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**Contents**

 **Page**

**1.0 Introduction 1**

**2.0 Policy Statement 1**

**3.0 Legal position 1**

3.1 Harassment 1

3.2 Bullying 1

**4.0 Definition of Harassment and Bullying 2**

**5.0 The Trust’s Mission and Values 2**

**6.0 Duties and Responsibilities 3**

6.1 Director’s Responsibilities 3

6.2 Director of Human Resources, OD and Estates 3

6.3 Responsibilities of Executive Management Team 3

6.4 Manager’s Responsibilities 3

6.5 Employee’s Responsibilities 4

6.6 Trade Union Representative’s Responsibilities 4

**7.0 Types of Harassment 5**

7.1 Racial Harassment 5

7.2 Examples of Racial Harassment 5

7.3 Sexual Harassment 5

7.4 Examples of Sexual Harassment 6

7.5 Homophobic Behaviour 6

7.6 Examples of Homophobic Behaviour 6

7.7 Harassment and the Equality Act 2010 6

7.8 Examples of Disability Discrimination 6

**8.0 Bullying 7**

8.1 Examples of bullying 7

8.2 Types of interactions where Harassment or Bullying may Occur 7

**9.0 Advice for Managers 8**

9.1 Managers should 8

9.2 Managers should not 8

**10.0 Victimisation 9**

**11.0 Challenging Bullying and Harassment 9**

11.1 Principles 9

11.2 Workplace Mediation 9

11.3 Harassment Advisers 10

11.4 Incident Reporting 10

12.0 **Procedure for Dealing with Cases of Bullying or Harassment 10**

12.1 Action to be Taken Prior to Invoking The Formal Procedure 10

12.2 The Formal Procedure 12

12.3 The Investigation 12

12.4 Consideration of the Investigative Report 13

12.5 Feedback to the Complainant 14

12.6 Feedback to the Alleged Bully/Harasser 15

12.7 Possible Outcomes of a Disciplinary Hearing 15

* 1. Feedback to the Complainant Following the Hearing 15

12.9 Follow up 16

**13.0 Harassment of Staff by Clients, Service Users and**

**Members of the Public 16**

13.1 Multidisciplinary Review 16

**14.0 Support Available for Staff 17**

14.1 Trade Union Representative 17

14.2 Manager 17

14.3 Human Resources Representative 17

14.4 Harassment Advisers 17

14.5 Staff Consultancy and Counselling Service 18

14.6 Occupational Health 18

14.7 Mediator 18

**15.0 Monitoring 18**

**16.0 Training 19**

**17.0 Further Advice and Information 19**

**18.0 Equality Impact Assessment 19**

**19.0 Version Control 19**

**Appendices:**

**Appendix 1: Challenging Harassment Informal/Formal Process**

**Appendix 2: Harassment Monitoring Form**

**Appendix 3: Equality Impact Assessment**

**Appendix 4 Version Control Sheet**

1.0 INTRODUCTION

South West Yorkshire Partnership NHS Foundation Trust (the Trust) is committed to promoting a work environment which is free of bullying or harassment and where the dignity of everyone is respected.

This policy enables harassment to be challenged and managed across the Trust.

Claims of harassment and bullying will be taken seriously and staff should not be deterred from raising their concerns.

This policy is set in the context of the Trust’s Wellbeing at Work agenda and the Trust’s values and behaviours.

The Trust also has further information about harassment and bullying, which can be accessed by members of staff and managers on the Trust’s intranet:

<http://nww.swyt.nhs.uk/wellbeing/bullying-harassment/Pages/default.aspx>

**2.0 POLICY STATEMENT**

South West Yorkshire Partnership NHS Foundation Trust (the Trust) is committed to providing and maintaining a healthy working environment for all employees, volunteers, agents and users. To this end the Trust is committed to eliminating workplace harassment and bullying.

**3.0 LEGAL POSITION**

**3.1 Harassment**

Harassment can be unlawful and could lead to proceedings under the Equality Act 2010.

Individuals are protected from harassment when applying for a job, while in employment and in some circumstances after the working relationship has come to an end (for example, in connection with the provision of a verbal or written reference). There is also protection for people against harassment on the basis of their membership or non-membership of a trade union.

Additionally the law covers harassment of an employee by a third party. An employer is liable for incidents that have happened on two or more occasions, if the employer knows that these have happened and has not taken reasonable steps to stop them.

**3.2 Bullying**

The legal position with respect to bullying is more complex as there is no separate piece of legislation which deals with work place bullying in isolation. Bullying might be part of discriminatory behaviour, or related to a myriad of different legal principles, for example:

* breach of contract - usually breach of the implied term that an employer will provide reasonable support to employees to ensure that they can carry out their job without harassment and disruption by fellow workers
* the common law right to take care of safety of workers
* Employment Rights Act 1996 (for example, constructive unfair dismissal)
* personal injury protection involving the duty to take care of workers arising out of the law of Tort
* Health and Safety at work etc Act 1974
* Trade Union and Labour Relations (Consolidation) Act 1992, dealing with special types of intimidation, etc)
* protection for whistleblowers under the Public Interest Disclosure Act 1998
* Criminal Justice and Public Order Act 1994
* Public Order Act 1986
* Protection from Harassment Act 1997
* Human Rights Act 1998.

