ongoing basis and should not wait until cases are closed.

- 1.4 This process applies to all staff working within the “NHS Organisation”. This includes contractors, students, volunteers, non-executive and independent members and staff from other organisations working on “NHS Organisation” premises. The process will not address cases where a member of staff feels that they are being bullied or harassed by a patient, relative, carer or any other member of the public. However, in those circumstances, staff are encouraged to inform their manager immediately for advice and support. Prompt action will be taken to deal

with the matter and although timescales are not specified, it is expected that any issues will be dealt with within a reasonable time frame and treated in confidence as appropriate. Action must be taken to ensure that the member of staff making the complaint is not placed in a position where further incidents may occur. In these circumstances the “*NHS Organisation*”s other appropriate policies e.g. staff charter, violence and aggression against staff will apply.

- 1.5 This procedure for handling conflict in the workplace is aimed at both managers and staff. A procedure such as this is constantly under review and its revision is positioned within a wider project which has the working title of the “common principles project”. This is a different approach with a focus on how organisations enable difficult conversations to take place and where concerns which are held can be raised as a matter of course and through the normal communication processes. Above all the focus will be on development and support for line managers to ensure that the right environment is in place so that staff feel that issues and concerns can be raised and that they will be listened to. The project is also looking at how conflict management in general is currently addressed so as to avoid unnecessary escalation with less focus on the process and more on achieving satisfactory outcomes.
- 1.6 A partnership review group has been set up with a view to developing some common NHS Wales wide principles with a view to shifting the emphasis of workforce policies in general from the current procedural approach to one of creating a more facilitative environment and culture based on certain values and principles.
- 1.7 Accordingly, this process does not form part of any contract of employment and it may be amended and/or withdrawn at any time.

The process will be reviewed on a regular basis as defined by the Welsh Partnership Forum.

## **2. Process**

### **2.1 Step 1**

It is important that all parties understand their responsibility to find an acceptable resolution to the situation that allows them to continue to work together.

If an individual feels that they have been harassed or bullied, it may be appropriate for them to approach the person or persons responsible. The individual should explain clearly to them that their behaviour is not welcome or makes the individual uncomfortable.

If this is too difficult or embarrassing or this approach is not successful, the individual should approach their line manager in the first instance (even if the issue is with an individual from another team). If the issue is with an individual from another team, the two line managers should liaise and agree who will lead. If the individual has concerns with their line manager, they should contact the next line manager in the hierarchy. The manager contacted should arrange an informal meeting with the individual to clarify the issue and try to resolve it. Managers are advised to keep notes of discussions/actions at these informal meetings, but need to be aware that a copy may be requested.

The outcome of this meeting may be as follows:-

- It may be that the issue is resolved at this meeting and no further action is needed (or it may be that some support, e.g. counselling is made available. The parties will be reminded of the agreed workplace rules setting out the expected standards of behaviour in the workplace).
- It may also be that the issue is identified as sufficiently serious to invoke the appropriate disciplinary procedure, i.e. move to the initial assessment stage of the disciplinary procedure (N.B. this could happen at any step in the process). If following initial assessment, and in accordance with the appropriate disciplinary procedure, the issue is not deemed serious enough to warrant a disciplinary investigation, then the issue should be referred back to step 2 below.
- If however, the issue is deemed to be sufficiently serious, then the matter should be addressed through the appropriate disciplinary procedure. In the event that the matter results in the issuing of a disciplinary sanction then this will not be disclosed to the complainant. In order to manage expectations, the complainant will be advised that the allegation(s) are deemed to be sufficiently serious at this stage to invoke the disciplinary process and that they may be called to provide evidence in that process. The complainant will be informed once the matter has been concluded, noting that they will not be informed of the level of any sanction applied.

### **2.2 Step 2**

The manager should arrange further separate discussions with the individual(s) to explore how the issue can be resolved.

If at Step 2 or any subsequent stage, an issue is uncovered that needs further investigation, the manager will be offered support by an independent person (appointed by the manager dealing with the issue) to gather information and a decision will be taken as to whether to apply the appropriate disciplinary procedure.

