

POLICY ON DIGNITY AT WORK PREVENTING BULLYING AND HARASSMENT

Policy Number	HR 006
Date Ratified	January 2011
Next Review Date	January 2014

Policy Statement/Key Objectives:

This policy will underpin Dignity in the Workplace fostering mutual respect. Lancashire Care Foundation Trust recognises that all its employees have the right to be treated with courtesy, dignity and respect at work and regards any form of bullying, harassment or victimisation as unacceptable behavior, which will not be tolerated. The policy provides the framework for investigating allegations of bullying and harassment.

The procedure will explain how to investigate allegations of bullying and harassment consistently, in a fair and objective prompt manner.

It also outlines the support channels available to all staff. The Trust will provide a network of “Independent Listeners” who will as part of their role provide empathetic assistance to employees with complaints of bullying and harassment, explain how the procedures for making a complaint operate both informally and formally and help establish and support both alleged harassers and complainants through the process.

Accountable Director: Director of Workforce and Organisational Development

Policy Author: Senior Business Partner

Executive Summary

Subject	Procedure for underpinning Dignity in the Workplace fostering mutual respect and preventing bullying and harassment. Provides the framework for investigating allegations of bullying and harassment.
Applicable to	All employees of Lancashire Care NHS Foundation Trust
Key Policy Issues	To ensure support mechanism are in place to deal with allegations of bullying and harassment fairly, consistently and promptly providing appropriate support to all parties
Date Issued	February 2009
Dates Policy reviewed	January 2011
Next review due date	January 2014
Policy written by	Lesley Smith-Payne
Consultation	Dignity at Work Sub Group Policy Group Staff Side JNCC Equality & Diversity
Policy reviewed by:	Senior Management Team Policy and Governance Group
Lead responsible for policy	Director of Human Resources and Organisational Change
Monitoring arrangements	The Head of Human Resources and Organisational Development will be responsible for monitoring this procedure and will provide assurance to EMT Governance via Quarterly Board Reports
Approved by	JNCC
Authorised by	SMT Policy and Governance
Signature	Joanne Marshall Director of Workforce and Organisational Development
Related procedural documents	Disciplinary Policy Stress Management Procedure Procedure for Supporting Staff following traumatic /stressful incidents complaints or claims Equal Opportunities Policy

	Procedure for In House Mediation Scheme
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1.0 Principles

The trust recognises that all employees have the right to be treated with consideration, dignity and respect. The trust seeks to support all staff in their professional development and aims to provide a happy and fulfilling environment in which to work. This policy promotes the respectful treatment of staff within the trust and the protection of the employees from bullying and harassment at work. Bullying and harassment will not be tolerated by the trust in any form.

Each member of staff carries personal responsibility for their own behaviour in relation to this policy and are responsible for ensuring that their conduct is in line with the standards set out in this policy. Staff should report to the appropriate manager, or trade union representative, or HR manager, or harassment advisor, any incidents of bullying and harassment, which come to their attention.

Allegations raised regarding bullying and harassment will be taken seriously and treated confidentially. The trust gives an assurance that there will be no victimisation against an employee making a complaint under this policy or against employees who assist or support a colleague in making a complaint.

Bullying and harassment may be treated as a disciplinary offence and, where allegations are founded, may lead to summary dismissal. Disciplinary action may also be taken if a complaint is found to have been submitted maliciously or in bad faith.

2.0 Purpose

As an equal opportunities employer, the trust supports a working environment for individuals in which dignity at work is paramount. The purpose of this policy is to support a working environment and culture in which bullying and harassment is unacceptable.

2.1 Personnel

This policy applies to all employees working within the trust. All visitors, patients, contractors and staff from other organisations working on trust premises will be expected to behave in an appropriate manner whilst on Trust premises. This policy will apply to all trust premises and all trust personnel working in other premises.

What is bullying and harassment?

Harassment, in general terms is unwanted conduct affecting the dignity of men and women in the workplace. It may be related to age, sex, race, disability, religion, sexual orientation, nationality or any personal characteristic of the individual, and may be persistent or an isolated incident. The motive of the “harasser” is irrelevant and the key is that the actions or comments are viewed as demeaning and unacceptable to the recipient.

Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient.

In this document workplace harassment is defined as:

“Any behaviour, deliberate or otherwise, directed at an individual or group of people that is found to be threatening, demeaning, humiliating, intimidating, victimising, offensive or objectionable to the recipient and to the general standards of society and which detracts from the working environment of employees”.

In addition, bullying can be defined as:

“An attack on someone else’s dignity by persecution, oppression, physically or morally by (threat of) superior force”.

The key to distinguishing between what does and does not constitute harassment is that harassment is behaviour that is unwanted by the person toward whom it is directed. It is the **impact** of the conduct and not the **intent** of the perpetrator that is the determinant.

Bullying or harassment may be by an individual against an individual (perhaps by someone in a position of authority such as a manager or supervisor) or involve groups of people. It may be obvious or it may be insidious. Whatever form it takes, it is unwarranted and unwelcome to the individual.

The following are examples of unacceptable behaviours that can be considered to constitute bullying and harassment.

- Bullying by exclusion - this may take the form of social isolation and/or exclusion from meetings
- The deliberate withholding of information with the intention of affecting a colleague's performance
- Unfair and destructive criticism
- Intimidating behaviour
- Verbal abuse and spreading of unfounded rumours
- Humiliation or ridicule, insults or derogatory comments
- Setting of unrealistic targets which are unreasonable and/or changed with limited notice or consultation
- Copying memos that are critical about someone to others that do not need to know
- Use of abusive language or terms
- Jokes or verbal abuse based on an individual's gender, colour, race, religion, disability, sexual orientation, age or other personal circumstances
- Obscene or suggestive language or requests
- Unwanted questioning about someone's private life
- Unnecessary physical contact, ranging from unnecessary touching or patting to indecent assault
- Displays or circulation of offensive material e.g. pin ups

- Threats, promises or favours related to work, including offers relating to
- sexual favours
- Actual or threatened violence

This list is not exhaustive.