**4.0 DEFINITION OF HARASSMENT AND BULLYING**

Harassment is ‘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’

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

*Source: ACAS Guide for Managers and Employers on Harassment and Bullying at Work. June 2014*

**5.0 THE TRUST’S MISSION, VALUES AND BEHAVIOURS**

This Policy is intended to help promote the Values of the Trust. In particular, it should help to reinforce the following values:

* + - * Respectful honest open and transparent
			* Person first and in the centre

This policy supports the following Trust behaviours:

* + - * I make careful decisions and think of my impact on others
			* I show compassion for others,and for myself
			* I keep promises and take responsibility for my actions
			* I see diversity as a strength
			* I work well with others to make improvements

**6.0 DUTIES AND RESPONSIBILITIES**

**6.1 Director’s Responsibilities**

The lead Director responsible for this policy is the Director of Human Resources, Organisational Development and Estates. Other Directors will need to ensure that this policy is widely known and implemented through out their Directorate.

**6.2 Director of Human Resources, Organisational Development and Estates**

Is responsible for ensuring equal opportunities for all employees and for:

* maintaining correct adherence to Trust policies and procures
* ensuring complaints of harassment are dealt with fairly, respectfully and confidentially
* engaging relevant stakeholders in the development of the policy
* ensuring appropriate arrangements are in place for managing any resource implications, including dissemination and training and for regular review.

**6.3 Responsibilities of the Executive Management Team (EMT)**

The Executive Management Team will approve this policy and be responsible for ensuring it has been developed according to the Trust’s protocol.

**6.4 Manager’s Responsibilities**

Service managers must ensure they:

* are aware of this Policy and know how to address issues of harassment and bullying in their specific area. They also have a duty to promote a culture where harassment and bullying are regarded as wholly unacceptable.
* establish and maintain a safe working environment, free from personal harassment and bullying.

* ensure that all staff within their sphere of management are aware of this policy and of the various procedures referred to in this document.
* are familiar with support available for staff and themselves should an incident, allegation or concern arise. They must ensure that good practice is followed.

Reports of personal harassment will be treated seriously and compassionately and be looked into without due delay.

**6.5 Employee’s Responsibilities**

All staff are responsible for their own behaviour and are expected to comply with this policy, the Trust Values and behaviours. Staff must:

* take appropriate measures to ensure inappropriate conduct does not occur. Personal harassment and bullying by Trust employees will be considered as misconduct and may be dealt with within the Trust’s Disciplinary Procedure.
* reflect on their own behaviour at work and ensure this is in line with the Trust’s Values and behaviours.
* be mindful that the perception of the claimant is of particular importance in claims of harassment/bullying. They should therefore, ensure their own behaviour is not perceived as inappropriate/ offensive.
* report any harassment or bullying behaviour that comes from any person whether Trust employee, client, visitor, carer or employee from another agency/partner organisation.
* seek to resolve any concerns at the earliest opportunity wherever possible, seeking support as required.

If an individual is in any doubt as to whether an incident that has occurred constitutes harassment or bullying, they should not hesitate to report it. Incidents may be discussed or reported to:

* An Harassment and Bullying adviser
* Their manager or a manager of their choice
* A Human Resources Representative
* Trade Union/Staff Side representative

The ultimate decision on whether to raise a complaint of harassment lies with the individual affected. If a person believes they are being harassed or bullied, they should not hesitate to report or discuss it.

If you are considering making a complaint about harassment or bullying it is good practice to keep a written record of any incident(s) noting:

* What happened
* When it occurred
* Where it occurred
* Whether there were any witnesses

Staff are also urged to keep a record of events should they witness any form of harassment. Any employee who witnesses an incident of harassment, or bullying, has a responsibility to challenge it and consider how this should be done, eg, reporting, approaching the alleged perpetrator. Colleagues or team members involved in incidents under this policy are reminded that they should remain impartial, professional and avoid behaviours that could be interpreted as victimisation.

The Trust also has a policy on Personal Safety from Aggression and Violence (which can be accessed on the intranet). This covers what staff should do in relation to aggressive behaviour from Service Users.

**6.6 Trade Union Representative’s Responsibilities:**

On receiving an Allegation of Harassment or Bullying Trade Union Representatives should:

* Explain the process in this Policy Document
* Ensure the ‘complainant’ is offered appropriate emotional support (which may be through the Staff Consultancy and Counselling Service)
* Discuss with the ‘complainant’ what they would like to do, referring to the procedure for guidance

**7.0 TYPES OF HARASSMENT**

As stated above Harassment is ‘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’. Harassment may apply to any of the protected chartacteristics. The following are examples of harassment.