In this context, independent means not previously involved in this issue. The independent person could be a member of the Workforce & OD function, or a manager from a different department.

### **2.3 Step 3**

If resolution is not achieved, the manager should suggest a meeting where he/she will facilitate an informal discussion between both parties. The manager will facilitate a meeting between all parties taking advice from W&OD departments as required. Potential outcomes may include transfer, change of hours, coaching, counselling etc. It should be noted that if any outcome involves a change to terms and conditions, then these will need to be mutually agreed with the members of staff concerned and appropriate records maintained. The outcome of the informal discussion will be confirmed by the manager in writing to all parties.

### **2.4 Step 4**

If resolution is not achieved at step 3, the manager will arrange for all parties to receive an informed explanation of the benefits of mediation, the principles underpinning it and the process, from a trained mediator, if possible. The manager will set out the implications if the breakdown in the working relationship remains unresolved.

The expectation will be that all parties will agree to enter into the initial stages of the mediation process (i.e. the individuals meeting with the mediator(s), separately in the first instance).

If mediation is successful and all parties are satisfied with the outcome an action plan will be written at the end of the joint meeting which is agreed by, and confidential to, the parties unless actions by others are required and/or the parties agree to this being shared. The process is then closed.

If the issue(s) is/are considered to be unsuitable for mediation by the mediators or if the joint mediation session fails to resolve the matter, the issue will be referred back to the line manager who will hold meetings with all parties to reconsider the allegations (staff side representatives may also attend).

The outcome of these meetings may be appropriate management action (supported by W&OD representatives), e.g. the temporary transfer of either party to another team/department if reasonable and practicable, change of hours (to minimise contact between both parties), coaching, counselling, clarification of workplace rules in respect of expected standards of behaviour.

Documented feedback will be provided to all parties. The process will be deemed to be completed.

Where informal attempts to resolve the matter have failed, or are inappropriate because of the particular circumstances, the individual may raise the matter formally under the *NHS Organisation's* Grievance Procedure where applicable at Stage 2. In those circumstances, the manager will decide whether any steps are necessary to manage any ongoing relationship between the parties.

The process also applies to issues raised by a group of individuals against a particular person.

## Appendix 1

### What is bullying and harassment?

Bullying is harder to define than harassment, as there is no specific legal definition or prohibition. The process should try and address all kinds of abuse or intimidation, not just abuse of a subordinate by a manager or supervisor.

There are many different definitions of bullying and harassment e.g.

**Bullying** is generally defined as a pattern of persistent, offensive, abusive, intimidating, malicious or insulting behaviour, abuse of power or unfair sanctions, which makes the recipient feel upset, threatened, humiliated or vulnerable, which undermines their self-confidence and which may cause them to suffer stress. It is the impact on the individual and not the intention of the perpetrator which determines whether the individual feels that bullying has occurred. Bullying is commonly associated with an abuse of power and can involve not just one person but also a group.

Bullying can take the form of physical, verbal and non-verbal conduct. Bullying may include, by way of example:

- a) physical or psychological threats;
- b) overbearing and intimidating levels of supervision;
- c) inappropriate derogatory remarks about someone's performance;

Legitimate, reasonable and constructive criticism of a worker's performance or behaviour, or reasonable instructions given to workers in the course of their employment, will not amount to bullying on their own.

**Harassment** is unwanted conduct related to relevant protected characteristics, which are sex, gender reassignment, race (which includes colour, nationality and ethnic or national origins), disability, sexual orientation, religion or belief and age, that:

- has the purpose of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person; or
- is reasonably considered by that person to have the effect of violating his/her dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for him/her, even if this effect was not intended by the person responsible for the conduct.

**Sexual harassment** occurs when a person engages in unwanted conduct as defined earlier and which is of a sexual nature. Conduct 'of a sexual nature' can cover verbal, non-verbal or physical conduct including unwelcome sexual advances, touching, forms of sexual assault, sexual jokes, displaying pornographic photographs or drawings or sending emails with material of a sexual nature.