3.0 Duties

3.1 Chief Executive & Trust board

The Chief Executive and trust board will receive assurance that effective systems are in place to manage bullying and harassment allegations within the trust, and where appropriate, ensure that adequate resources are available to support these systems.

3.2 Director of Human Resources and Organisational Development

The Director of Human Resources and Organisational Development will provide assurance to EMT Governance and the Trust Board of compliance with this procedure.

3.4 EMT Governance

EMT Governance is responsible for:

- Ratifying this procedure on behalf of the Trust Board
- Receiving assurance of compliance with this procedure via quarterly reports,
- Monitoring actions to address issues of non-compliance with this procedure

3.5 Responsibilities of staff and managers

All staff have personal responsibility for their own behaviour and for ensuring that they comply with the policy. There are a number of things that staff can do to help prevent harassment, such as:

- Set a positive example by treating others with respect.
- Be aware of the trust's policy and comply with it.
- Do not make personal comments.
- Do not accept behaviour that may be offensive when directed against you or others, and take positive action to ensure that it is challenged and/or reported.
- Be supportive of colleagues who may be subject to bullying and/or harassment.

If you are subject to bullying and/or harassment but do not feel able to talk about it yet, make notes including dates and details which will help you recall events clearly at a later date. Staff can also contact their HR manager or union representative or a trained harassment advisor for advice and support.

All managers have a responsibility to implement this policy and to bring it to the attention of staff in their work area, in order to establish and maintain a work environment free of harassment. They must:

- treat a complaint seriously and deal with it promptly and confidentially, giving the employee and the alleged perpetrator full support during the whole process

- set a positive example by treating others with respect and setting standards of acceptable behaviour; also, promote a working environment where harassment is unacceptable and not tolerated
- tackle, and where possible, resolve incidents of harassment
- consult with their HR manager at any time for advice and support.

3.6 Role of HR department

The HR Department have a responsibility to ensure that the policy is followed, fairly and consistently. Their duties will involve:

- advising managers on the application of the policy
- advising managers and staff where individuals feel that they are being harassed or bullied in the course of their employment
- ensuring the effective implementation of the policy
- monitoring incidence of bullying and harassment and initiating appropriate action
- reviewing and amending the policy as necessary.

3.7 Role of Trained Harassment Advisors

As part of their role, trained staff provide:

- empathetic assistance to employees with complaints of bullying and harassment,
- explain how the procedures for making a complaint operate both informally and formally, and
- help establish and provide support for both alleged harassers and complainants through the process

3.8 Occupational Health Department

Occupational Health Departments have a responsibility for:

- Providing support and counselling for staff
- Referring staff to Psychological Therapies Services if required
- Liaising with managers as to whether a member of staff is fit to work following referral to the Occupational Health Department

4.0 Support and advice

The trust is committed to achieving informal resolution of complaints relating to harassment wherever possible.

In line with this approach, a series of options have been put into place to enable staff to be supported. This support will be provided to complainants, alleged perpetrators and any witnesses.

4.1 Trained “Harassment Advisors”

LCFT will establish a network of independent, trained, supportive “Harassment Advisors”, specifically for providing support in cases of alleged harassment. All Harassment Advisors will receive appropriate specialist training to enable them to fulfill their role. They are an independent and confidential resource. As part of their role they; provide a “listening ear” empathetic assistance to staff with complaints of bullying and harassment, explain how the procedures for making a complaint operate both informally and formally and they help establish and provide support for both alleged harassers and complainants through the process.

Harassment Advisors will not normally be able to give advice or opinions to the Investigating Officer. Use of Harassment Advisors will be time limited and they will try to guide the individual towards some sort of personal resolution or further action. The Harassment Advisor, whilst supporting the individual, will, within a reasonable length of time expect the individual to work towards a personal resolution. A list detailing who and where the Harassment Advisors are, is available on the intranet, Human Resources Department or Staff Side. If you require the help of a Harassment Advisor you can approach any one of them. You do not need to use the Officers located within your own area.

4.2 Counselling

The trust provides a confidential external service for its staff. This service is provided through Occupational health with confidential face-to-face counselling sessions.

4.3 Occupational Health Service.

Any member of staff who is involved in a claim of bullying and harassment may find it helpful to talk to the occupational health service. All employees have a right to self refer into occupational health. Counselling can play a vital role by providing a confidential avenue to resolve the complaint.

4.4 Trade Unions

The trust recognises the important role trade unions play in addressing harassment and members are encouraged to approach these representatives regarding their concerns. The trust will work in conjunction with the trade unions in addressing unacceptable and inappropriate behaviours.

4.5 Independent Mediators

Trust mediators are specially trained to facilitate informal outcomes where possible between those who have raised concerns and the people that they have concerns about. Mediation is an informal process in which a neutral person helps people in conflict to reach a settlement they both find acceptable. Mediation is a voluntary process, which is completely confidential, facilitated by an impartial mediator and creates a positive outcome. The Trust supports the principles of mediation and has launched an “In House” mediation scheme. Funding has been secured and has facilitated the accredited training of 12 staff from across all areas of the Trust to enable the mediation scheme to be offered.

The In House Mediation Service supports and underpins well being and dignity in the workplace fostering an ethos of mutual respect through an approach of open communication and early intervention when workplace conflict arises. Mediation offers an alternative informal method of improving workplace relationships by encouraging the employees involved to actively seek a solution to their differences and agree effective ways of working together in the future. Mediation is a voluntary process that is facilitated by 2 impartial and appropriately trained mediators who are free of any conflict of interest.

Mediation is an effective tool that can be used to restore relationships between two or more parties. It is intended as an early intervention method to resolve conflict at work issues.

It is a structured process using impartial mediation to provide neutral space to facilitate communication between two or more parties to help them to understand one another and to begin to think creatively about a mutually acceptable solution to their differences.

The process aids communication between parties, provides an understanding of the breakdown in that relationship and places emphasis on creating solutions to develop a better working relationship. Applications for mediation can now be made via Human Resources Department.