**7.1 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.

**7.2 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

**7.3 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.

**7.4 Examples of Sexual Harassment**

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

* Unnecessary and unwanted physical contact, ie 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

**7.5 Homophobic Behaviour**

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

**7.6 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

**7.7 Harassment and the Equality Act 2010**

Disability is a protected characteristic under the Equality Act 2010 and therefore protected in law. Harassment includes comments, actions, jokes or suggestions which might create an uncomfortable working environment for a person with a disability.

**7.8 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

**8.0 BULLYING**

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.

**8.1 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
* Unjustifiable over-monitoring a colleague’s performance, eg unreasonable faultfinding, 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

**8.2 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, eg

* Colleague to colleague
* Manager to employee
* Employee to manager
* Employee to service user
* Service user to employee
* Service user to service user
* Other agency or organisation employee to Trust employee and vice versa
* Contractor to Trust employee and vice versa

**9.0 ADVICE FOR MANAGERS**

In adhering to the Harassment and Bullying Policy, managers must be aware of their responsibilities in order to ensure that the policy is effective. Managers may also be appointed to the role of Investigating Officer. They would not act in the dual role of Investigating Officer whilst simultaneously acting as the initial contact for the same person.

Managers must complete a DATIX report and/or a monitoring form if there is an incident of harassment or bullying. See Appendix 1.

**9.1 Managers should**:

* promote the Trust’s values and behaviours within their service ensuring they are understood by all staff
* set a good example by treating everyone with dignity and respect, ie promoting a culture where harassment is clearly unacceptable
* foster openness and respect within staff teams
* enable a positive working environment
* encourage and promote good working relationships
* ensure staff know how to raise concerns regarding harassment
* encourage informal resolution of issues at the earliest stage where appropriate
* deal with allegations of harassment within the framework set out
* work with Human Resources Managers and Harassment Advisers
* remember the impact of the behaviour determines harassment, not the intent
* understand the dynamics and effects of harassment
* ensure corrective solutions are implemented
* ensure staff in their sphere of management who are involved in harassment procedures are properly supported, treated fairly with respect and dignity, offering support to both the individual alleging harassment and the individual accused of it.
* take *immediate* corrective action if they witness harassment occurring in their service areas
* be aware that harassment is unlikely to occur when they are on duty
* ensure complaints of harassment or bullying against themselves are appropriately investigated

**9.2 Managers should not:**

* assume that no complaints means no problems
* try to dissuade people from making complaints
* assume that complainants are over-sensitive or trouble makers
* accept “I didn’t mean any harm” as an excuse for harassment
* allow retaliation or victimisation
* allow any service area within their sphere of management to become receptive to harassment and bullying behaviours

**10.0 VICTIMISATION**

Victimisation arising as a consequence of a member of staff raising a complaint, is a very serious matter and will be dealt with under the Trust’s Disciplinary Procedure.

The Trust recognises that many people who are subject to harassment do not complain about what happens to them.

The Trust is committed to challenging harassment and bullying in the workplace and an individual has a right to raise their concerns about being harassed or bullied.

Examples of victimisation include ignoring someone, ‘cold shouldering’ them, ‘sending them to Coventry’, or generally making life difficult for them. The Trust takes any allegations of victimisation seriously (as it is expected to do so, by the law). If victimisation is proven, it could lead to disciplinary action being taken against the individual concerned.

There may be circumstances where the behaviour of the alleged harasser is such that the Trust will be obliged to pursue the matter under the Disciplinary Procedure.

**11.0 CHALLENGING BULLYING & HARASSMENT**

**11.1 PRINCIPLES**

The Trust will ensure that all formal complaints will be taken seriously and investigated without undue delay; appropriate interim action may therefore be taken immediately.

Claims of bullying and harassment may be made either by a person who is being bullied or harassed or by a witness who has observed the harassment and is affected by the unwanted conduct, even when it is not directed at them.

At all stages of this procedure sensitive consideration will be given to issues relating to equality and diversity e.g. in some circumstances it may be appropriate to consider the gender of the Investigating Officer if the allegation under investigation relates to sexual harassment.

Bullying or harassment in any form could constitute gross misconduct and lead to dismissal. Similarly any unwarranted allegation of bullying or harassment, made in bad faith and with malicious intent may also be regarded as gross misconduct and again could lead to dismissal.

Retaliation against an employee complaining about bullying and harassment or victimisation of the perpetrator or witnesses may also be considered as a disciplinary matter under this policy.

In order to protect all parties, complaints of bullying and harassment will be treated as a priority and seriously. In addition, all employees involved with an investigation and any subsequent progress will be expected 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.

The Trust recognises that bullying and harassment can affect job performance and cause stress. This can affect both the person alleging inapppriate behaviours and the person accused. Where bullying and harassmentcauses deterioration in job performance this will be treated as a health problem and the person will be encouraged to seek help.

The legitimate, justifiable and appropriately given criticism of an employee’s behaviour or job performance will not be construed as bullying and harassment.