### ***Less favourable treatment for rejecting or submitting to unwanted conduct***

The third type of harassment occurs when a worker is treated less favourably by their employer because that worker submitted to, or rejected unwanted conduct of a sexual nature, or unwanted

conduct which is related to sex or to gender reassignment, and the unwanted conduct creates for them any of the circumstances as defined earlier.

Unlawful harassment may involve conduct of a sexual nature (sexual harassment), or it may be related to age, disability, gender reassignment, marital or civil partner status, pregnancy or maternity, race, colour, nationality, ethnic or national origin, religion or belief, sex or sexual orientation. The harassment may be persistent or relate to an isolated incident. The essential feature of harassment is that it is behaviour that the recipient feels is inappropriate to him/her and he/she regards it as personally offensive (i.e. a subjective test). However this must be weighed against what is generally regarded as reasonable behaviour (i.e. an objective test).

The term 'related to' is given a broad meaning in the Equality Act 2010 and provides that employees can complain of unwanted conduct related to a relevant protected characteristic that they find offensive even if it is not directed at them personally. The Act also provides protection to workers who may be associated with someone who has a protected characteristic.

Harassment is unacceptable even if it does not fall within any of these categories.

Harassment may include, for example:

- a) unwanted physical conduct or "horseplay", including touching, pinching, pushing and grabbing;
- b) continued suggestions for social activity after it has been made clear that such suggestions are unwelcome;
- c) sending or displaying material that is pornographic or that some people may find offensive (including e-mails, text messages, video clips and images sent by mobile phone or posted on the internet);
- d) unwelcome sexual advances or suggestive behaviour (which the harasser may perceive as harmless);
- e) racist, sexist, homophobic or ageist jokes, or derogatory or stereotypical remarks about a particular ethnic or religious group or gender;
- f) outing or threatening to out someone as gay or lesbian;
- g) offensive e-mails, text messages or social media content; or
- h) mocking, mimicking or belittling a person's disability.

A person may be harassed even if they were not the intended "target". For example, a person may be harassed by racist jokes about a different ethnic group if the jokes create an offensive environment.

Bullying and harassment are often hard to recognise, as behaviour that is considered to be bullying and/or harassment by one person may be considered 'firm management' by another. Most people will agree on extreme cases, but it is often the 'grey' areas that are difficult to define, and to consider how this has impacted on the individual.

It is therefore important to identify examples of unacceptable behaviour that may constitute bullying and/or harassment in the workplace.

Examples of unacceptable/inappropriate behaviour in the workplace:

The following list is not intended to be exhaustive but to provide some examples of bullying behaviour and harassment which the NHS Organisation deems to be unacceptable / inappropriate.

- Spreading malicious rumours, or insulting someone (particularly on the grounds of age, race, sex, gender reassignment, disability, sexual orientation and religion or belief).
- Anonymous abuse by and against staff using social media (sometimes known as trolling).
- Copying memos or emails that are critical about someone to others who do not need to know
- Ridiculing or demeaning someone - picking on them or setting them up to fail
- Overbearing supervision or other misuse of power or position
- Unwelcome sexual advances, including lewd or suggestive remarks, touching, standing too close, display of offensive materials, asking for sexual favours, making decisions on the basis of sexual advances being accepted or rejected.
- Making threats or comments about job security without foundation.
- Deliberately undermining a competent worker by overloading and constant criticism, and/or conversely removing duties from an individual's day to day workload without good reason or explanation.
- Preventing individuals progressing by intentionally blocking promotion or training opportunities.
- Unwanted or inappropriate physical contact, ranging from touching to serious assault.
- Intimidation, deliberate exclusion or victimising behaviour.
- Isolation or non co-operation at work, exclusion from social activities.
- Intrusion by pestering, spying, stalking etc.
- Persistent pressure to produce work in unrealistic time-scales or to produce information without adequate resources or training etc.

Unacceptable/inappropriate behaviour in the workplace can also include conduct at work-related social events and other 'out of hours' conduct that reflects on the employment relationship.