5.0 Fair/Firm Management or Bullying and Harassment?

Behaviour that is considered bullying by one person may be considered firm management by another. Most people will agree on extreme cases of bullying and harassment but it is sometimes the “grey” areas that cause most problems. Bullying and harassment are not necessarily face-to-face; they may be written communications, email, phone etc. Bullying and harassment can often be hard to recognise and may not be obvious to others and may be insidious. The recipient may think this is normal behaviour and anxious others will consider them weak or not up to the job, if they find the actions of others intimidating.

The differences between a manager who is firm but fair and a manager who is bullying and Harassing staff is often ambiguous. The table bellows highlights fair management contrasted with bullying or harassment.

Firm but fair manager	Bullying or harassment
Consistent and fair	aggressive, inconsistent and unfair
determined to achieve the best results, but reasonable and flexible	unreasonable and inflexible
knows their own mind and is clear about their own ideas, but willing to consult with colleagues and staff before drawing up proposals	believes that they are always right, has fixed opinions, believes they know best and not prepared to value other people's opinions
insists upon high standards of service in quality of and behaviour in the team	insists upon high standards of service and behaviour but blames others if things go wrong
will discuss in private any perceived deterioration before forming views or taking action and does not apportion blame on others when things go wrong	loses temper, regularly degrades people in front of others, threatens official warnings without listening to any explanation
asks for people's views, listens and assimilates feedback	tells people what is happening, does not listen

5.1 The difference between constructive and destructive criticism

As part of the ‘everyday management process’ managers are required to provide staff with feedback concerning their performance, conduct, time keeping and so on.

If any of these areas have been unsatisfactory the feedback may be critical of the worker concerned. If criticism is delivered in a constructive manner it can be beneficial to the member of staff, providing them with the opportunity to reflect on their behaviour and make any necessary improvements.

Destructive criticism, on the other hand, can have detrimental effects on staff moral and damage the psychological contract between manager and employee.

5.2 Constructive criticism will focus upon:

- actions and behaviour, focusing on what the employee has done or not done
- facts, with specific examples of behaviour that has been inappropriate and an explanation of why it was inappropriate
- future improvement, for example requiring the employee to do something differently or make changes.

5.3 Destructive criticism, on the other hand, may involve:

- aggressive behaviour, such as yelling
- personal insults or put-downs
- allocating blame rather than responsibility
- focusing on how awful the situation is, rather than on future improvement or rectification of the problem.

6.0 Affects of Bullying and harassment

For the organization:

- rising levels of absenteeism
- premature ill-health and retirement
- high levels of staff turnover
- reduced productivity for victims and colleagues
- cost of potential litigation
- damage to reputation.

For the individual:

- sleeplessness
- lethargy
- loss of appetite
- migraines/severe headaches
- mood swings
- skin problems
- anxiety
- stress
- de-motivation

7.0 Process for Dealing with Bullying & Harassment

Lancashire Care Foundation Trust's approach to dealing with harassment consists of the following elements:

- A clear statement, as outlined within the policy statement, of the Trust's position on the issue.
- The incorporation of the policy statement and the procedures and guidance set out in this document as an integral part of the overall Equal Opportunities in Employment Policy.
- The identification and training of suitable nominees to act as "Harassment Advisors".
- The establishment and monitoring of the procedures, as outlined in this guidance, for the informal and formal resolution of complaints of harassment. An annual report to the Board detailing the number and nature of complaints made under

the policy will be presented and a copy made available to recognised staff organisations and Harassment Advisors. The personal details of which will remain confidential.

- The distribution of this policy procedure and guidance to all existing employees and new recruits.
- The publicising of the policy on preventing harassment by including the following statement within all Job Information packs:
“The Trust condemns all forms of harassment and is actively seeking to promote a workplace where employees are treated with dignity, respect and without bias”.
- The regular review and updating of this document in consultation with the Policies and Procedures Working Group.

7.2 Informal procedure

Employees are encouraged to discuss any concerns about harassment with the Harassment Advisors, human resources, a trade union representative or occupational health.

7.3 Informal Approach to alleged bully or harasser

This will involve the individual approaching the alleged bully or harasser in order to tell them that their behaviour is found to be offensive and why, and to ask them to stop using such behavior. The employee may ask a colleague, trade union official to be present for moral support. If the individual would find confronting the alleged bully or harasser too difficult but still wishes to pursue the matter informally they can ask their trade union official, line manager or human resources representative to speak to the person concerned.

Actions you can take yourself:

- Keep a diary of all incidents - records of dates, times, any witnesses, your feelings etc. Keep copies of any correspondence that may be relevant, for example reports, letters, memos, notes of any meetings that relate to you.
- In many instances it is possible for the complaint to be resolved quickly by explaining directly to the harasser the effect their behaviour is having and that you want it to stop.
- You should always make it clear that if it continues you will make a formal complaint.
- If the behaviour of a person is aggressive it may be necessary to walk away making it clear you do not wish to be spoken to in that way.

Another option may be for the individual to write directly to the alleged bully or harasser detailing the offensive behaviour and confirming the requirement to stop any further bullying or harassment. (Appendix 2). The individual should keep a record of any informal action taken, along with a note of the date and what those involved said. This is necessary should evidence be required at a later date should the bullying or harassment continue or subsequently recur.

In order for accurate records of the level of harassment complaints within the trust to be reported it is necessary for the “Harassment Reporting Form” (Appendix 1) to be completed. Guidance on how to complete is contained within Appendix 1. Support in completing these forms is also available from Harassment Advisors, HR or staff side.

7.4 Formal Process

Where the informal approach is unsuccessful or the individual has chosen to go straight to the formal stage of the procedure the following arrangements will apply.