The policy applies to all employees of the Trust during working hours and may in some cases apply outside normal working hours where it is felt that an individual’s actions detrimentally affects the organisation or a colleague. See Process Overview flow chart at Appendix 1.

**11.2 WORKPLACE** **MEDIATION**

The Trust is firmly committed to using alternative methods for resolving disputes in all of its activities, where appropriate. Consequently, within this policy the Trust is offering a method of intervention in the form of workplace mediation.

Mediation is a voluntary, confidential, non-binding and without prejudice method of resolving disputes. Information is shared with a neutral individual who helps the parties in dispute to negotiate a settlement (the mediator). The mediator has no power to impose a settlement, does not decide or judge the case, but assists the parties to reach their own agreement, through establishing genuine agendas and areas of common ground. Mediation can often be more successful than other formal proceedings and more importantly can result in restoring and maintaining relationships within the workplace.

Mediation can be proposed at any stage during a conflict or dispute. Conflict can be defined as a state of opposition, a clash of opposing interests or a mental or emotional struggle. Whilst the term dispute can be perceived as a situation of competition in which the parties are aware of the incompatibility of an interpersonal conflict that is communicated or manifested.

Within this policy there are four windows of opportunity for mediation to occur:

* When an employee recognises there is a conflict between another or group of employees.
* After an employee has taken advice and before the conflict or dispute escalates.
* At any stage during the formal procedure.

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| * As an outcome of a formal hearing.
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|  |
| The Trust will normally only recommend trained Mediators to facilitate this process.**11.3 BULLYING AND HARASSMENT ADVISERS** |

The Trust has a number of Bullying and Harassment Advisers who have been specially trained to help and support staff through this process. Their names and contact numbers are widely available throughout the Trust and on the intranet. Contact with Advisers is encouraged and confidential; it also carries no obligation to take a complaint further. If an individual is worried about an harassment or bullying issue, then talking to an adviser provides a good opportunity to discuss the problem enabling the individual to reflect on the issue and consider possible solutions.

**11.4 INCIDENT REPORTING**

Incidents of harassment whether by a member of staff or a patient/visitor should be reported using the Trust’s Incident Reporting System (DATIX).

**12.0 PROCEDURE FOR DEALING WITH CASES OF BULLYING OR HARASSMENT**

12.1 Action which should be taken prior to invoking the Formal Procedure

An employee who feels that they are being harassed or bullied can choose to deal with this in a number of informal ways before making their complaint formal. It is strongly recommended that an employee should keep a record of any incident(s) including dates, times, witnesses, written correspondence, circumstances and their reaction to the bullying/harassment as this will help to establish the facts whatever action they choose to take.

Concerns around bullying and harassment should be addressed at the earliest opportunity before they escalate further. Often honest and open discussion between colleagues at an early stage can resolve issues quickly and prevent further issues developing.

The complaint may be resolved informally by taking the following action:

1. It may be sufficient for the complainant to explain clearly to the person who is carrying out the unwanted conduct that their behaviour is offensive, unwelcome and/or that it interferes with their work. The complainant should make it clear that if the bullying/harassment continues they will make a formal complaint.
2. It may also be appropriate to walk away from a person where their behaviour is aggressive, making it clear that this is unacceptable.
3. The complainant may approach a Bullying and Harrassment Adviser within the Trust for advice and support. Whilst the Adviser will not actively intervene they may suggest others who could offer a managed solution.
4. The complainant may feel inhibited and or unable to approach the alleged bully/harasser directly, especially where the complaint may be against their Manager. In these circumstances they may discuss the problem with a Human Resources representative, another Trust manager, colleague, Staff Side representative, or Bullying and Harrasment Advisor and ask for their advice and help in approaching the alleged harasser.
5. Alternatively the complainant could write to the alleged bully/harasser stating that they feel bullied or harassed and indicating where and when this occurred and how they wish to be treated in the future.
6. Where the manager of the alleged harasser is made aware of allegations of bullying and harassment they, with the agreement of the complainant, the alleged harasser and trade union representatives, may attempt to resolve the issues informally. This may involve a number of options including a structured process which offers workplace mediation, trade union or HR Representatives. The complainant’s manager may also be involved at this stage.
7. Individuals should keep a brief note of what was discussed and when the discussions took place. These may be used as evidence at a later date if the complaint of bullying or harassment is made formal.
8. It should be noted that if the manager to whom the complaint is notified is not also the manager of the alleged bully/harasser, the manager will, with the agreement of the complainant, immediately notify the alleged bully/harasser’s manager or vice versa.
9. It should be noted that confidentiality will be maintained wherever possible. However, circumstances may arise where confidentiality may need to be breached owing to the potential seriousness of the situation. In these circumstances, the individual will be informed before full disclosure is made.

**12.2 The Formal Procedure**

1. If the complaint is not solved using informal methods or, the complaint is so serious that it could warrant formal action under the Trust’s Disciplinary Policy and Procedure then the formal procedure should be invoked by the complainant’s line manager. In all cases the complainant must be prepared to provide full information in writing or verballyin order that a thorough investigation can be carried out.
2. Where the complaint is made verbally it will be taken down in a statement which they will be required to sign. The information should include, where possible:
* Name and job title of alleged bully/harasser
* The nature of the bullying/harassment
* Dates and times when the bullying/harassment occurred
* Names of any witnesses to incidents of bullying/harassment and any action already taken by the complainant to address their concerns
1. Where the formal complaint is received by a Human Resources representative they will ensure that it is forwarded to the appropriate level of senior management, bearing in mind that the alleged bully/harasser may be the complainant’s own manager or a manager in a different service.
2. The alleged bully/harasser’s Senior Manager and, where different, the complainant’s Senior Manager, in consultation with the Human Resources representative will consider the action to be taken to protect both parties and others affected within the working environment such as suspension or transfer to alternative duties of either party to protect all involved.
3. A decision will also be made on whether or not an investigation should be undertaken and if so who will undertake the investigation.
4. The alleged **bully/harasser** must be advised of the nature of the complaint against them and this will be confirmed in writing. Confidentiality will be maintained wherever possible.

**12.3 The Investigation**

1. The investigation of the complaint of **bullying/harassment** will normally be conducted by an independent management representative from the Trust.
2. Whilst at this stage this is not a disciplinary matter, the investigation will be undertaken in accordance with principles set out in the Trust’s Disciplinary Policy and Procedure.
3. Dependent on the nature of the complaint there may be a requirement for the Investigating Officer to be external to the Trust. The Investigating Officer will be supported at all stages by a Human Resourcesrepresentative.
4. The Investigating Officer will, in the first instance, meet with the complainant and take a detailed written statement of the incident(s) and identify any witnesses who may need to be interviewed as part of the investigation.
5. Contact will also be made, with the alleged bully/harasser to inform them that the investigation has commenced and that they will also be given the opportunity to give a detailed written statement and identify any witnesses.
6. The investigation should be completed without undue delay. However**,** where the investigation is expected to continue beyond an 8 week period the employee should be informed of the decision in writing by the Senior Manager who commissioned the investigation. Any extension should be for a maximum period of four weeks at any one time and the employee should be informed of the reasons for the extension and any progress made.
7. The Investigating Officer will produce a report at the conclusion of their investigation detailing all of the relevant evidence regarding the allegations.

**12.4 Consideration of the Investigation Report**

 **Feedback Meeting**

1. Following the investigation, a Feedback Meeting will be convened by the alleged bully/harasser’s manager. The Investigating Officer will present their report to a panel consisting of:
	1. The alleged bully/harasser’s manager (to act as Chair)
	2. The complainant’s manager (where different from the bully/harasser’s manager). If the complainant’s manager has been accused of harassment/bullying they would not be present at this meeting.
	3. A Human Resources representative not previously involved
2. Prior to the Feedback Meeting the panel will have access to the Investigating Officer’s report and witness statements. At this stage, witness statements will not be made available to the alleged bully/harasser.

1. During the Feedback Meeting the panel may question the Investigating Officer about the facts they have collected, the way they have undertaken the investigation and the evidence as to whether bullying/harassment has occurred.
2. Having considered all the evidence the panel will decide the course of action to be followed.
3. Workplace mediation can be an option to consider as an outcome of the Feedback Meeting. In such cases, the manager, with the advice of a Human Resources representative, will refer to a trained mediator. There may also be other outcomes agreed such as a learning and development plan for the alleged bully/harasser.
4. If the decision at the Feedback Meeting is that there is sufficient evidence to warrant a Disciplinary Hearing being arranged this will be convened as soon as practically possible by the alleged bully/harasser’s manager in accordance with the Trust’s Disciplinary Policy and Procedure. The Disciplinary Hearing will be chaired by a Senior Manager not previously involved. The feedback report will be used at the disciplinary hearing and it will not normally be necessary to conduct any further investigation.

**12.5 Feedback to the Complainant**

1. The complainant will be invited to attend a feedback meeting with the chair of the Complaint Hearing Panel and an HR representative.
2. It will be explained to the complainant if there is sufficient evidence to refer the matter to a Disciplinary Hearing. It should be made clear that the outcome of any subsequent Disciplinary Hearing cannot be disclosed to the complainant. However, they will be informed that appropriate action will be taken.
3. The decision of the Complaint Hearing Panel will be confirmed in writing to the complainant by the Chairpersonwithin seven days of the feedback meeting.
4. If the complainant considers that the process of investigation under this policy has been unfairly or poorly carried out they may place their concerns in writing to the next level management of within seven working days of receiving feedback. The letter must detail the reasons why the complainant believes the process has been unfairly or poorly carried out.
5. The manager in receipt of the concerns will arrange an Appeal Panel which they will chair accompanied by a Human Resources representative not previously involved.
6. The Appeal panel will review the investigation including the witnesses interviewed, content of statement and documentary evidence against the concerns raised by the complainant. Should the complainant’s concerns be founded, the panel would inform the Investigating Officer of any gaps that have arisen. The Investigating Officer will then conclude the investigation and a further Complaint Hearing will take place with the Appeal panel. There will be no further right to appeal this decision.