- A decision to conduct a formal investigation must be made by a senior manager jointly with the HR manager.
- Where an investigation is deemed appropriate, it must be conducted independently by a manager with HR support and allows the appropriate involvement of trade union representation of the individuals involved. This investigation and any action arising from it will be carried out in line with the trust disciplinary procedure.
- If, following investigations, it appears that harassment/misconduct has occurred; the investigating manager will recommend the appropriate course of action in line with the trust's disciplinary procedure. A detailed response will be given to both parties outlining the results of the investigation and what action, if any, is being taken in respect of the complaint. This may result in a meeting under the trust disciplinary policy being convened and the behaviour being viewed as Gross misconduct. This may also apply in cases where the complainant's behaviour is deemed to be malicious.
- The trust has set a target of two months, for completing formal investigations. However, given the complexities of some issues, this may not always be achievable. Timescales will be discussed in more detail with the individual concerned.
- All cases must be treated seriously and dealt with promptly, as this will prevent additional stress and anxiety to both sides of the complaint. Failure to do so may result in disciplinary action being taken against the investigating manager for neglect of duties.

7.5 Step 1: Initial response

Following receipt of the letter of complaint the investigating manager has five working days to inform the employee that an investigation will be undertaken and ensure that the employee is made aware of the process that will be adopted during the investigation, and what their role may be at any subsequent disciplinary proceedings that may take place.

The person against whom the complaint is made should also be informed at the outset of the investigation of the complaint against them and given a copy of the letter of complaint.

7.6 Police involvement

In cases of alleged assault or behaviour that is considered to be a criminal offence, the organisation may (where appropriate) contact the police or support an employee in contacting the police if the complainant so wishes.

7.7 Step 2: Possible suspension or redeployment during the investigation

The investigating manager should consider the appropriateness of suspension or redeployment for the duration of the investigation to relieve the stress and pressure on one or both parties and/or to prevent the risk of further incidents or victimisation occurring.

Suspension of the alleged harasser may be considered if the alleged offence is very serious where a manager feels that it is in the interest of either, the individual, the

organisation or both. It may be appropriate in some cases for both parties to be suspended. It will be made clear at all times that suspension under this procedure is not a disciplinary act and does not imply that there has been any misconduct, or that there is any suggestion of guilt.

Temporary redeployment of one or both parties can also be considered. In normal circumstances it is appropriate that the alleged bully/harasser should be redeployed rather than the complainant. The complainant could, however, be offered the option of redeployment where appropriate. In some circumstances both parties may be redeployed.

7.8 Step 3: Meeting with the complainant

Following receipt of the letter of complaint the investigating manager has 10 working days to sensibly and sensitively arrange and conduct a meeting with the complainant. The purpose of the meeting is for the investigating manager to take a detailed written statement of the incident(s). A trade union official, Harassment Advisor or a work colleague may assist the complainant. The complainant should be given the opportunity to nominate witnesses whom they wish to be interviewed by the investigating manager.

NHS Employers guidance – bullying and harassment

7.9 Step 4: Meeting with the person against whom the complaint has been made

The investigating manager will meet with the person against whom the complaint has been made and hear what they have to say about the alleged incident(s) – having previously been informed of the allegation against them. Their trade union official, or a work colleague may assist them. Notes of the meeting will be taken. The employee should be given the opportunity to nominate witnesses whom they wish to be interviewed by the investigating manager.

7.10 Step 5: Meeting with the witnesses

The investigating manager will meet with the witnesses nominated by the complainant and the alleged bully/harasser. Employees identified as witnesses to incidents may be assisted at the meeting by their trade union official, or a work colleague. Notes of the meeting will be taken: **notes for steps 3–5**

- The purpose of these meetings is to establish the facts. They are not disciplinary hearings of any sort. All those giving information to the designated investigating officer will do so privately and not in the presence of any other person involved in or present during the alleged incident(s).
- Notes taken during these meetings will be made available to all those involved in their particular meeting and comments can be made if appropriate.

7.11 Step 6: Further clarification

The investigating manager may decide to meet any of the employees again to clarify or gain further information. He/she must also ensure that they obtain copies of any written material that may be used as evidence.

7.12 Step 7: Consideration of information

Having obtained all the information possible, the investigating manager and human resources representative will review the information and decide whether the

complaint is substantiated. In cases of sexual harassment, in no circumstances will evidence of the complainant's experience, sexual attitudes or behaviour be taken as relevant information.

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

7.13 Step 8: Further action

The investigating manager and human resources representative will consider the facts and will recommend one of the following:

- take no action, as the allegation has not been substantiated or there is insufficient evidence
- proceed to a disciplinary hearing, as the investigation has found that there may be a case to answer
- take alternative management action, as the evidence and/or nature of the complaint does not justify formal disciplinary action.

This could include:

- a recommendation for facilitated discussion/counselling for both parties, where both parties agree to this
- a recommendation for redeployment of one or both parties, either on a temporary or permanent basis
- setting up arrangements to monitor the situation
- required attendance on training courses (such as equality and diversity awareness training), formal counseling and / or an Action Plan to address concerns, issues and / or training needs
- a period of special leave to enable working arrangements to be put in place.

7.14 Confidentiality

All employees involved with the investigation and any subsequent process are required to respect the need for confidentiality.

All complaints, associated correspondence and interviews will be treated in strict confidence. Breaches in confidentiality will be subject to disciplinary action.

Because harassment is such a sensitive and controversial issue, everybody involved in a case where harassment has been alleged must, as far as reasonably practicable, maintain confidentiality. Employees not directly involved with a complaint may, in certain circumstances, be interviewed and asked for statements to enable a thorough and fair investigation of all the facts of the complaint. Both complainant and alleged harasser will be entitled to copies of any witness statements taken should a Disciplinary Hearing be convened following the investigation.

7.15 Intimidation or Victimisation

Intimidation or victimisation of any member of staff prior to or following a complaint of harassment, whether or not any harassment is proved, is a disciplinary offence in itself and therefore could lead to disciplinary action against a perpetrator. Any such intimidation or victimisation should be reported immediately to your Manager, the Investigating Officer or a Staff Side Representative.

7.16 Action when the complainant or alleged bully/harasser is dissatisfied

If the complainant disagrees with the decision taken by the investigating manager or disciplinary panel, they have the right to raise this matter under the organisation's grievance procedure.