**12.6 Feedback to the Alleged Bully/Harasser**

1. Where the decision of the Complaint Hearing Panel is that a Disciplinary hearing should be arranged the alleged bully/harasser will be notified in writing.
2. Where the decision of the Complaint Hearing Panel is that there is not sufficient evidence to warrant a Disciplinary hearing they will be invited to attend a feedback meeting with the Chair of the Complaint Hearing Panel and a HR Representative to be informed of the outcome. They may be accompanied by a Trade Union Representative or fellow worker not acting in a legal capacity. If the Complaint Hearing Panel have agreed other outcomes these will be discussed at the feedback meeting.

**12.7 Possible Outcomes of a Disciplinary Hearing**

1. If proven, the disciplinary action taken may include dismissal or a lesser formal warning. Where lesser action is appropriate, for example, a written warning, this may be coupled with action to ensure that the complainant is able to continue working without embarrassment or anxiety. This may include:
* The transfer of the bully/harasser to a different work area where this is not possible.
* Arrangements for the amendment of working practices to minimise contact between the two employees
* Compulsory attendance on relevant training and development e.g. equality and diversity, assertiveness training, etc
* A period of increased supervision and monitoring
* Referral to Occupational Health Services
* Workplace mediation (provided both parties are in agreement)
1. If a transfer is a consequence of disciplinary action and is detrimental to terms and conditions or involves downgrading for the **bully/harasser**, then in such circumstances SWYFT’s protection arrangements will not apply.
2. The right to appeal any Disciplinary Hearing outcome will be in line with the Disciplinary Policy and Procedure.

**12.8 Feedback to the Complainant Following a Disciplinary Hearing**

1. Transfer of the complainant should only be considered after all other options have been explored and would normally be agreed. If transfer of the complainant includes downgrading, then the Trust’s protection arrangements will apply.
2. The complainant will be notified that appropriate action has been taken in accordance with the Trust’s Disciplinary Policy and Procedure. This will not include the level of the disciplinary sanction. Steps will be taken to maintain confidentiality as far as possible.
3. Where the bully/harasser will be returning to work and will have direct impact on the complainant, the manager must meet with the complainant to discuss a suitable way forward.

**12.9 Follow Up**

1. It is important that records are kept of both formal and informal harassment complaints. Where bullying or harassment did occur there must be follow up by the manager to ensure that this behaviour has stopped and that there has been no subsequent victimisation. Monitoring should be carried out on a regular basis until it is clear that the situation has been adequately resolved.

|  |
| --- |
|  |

**13.0 HARASSMENT OF STAFF BY CLIENTS, SERVICE USERS AND MEMBERS OF THE PUBLIC**

The Trust has a duty to provide a safe and secure environment for service users, staff and visitors.

Many incidents of harassment can be dealt with effectively in an informal way. Often clients and their carers may be experiencing considerable anxiety and uncertainty which may result in harassing or bullying behaviours.

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

The incident and the way it was managed should then be reported to the line manager and a DATIX form completed. These forms will enable evidence of harassment by service users and visitors to be recorded and considered by the Health and Safety Trust Action Group in order to improve the way the Trust deals with harassment issues.

If the behaviour persists, it must be reported again to the manager, as there may be a legal requirement to ensure action is taken to prevent it reoccurring. If the manager is unclear about what action they should take they need to seek advice from a Human Resources representative.

Staff should seek support from their supervisor or manager if they are being subject to harassment or bullying from service users or visitors, however they should be aware that they can approach the Staff Consultancy and Counselling Service, their Trade Union representative or a Harassment adviser if this is thought to be appropriate.

If a member of staff is subjected to harassment, bullying or abuse by a service user or their carer/relative/visitor, it may be appropriate for the manager to set up a multi-disciplinary review to determine the best way of handling the situation.

**13.1 The Multi-disciplinary Review**

The multi-disciplinary review team, having discussed the alleged harassment factors, balanced against the care/treatment, should decide future action, management and service delivery.

Actions may include: moving the service user, or the member of staff (with their agreement) to another location. Suspending the service if this is feasible and legal.

At all times the complainant must be kept fully informed and involved in decisions that impact on their working arrangements. Any concerns raised must be dealt with promptly with appropriate consideration.

# 14.0 SUPPORT AVAILABLE FOR STAFF

Raising concerns at work can be a difficult and demanding process and staff should be supported to maintain their well-being and resilience. In addition, any colleague accused of bullying and harassment will also require support, advice and guidance. Service managers have a key role in providing support for staff and should work in partnership with staff and staff side referring to the Trust Occupational health and well-being service for advice where necessary.

**14.1 Trade Union (Staff Side) Representative**

Trade union representatives will understand the issues involved in bullying harassment and will have a good understanding of the Trust’s policies and procedures in tackling harassment and bullying. They can provide support to members concerned about harassment and bullying.