If the alleged bully or harasser does not accept the outcome of the investigation or disciplinary hearing, he/she is entitled to pursue action through the appeals procedure set out in the organisation's Disciplinary Procedure

7.17 Follow up

Following resolution of both formal and informal harassment complaints, a record should be kept of the incident. Where harassment did occur, it is important to check that the harassment has stopped and that there has been no subsequent victimisation. Monitoring will be carried out on a regular basis.

8.0 Training

The trust will make the following training provisions:

- New staff will be made aware of the policy as part of the mandatory training received on the induction programmes.
- Existing staff will receive bullying and harassment awareness training as identified through the PDP process.
- Management will be trained to handle complaints effectively through attending HR skills workshops if identified as requiring training through PDP process.
- Full Training will be provided for Harassment Advisor through a mandatory training programme, which must be completed in order to undertake the role of harassment advisors.

9.0 Employment Legislation

At present there is no legislation in place, which specifically deals with the issue of workplace bullying. However there are a number of laws, covering discrimination and harassment under which action can be taken, such as:

- Health and Safety at Work etc. Act 1974
- Sex Discrimination Act 1975 (as amended by the Sex Discrimination Act 1986)
- Race Relations Act 1976
- Disability Discrimination Act 1995
- Criminal Justice and Public Disorder Act 1994
- Employment Rights Act 1996
- Protection from Harassment Act 1997
- Crime and Disorder Act 1998
- Employment Equality (age) Regulations 2006
- Employment Equality (sexual orientation) Regulations 2003
- Employment Equality (religion or belief) Regulations 2003

9.1 Health & Safety at Work Act 1974

The Act places a general duty on employers to ensure as far as is reasonably practicable the health safety and welfare at work of all their employees. Incidents of bullying and harassment could be deemed to damage employee's health and welfare.

9.2 Criminal Offence of Harassment

In addition the **Criminal Justice Public Order Act 1994** and **Protection from Harassment Act 1997** create a criminal offence of harassment with a fine and / or prison sentence as a penalty with a right for damages for the victim if proven. A harasser may be deemed personally liable to pay damages if a successful claim is made to an Employment Tribunal for sexual, racial, disability or age discrimination.

The Act states that a person must not pursue a course of conduct which amounts to the harassment of another, and which they know or ought to know amounts to such. As a result of a recent ruling by the Court of Appeal, employers can also now be held vicariously liable for incidents of harassment by an employee.

10.0 Monitoring

10.1 Compliance with this procedure will be reviewed by the HR Managers for their Locality in conjunction with line managers through analysis of completed investigations to identify any lessons learnt on a quarterly basis.

10.2 The HR Managers will be required to produce monthly updates to the Director of Human Resources and Organisational Development for on-going bullying & harassment investigations.

10.3 A quarterly report will be presented to the Trust Board by the Director of Workforce and OD detailing compliance with the above procedure with details of numbers of complaints of bullying and harassment made including any recommendations where this may be deemed appropriate

STANDARD	How will it be monitored	Frequency of Monitoring	Responsibility
Duties Framework for investigating allegations of bullying & harassment consistently in a fair and objective manner	Review a sample / analysis of completed investigations.	Annually	Network HR Business Partner
Audit of completed harassment forms	Feedback from Harassment Support Officers & analysis of	Quarterly	Network HR Business Partner

Formal process to complete investigations with regard to allegations of bullying & harassment	completed forms. Timeframe for completing formal investigation process is 2 months, with set time frames for notifying complainant of investigation process & arrange meeting with complainant, alleged perpetrator and any witnesses.	Analysis of completed investigations to highlight lessons learnt. Analysis of Timeline to identify any delays or gaps and rationale	Investigation Manager & Network HR Business Partner Harassment Officers Mediators OHS
Provide monthly updates to the Director of Workforce & OD for on-going bullying & harassment investigations	Complete spread sheet of all investigations to track progress and timeframes	Monthly	Locality HR Advisors & Network HR Business Partners
Provide Quarterly reports to the Trust Board detailing number of bullying investigations, outcomes and incorporating any recommendations as deemed appropriate.	Director of Workforce & OD will present quarterly reports to Trust Board	Quarterly Reports to the Board identifying numbers of investigations & timeframes	HR Business Partners & Director of Workforce & OD.
Provide training & awareness of Dignity at Work policy	New staff will be made aware of the policy as part of the mandatory training received on induction	Complete local induction Complete Mandatory Workbook	Line Manager All staff
Existing staff will receive bullying and harassment awareness training as identified through the PDP process	HR Skills Workshops Bullying & Harassment will be part of Mandatory training Workbook completed by all	Annually Annually	HR Business Partners All staff

Provide training for Harassment Advisers	staff yearly Training Programme Evaluation	Annually	Senior Business Partner
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The Director of HR and Organisational Development will provide assurance to the Trust Board via the quarterly report. An action plan will be developed and implemented to address issues of non-compliance and will be monitored by the HR Business Partners.

11.0 Equality Impact Assessment

Please see appendix 5

12.0 Review

This procedure will be reviewed every 3 years or earlier if there is a change in legislation of NHS guidance

13.0 Other Associated Policies

Disciplinary Procedure
 Stress Management Procedure
 Procedure for Supporting Staff following traumatic/stressful incidents complaints or claims
 Equal Opportunities Policy
 Grievance procedure
 In House Mediation Procedure

14.0 References

NHS Employers Guide Bullying & Harassment
 ACAS 2007 Bullying and Harassment
 CIPD
 Equality & Human Rights Commission
 RCN Guide Bullying & Harassment
 Unison agreement for Bullying & Harassment
 Andrea Adams

Appendix 1

Harassment Support Service

Report of Alleged Case of Harassment

<u>Date:</u>	<u>Trust:</u>	<u>Case Ref. No:</u>	<u>Harassment Advisor:</u>	<u>How Referred:</u>	<u>Employment Area:</u>	<u>Type of Harassment:</u>

<u>Sex of Client:</u>	<u>Approx. Age of Client:</u>	<u>Sex of Perpetrator:</u>	<u>Approx. Age of Perpetrator:</u>
Male/Female		Male/ Female	

DETAILS OF CASE: (OBSERVE CONFIDENTIALITY OF ALL PARTIES WHEN REVEALING DETAILS OF CASE)

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IF REQUIRED CONTINUE ON REVERSE

CASE RESOLVED

**YES / NO /
NOT KNOWN**

**** A copy of this form will be forwarded to the Human Resources Dept.
IF IN THE FUTURE YOU REPORT ON THIS CLIENT AGAIN, PLEASE USE THE
SAME REFERENCE NUMBER***

Appendix 2

Model Letter Appendix 2 to Policy and Procedure on Harassment

First Stage

To:.....From:.....