**14.2 Manager**

All managers have a responsibility to ensure a safe environment which maintains the dignity and of everyone, this includes maintaining a workplace free from harassment and bullying.

Managers will ensure proper support is available and implement any recommendations arising from such cases.

Managers have an obligation to protect the complainant from retaliation, victimisation and further harassment.They should also provide support to any staff member accused of bullying and harassment.

**14.3 Human Resources Representative**

All Human Resources representatives have an understanding of harassment and bullying. They can provide support and guidance. In some cases they will be involved as investigating officers. They will not act in a dual role of investigating officer whilst simultaneously acting as an initial contact.

**14.4 Bullying and Harassment Advisers**

Advisers are staff members from all areas and levels in the Trust, who have volunteered to do this work. All have received training and were reselected after training.

The role of the Adviser is to:

* provide impartial support and advice to employees on request, who think they have experienced personal harassment or bullying
* provide impartial support to those who have been accused of harassment and bullying
* listen to the complaint and explain the available options
* help a complainant decide what steps and/or routes (informal/formal) to take if a concern/complaint is to be pursued
* accompany the complainant or accused to meetings

They will complete a monitoring form if not completed by the individual’s manager, see Appendix 2

The Adviser cannot:

* Provide long term counselling
* Provide specialist advice, eg legal advice
* Direct staff on which action to take
* Represent staff
* Intervene on their behalf

**14.5 Staff Consultancy and Counselling Service**

The Trust provides a free and confidential counselling service for all employees of the Trust. Qualified and professionally trained counsellors are available to talk over problems including harassment and bullying issues. Information is available on the

Intranet, or the service can be contacted by phone: (01924) 316049.

**14.6 Occupational Health**

Staff may access Occupational Health for wellbeing issues including support around harassment and bullying.

**14.7 Mediator**

Independent Mediation will only be arranged where it is appropriate to the issues that have arisen. Mediators are skilled in resolving conflicts and often enable difficulties between individuals to be resolved. The purpose of a Mediator is to bring both sides together and find ways of resolving the issues of concern. Several meetings may be necessary and the approach taken will vary according to the circumstances of the case. The Mediator will also agree the outcome with the parties and how this will be evaluated in the future.

# 15.0 MONITORING

Monitoring is necessary to increase the effectiveness of this policy in challenging and eliminating harassment in the Trust. The Director of Human Resources and Workforce Development will ensure that the Monitoring forms returned, are regularly reviewed, (this being not less than annually) and appropriate action taken as a result of the information received. This should also enable the Policy to be reviewed in the light of experience and ensure that any equality issues that arise are addressed. See Appendix 2 for the Monitoring Form. Information gathered from the annual Staff Opinion survey will also be used to monitor the effectiveness of the Policy and enable further development.

**16.0 TRAINING**

Harassment & Bullying awareness training is addressed as part of the Trust’s Equality and Diversity training course and Equality and Diversity e-learning. New starters are also made aware of the Trust’s Harassment and Bullying Policy during their local induction.

Where staff with people management responsibilities need guidance, advice and/or coaching on the policy, they should initially contact their local Human Resources team who will discuss the most appropriate way to address their needs.

**17.0 FURTHER ADVICE AND INFORMATION**

If you would like any further advice or information on any of the issues addressed in this document, please contact any of the following:

* A Human Resources representative
* A Bullying and Harassment Adviser (see list of advisers on the Trust’s Intranet)
* The Staff Consultancy and Counselling Service (Tel 01924 316049)
* Any Trust Manager or Director
* A Trade Union/Staff Side Representative
* The Occupational Health Department (Tel 01924 316031)

# 18.0 EQUALITY IMPACT ASSESSMENT

The Trust aims to ensure that its policies promote equality. This Policy has been subject to an Equality Impact Assessment. The expectation is that overall the Policy will be beneficial in establishing and ensuring equality within the Trust, see Appendix 3. This will be by enabling inappropriate behaviour to be challenged and changed.

**19.0 VERSION CONTROL**

This Policy is the revised version of the policy issued by South West Yorkshire Partnership NHS Foundation Trust, see Appendix 4

Potential Bullying / Harrassment raised

**APPENDIX 1**

**Challenging Bullying & Harassment – Process Overview**

**APPENDIX 2**

Report produced with recommendations

Manager monitors for further issues

YES

NO

YES

Written statement from complainant

NO

Resolution Achieved

Yes / No ?