This letter is a formal complaint regarding the following, which I found unwanted, unprovoked by myself and unacceptable.

(Statement)

I assume that you will now ensure that there is no repetition or further harassment.

If there is repetition I will have no hesitation in taking further formal action.

Signed:.....Date:.....

A copy in confidence is sent to the Head of Human Resources.

1. Possible Statement Examples

In recent (weeks/months/days) you have made (suggestive/lewd/immoral) remarks or propositions to me, for example, your comments about my (dress/appearance/figure), or suggestions regarding a relationship between us, or, your ambitions regarding a relationship with me, or, your constant improper phone calls.

On, (date/time) you (describe action), a most disturbing action.

Guidelines for Completion of Form

Date:	Date of meeting (If individual is completing the reporting from alone, date of completion.)
Trust:	Lancashire Care Trust
Case Ref:	Leave blank unless being completed with a Harassment Advisor.
Support Worker:	Name of Line Manager, Harassment Advisor, or Staff Side Representative. (If individual is completing alone please leave blank.)
How Referred:	If referred to a Harassment Advisor (Self, Line Manager, Staff Side Representative)
Employment Area:	Nursing, Administration etc.
Type/Harassment:	See section 3 of Policy
Sex of Client:	Sex of the individual reporting the concern/incident
Approx. Age of Client:	Age range of individual reporting the concern/incident/allegation. (i.e. 20-30)
Sex of Perpetrator:	Sex of the individual the concern/incident/allegation has been made against.
Approx. Age of Perpetrator:	Age range of individual the concern/incident/allegation has been made against. (i.e. 20-30)

Appendix 3

Harassment and Bullying in the Workplace

Investigators' Guide

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Introduction and Roles

These notes have been produced to support the investigators training course and are intended to supplement your own organisation's policy on harassment and bullying.

The common threads of most procedures are that there will be two stages in handling a complaint – informal and formal, and when a formal complaint has been made, an investigation will take place.

The most common practice is two offices known as the investigating team investigate the complaint. The particular make up of the team will depend in the nature of the complaint, wherever possible e.g. a mixed gender pair in case of sexual harassment.

In most procedures there will be a clear distinction between the role of the investigators and the role of the disciplinary panel and it is essential that this is understood by the investigating team and the complainant and alleged harasser/bully.

The investigators role is to:

- Investigate the complaint received.
- Establish the facts and evidence.
- Produce a report establishing whether or not there is substance to the allegation.

The role of the investigating team is **NOT** to:

- Make any decisions about disciplinary action.
- Act as a counsellor to either party.
- Make moral judgements.

Preparation and Planning

Having been given the task of investigating a complaint the temptation is often to rush out and start interviewing, but in fact the first step should be to clarify the task and to establish how you will work together as a team. Your initial meeting as a team should focus on:

- How you see the complaint.
- The definitions within the procedure e.g., sexual harassment/bullying.
- Immediate decisions required to enable investigation e.g. suspension etc.
- Timetable for investigation meetings/interviews.

But should also address:

- How will you work together
- Who will take notes/ask questions
- What are your individual strengths and weaknesses
- What will you do if you disagree with each other
- Where can you get support
- How will you change over roles in an interview

Once you have agreed some ground rules of how you will work together you can begin to consider what you will do. As far as possible you should have a strategy for the investigation whilst always allowing for changes based on the information you receive as you go along. As an aid to your strategy it is often useful to draw up a plan to ensure that you could, if questioned at a later stage, clearly say why you interviewed particular employees. A sample plan is included but amend it to suit your own style.

You will need to discuss with each other practical issues such as access to witnesses, confidential interviewing/typing etc.

Investigation Matrix

Allegation

Issues to be addressed

Interviews

Who?

Why?

Information gained

Evidence document etc

What?

Why?

Information gained

Issues to be addressed with alleged harasser/bully

Response

Conducting Investigation Interviews

Whilst many officers have experience of interviewing in different situations from recruitment to disciplinary, and obviously the specific skills involved are transferable, it needs to be recognised that the emotional context of interviewing harassment/bullying complaints is significantly different.

The person making the complaint is often vulnerable and may have been experiencing harassment for some time but the investigating team may be the first people to hear the complaints. The complainant may be confused and fearful or angry, what is most often the case is that they are concerned that you believe them. For the person who has had allegations made against them, again a whole range of emotions may be experienced from anger and aggression to confusion and fear.

Whilst the position of the two named parties are quite obvious, the emotional impact on other employees who you choose to interview should be not underestimated, it may be that they are anxious about being disloyal to one part or may have been harassed/bullied themselves.

If there are a lot of employees involved in a case or it is a particularly serious case, you may find the process quite draining and you should ensure you have enough time between interviews or you may decide to alternate the questioning role.

The Investigating Team's difficult task is to be seen to be fair to both the complainant and the alleged harasser and this is only possible if they are not overwhelmed by the emotional context.

Interviewing the Complainant(S)

Although you will have a written statement from the complainant, the first interview will always be with them to establish the full details of the complaint. Whilst it is desirable to get all the information you need at this interview, the complainant may need to take the interview slowly and may need a break.

Step 1

- Make sure you won't be interrupted
- Explain the role of the Investigating Team
- Check that they understand their rights of representation
- Give the complainant time to settle down
- Encourage them to express their feelings
- Acknowledge the difficulty of the situation and possible embarrassment

Step 2

- Clarify the details and ask specific questions
- Gather facts, dates, times, witnesses etc.
- Identify gaps
- Ask for specific examples, not "they made rude jokes" ask for words used
- Ask if the complainant has spoken to anyone else about allegations
- Ensure you understand the complaint
- Check what the complainant wants as an outcome

Step 3

- Explain what happens next
- Clarify where they could get support from
- Advise them they must NOT discuss the complaint with colleagues, witnesses etc.
- Close the interview

Often the complainant will try to draw you into committing yourself on a course of action or just to confirm that you believe them. It is very important that you remember you have only heard one side of the story at this stage and that you make no indication of how you feel about the complaint.

After the first interview there are several things the Investigating Team need to do:

- Give yourself time to think/discuss the case
- Write up your notes
- Consider your feelings, are you the best person to deal with the case?
- Go back to the definitions of harassment/bullying in the procedure
- Do you need to suspend/move someone to facilitate the investigation?
- Draw up an Investigation Plan
- Decide who to see next

- What information can you gather?

Interviewing the Alleged Harasser/Bully

The purpose of this interview is to give the alleged harasser/bully the opportunity to state their case and it is important that the principles of natural justice apply in that they know the case against them before the interview and they have the right to be represented. As with the complainant, this interview is often emotionally charged.

Step 1

- Make sure you won't be interrupted
- Explain the role of the Investigating Team
- Outline the complaint in full
- Explain their rights to representation

Step 2

- Give non-verbal signs you are listening
- Ask questions to clarify details
- Give them time to state their case
- Clarify any alterations of working situation e.g. suspension, changes in place of work, whilst investigation continues
- Advise on support available e.g. occupational health unit, counsellor

Step 3

- Explain what happens next
- Advise them they must NOT discuss the complaint with complainant, colleagues, witnesses
- Close the interview

The response of the alleged harasser/bully is crucial in terms of evidence evaluation. In most cases, although not always, the response tends to fall into one of the following categories:

- 1 "I did it but I thought he/she welcomed it"
- 2 "I did it but didn't think it bothered her/him"
- 3 "I did it but I didn't realise he/she was so sensitive"
- 4 "I did it but I have been under stress myself"

Although each of these poses different problems for the Investigating Team they are in fact all admissions.

The first category is at the heart of the definition of harassment, was the behaviour welcomed, remembering that it is for the recipient to decide if the behaviour was welcomed at the time.

The second and third responses are easier to deal with in the sense of there is some acknowledgement that if they had known the behaviour to be offensive they would

not have continued and leaves the complainant's view that it was unwelcome, unchallenged.

The fourth response may well be taken into account as mitigation as part of the disciplinary process, but this still constitutes an admission.

5 "I didn't do it"

The fifth response is probably the most difficult for an Investigating Team to deal with, and this is exacerbated by the fact that by its very nature, harassment and bullying often happens without witnesses.

In this situation your task is to determine which of the two accounts is most credible on the balance of probabilities.

Investigation Interview

A list of some sample questions is shown below which may assist you in the planning stage for your interviews.

Questions for the Complainant:

- Explain what happened?
- When did the incident take place?
- Who was there – did anyone witness the incident?
- Where were you?
- How did you react?
- Did you see or speak to anyone directly after the incident?
- Has there been previous incidents?
- Did you speak to anyone about the previous incidents?
- Is there any evidence written or physical about the incident?
- How did this make you feel?

What to avoid:

- Surely they were only joking
- Have you considered the impact this will have on the team?
- Are you sure it wasn't just a misunderstanding?

Questions for the alleged Harasser/Bully:

- Do you fully understand the complaint?
- Do you accept the incident took place?
- Describe the incident to me
- What exactly did you say?
- What was the reaction of the complainant?
- Has this ever happened before?
- Were there any witnesses?
- Did you speak to anyone following the incident?

What to avoid:

- I'm sure you would have stopped if he/she would have complained
- Don't you agree that some people are more sensitive than others?

Investigation Interview Checklist

Introduction

Names of Investigators _____

Status of interview _____

Rights to have a supportive person in attendance

Notes of interview _____

Outline details of complaint

Closure

Ask what complainant wants as an outcome

Explain next stage in the process _____

Explain source of support/counselling _____

State any changes to work arrangements

Confirm that the details of the investigation
should not be discussed _____

Evaluating the Evidence

The most difficult task for the Investigation Team is often to decide when they have gathered enough evidence to finalise a recommendation. It should be borne in mind that if further disciplinary action is taken a more detailed investigation will take place. The decision the Investigating Team has to make is do they believe on the **balance of probabilities** that harassment/bullying has or has not taken place. It is not for them to struggle with proof beyond or reasonable doubt as a criminal court would have to.

In determining that balance of probabilities there are two distinct categories of evidence, which should be weighted. The most significant evidence will be from witnesses' statements to the actual incident together with any admissions from the alleged harasser/bully.

You may also include corroborative evidence as part of your deliberations that may be documentary evidence or information gathered at interview, which could include any of the following:

- Recorded changes in sickness/lateness since the incident
- Request from complainant to change job
- Statements regarding the demeanour of the complainant after the incident
- Physical evidence e.g. store cupboard isn't on the way to the manager's office, no obvious reason to be in a particular place.

At the end of the process of gathering your evidence you need to have a clear view of:

- What the facts are
- What is the balance of evidence as to whether the incident took place
- Is the complaint in line with the procedure definition of sexual harassment

Report and Follow Up Action

Investigation Report

The final task of the Investigating Team is to present a report which records your findings and recommends whether further disciplinary action should be taken. The purpose of this report is for management to get a clear picture of whether you conclude that harassment/bullying did or did not take place, and as such the report needs only to be factual and brief. It is likely that during the investigation you will have generated a huge amount of paperwork but this does not need to be reflected in the final report.

It may also be the case that you have gathered an amount of organisational issues that may have contributed to the situation where harassment/bullying took place. Whilst these issues must be raised they should not appear in the final report. It is best to regard the report as a public document which would be available to the complainant, alleged harasser, trade unions and even an industrial tribunal and you should bear this in mind whilst drafting it. Any outstanding management issues should be included in a separate report to the Head of Department.

Format of the Report

The following is a suggested simple format for the final report.

Background	Details of the staff structure, working arrangements etc.
Nature of the Complaint	Specific incidents referred to and nature of the complaint – use complainant's own words
Investigation Process	Describe the steps taken to investigate the incident
Alleged Harasser/ Bully's Response	Give the response for each complaint
Additional Evidence	Brief details of witnesses' statements and corroborative evidence taken into account
Findings and Evaluation	Statement as to whether you are able to support the claim of harassment/bullying based on witnesses' evidence or balance of probabilities
Final Recommendations	This should be clearly expressed e.g. further disciplinary action should be considered, but should not commit the disciplinary hearing e.g. "dismissal is the appropriate action"

Follow Up Action

The importance of having a procedure on harassment and bullying is not only to ensure that the organisation has a process to deal with the behaviour once it has been brought to the management's attention, but also to learn the lessons to prevent it happening again.

Having carried out an investigation you will be ideally placed to identify factors that need to be tackled to prevent future incidents and this could take the form of a report or discussion with the appropriate senior officer. There will also be specific issues about the case which you may have a view on e.g., how to prevent victimisation of the complainant, suggestions on monitoring the situation.

Appendix 4

Initial Equality Impact Assessment

Department/Function	All services within Lancashire Care NHS Foundation Trust
Person responsible	Lesley Smith-Payne
Contact details	Lesley.smith-payne@lancashirecare.nhs.uk
Name of policy/procedure/service to be assessed	Procedure for supporting staff involve in traumatic/ stressful incidents complaints or claims
Date of assessment	12.02.09
Is this a new or existing policy/procedure/service?	Existing
1. Briefly describe the aims, objectives and purpose of the policy/procedure/service?	The policy will underpin Dignity in the Workplace fostering mutual respect. LCTF recognises that all its employees have the right to be treated with courtesy, dignity and respect at work and regards any form of bullying, harassment or victimisation as unacceptable behaviour, which will not be tolerated. The policy provides the framework for investigating allegations of bullying and harassment.
2. Who is intended to benefit?	All staff
3. What outcomes are wanted?	Staff will feel supported to raise concerns regarding allegations of bullying and harassment. All staff has the right to be treated with courtesy, dignity and respect, which are underpinned by the policy.
4. Who are the main stakeholders?	Staff Managers Support agencies
5. Who is responsible for implementation?	All staff

6. Are there concerns that there could be differential impact on the following groups and what existing evidence do you have for this?			<p>In terms of support for staff from any minority group, as an organisation we need to be aware that discrimination can have an immense impact on someone's life, including their working life. In line with relevant legislation and good practice the Trust must do all it can to eliminate discrimination and ensure equity of support.</p> <p>All staff from diverse groups are now protected in the workplace through relevant legislation, however the Trust must ensure that responsible staff and managers are capable of supporting all member of staff regardless of their personal background. This will be addressed through the development of the Equality and Diversity training strategy for all staff.</p>
People from a Black or minority ethnic background	Yes		<p>Staff from a black or minority ethnic background including migrant workers who are not fully conversant with the English language may not fully understand what constitutes bullying & harassment. Extra support may be required. Some members of staff from BME groups may have a different cultural understanding as to what bullying & harassment is and not therefore readily raise their concerns about their treatment or use internal or external support mechanisms. There is an increased risk they may suffer racial abuse. If they do, the Trust must ensure the existing mechanisms are culturally sensitive enough.</p>
Women or men Including trans people	Yes		<p>Women or men who also have other issues in their lives (e.g. childcare, domestic violence, study etc.) and are juggling work and life balance could be more vulnerable to being treated differently due to their individual needs and have an increased risk of being treated differently in the workplace.</p>
People with disabilities or long term health conditions	Yes		<p>Staff could be already suffering from a traumatic event in their lives. Line managers must be sensitive to existing conditions. If a member of staff has increased sickness or needs workplace adjustments this could increase the risk of them being discriminated against on the grounds of their disability.</p>
People with or without a religion or beliefs	Yes		<p>Their beliefs could increase the risk of them being treated differently or being discriminated against on the grounds of their religion or belief. If made to feel excluded or ridiculed could lead to someone questioning their religious beliefs which in turn could have an impact on the kind of support needed to ensure a successful recovery.</p>

Lesbian, gay, bisexual or heterosexual people	Yes		If any kind of homophobia were integral to the allegation of bullying or harassment this would be discrimination. The Trust must ensure it is totally confident that it can fully support lesbian, gay and bisexual staff and provide support mechanisms to enable them to raise allegations of bullying or harassment.
Older or younger people	Yes		Older members of staff may be less likely to seek support due to a possible legacy in past working lives of 'don't complain, just get on with it'. Young members of staff may feel less able to seek support due to lack of assertiveness skills linked to level of experience
7. Could any differential impact identified above be potentially adverse?	Yes		The Trust is developing equality and diversity training strategy for all staff working at all levels in the organisation. This is linked to the Knowledge and Skills framework. However until this work has been completed and evaluated and the attached action plan carried out it is currently difficult to know if there is any adverse impact on any of the equality target groups. The Trust will ensure the attached action plan is carried out and a full impact assessment of this policy and its issues over the next twelve months
8. Can any adverse impact be justified on the grounds of promoting equality of opportunity?	Yes		The procedure aims to be equitable for all members of staff. The policy makes it clear that bullying or harassment on the grounds of sex, race, gender, age, and religious belief is unlawful and outlines the legislation, which could be invoked. There are no provisions identified currently for specific support processes for specific equality target groups. (An example of this might be Asian female staff identifying how exactly they would like to be supported differently from other members of staff).
9. Have you consulted with those who are likely to be affected?			As part of the action plan and the full impact assessment of this procedure and the risk management function, staff and managers from equality target groups will be targeted for involvement
10. Should the policy/procedure/service proceed to full impact assessment?			

I understand the impact assessment of this policy/procedure/service is a statutory obligation and take responsibility for the completion of this process.

Names of assessors: Lesley Smith-Payne

Date of assessment: 12.02.09

Date of next review: 3yrs