With support of Manager, HR, Staff Side, Harrasment Adviser or Mediation

Investigation initiated with independent person

Informal resolution considered

Approriate action to address working environment

OUTCOME

Following guidelines of Trust Disciplinary Procedures

Disciplinary Hearing Chaired by Snr Manager not previously involved

Feedback in writing to complainant and harrasser

Senior Managers of complainant and harasser

Investigating Officer

Following guidelines of Trust Disciplinary Procedures

Referred to Disciplinary Hearing by Complainants Manager

Feedback to Complainant and

Harrasser by Chair

Manager monitors for further issues

Outcome indicates sufficient evidence to hold a hearing Y/N

Consideration given to transfers etc. to address working environment

Feedback Meeting

Faciltated by Staff side or HR if necessary

**APPENDIX 2**

**STRICTLY CONFIDENTIAL**

**Please ensure Anonymity for the Member of Staff when completing this form**

**This form gives important feedback to help combat harassment in the Trust**

## INCIDENT(S) OF HARASSMENT OR BULLYING MONITORING FORM – to be completed by the person dealing with initial contact

|  |
| --- |
| Tick whatever applies, and give details where relevant without compromising anonymity |
| **How you were contacted:**Phone □Meeting(s) □Other (Please specify) □ | **Nature of concern:**Harassment □Bullying □Other (specify) □ |
| **Date of first contact**: | **Approximately how much time did you spend on this case:** |
| **Type of harassment/bullying**  **Please also give some basic details of concerns:** Verbal □ Physical □ Victimisation □Malicious behaviour □Written □Exclusion □Other (specify) □ |
| **Harassment by:**Colleague within dept/ward/team □Other member of staff □Junior colleague □Supervisor □Line Manager □Senior Manager □Service User or Client □Visitor or member of the public □Contractor □Other (specify): □ | **Perceived reason (if relevant):**Sex □Race □Disability □Sexual orientation □Age □Religion □Nationality □Position within organisation □Other □(Specify): |
| **Was it reported to their manager?:**Yes □ No □ |  **If ‘no’ (please give reason if known):**  |
| **Final outcome:**Not known □Informal resolution □Formal complaint □Other □No Action □  | **Profile of client (if known and not compromise confidentiality)**Sex: Ethnic Origin:Age:Disabled: Yes □ No □ |
| **Name of Adviser/Manager HR/Staff Rep etc:** | **Date:** |
| **This form gives important feedback to help tackling harassment and bullying. Please make any comments which might help avoid similar issues/problems arising in the future etc** |

**The form should now be sent to Julie Le Moigne, HR Administrator Block 9, Fieldhead. Marked ‘Personal and in Confidence’**

**APPENDIX 3**

**Equality Impact Assessment Tool**

|  |  |  |
| --- | --- | --- |
|  | **Equality Impact Assessment Questions:** | **Evidence based Answers & Actions:** |
| **1** | **Name of the policy that you are Equality Impact Assessing** | Harassment and Bullying Policy |
| **2** | **Describe the overall aim of your policy and context?****Who will benefit from this policy?** | To create a culture and workplace environment in which harassment and bullying is not tolerated, and to have appropriate processes for dealing with harassment and bullying All staff |
| **3****4** | **Who is the overall lead for this assessment?****Who else was involved in conducting this assessment?** | Director of Human Resources, Organisational Development and EstatesHR Business Manager, Staff Organisations, Managers and the Equality and Diversity compliance Manager  |
| **5** | **Have you involved and consulted service users, carers, and staff in developing this policy?****What did you find out and how have you used this information?** | The Executive Management Team was consulted during the original development of the Policy and it was developed and reviewed in conjunction with staff side organisations and harassment advisers. This is an ongoing process. The BAME staff network were consulted.The Trust policy should reflect the Trust’s behaviours and should encourage a work environment based on dignity and respect. |
| **6****7** | **What equality data have you used to inform this equality impact assessment?** **What does this data say?** | Feedback and data from incidents, harassment advisers and information from staff opinion surveys is used in reviewing and developing how the Trust tackles harassment and bullying. NHS Staff Survey and Well-beign at Work data has been used to inform the development of this policy.Usually the Trust is in line with other Trusts regarding the percentage of staff reporting harassment and bullying. However this level is still regarded as too high and this policy and other measures have been devised to address this.  |
| **8** | **Taking into account the information gathered.****Does this policy affect one group less or more favourably than another on the basis of:** | Though the policy does not treat groups differently, it is intended to enable harassment to be challenged and dealt with. As some groups of staff (with protected characteristics) may be more vulnerable to harassment, this policy will provide particular support to those staff.  |
|  |  | **YES** | **NO** |  |
| **9a** | **Race** |   | N |  |
| **9b** | **Disability** |  | N |  |
| **9c** | **Gender** |  | N |  |
| **9d** | **Age** |  | N |  |
| **9e** | **Sexual Orientation** |  | N |  |
| **9f** | **Religion or Belief**  |  | N |  |
| **9g** | **Transgender** |  | N |  |
| **9h** | **Marriage and Civil Partnership** |  | N |  |
| **9i** | **Pregnancy and Maternity** |  | N |  |
| **9j** | **Carers** |  | N |  |
| **10** | **What measures are you implementing or already have in place to ensure that this policy:*** **promotes equality of opportunity,**
* **promotes good relations between different equality groups,**

**eliminates harassment and discrimination** | The purpose of the policy is to stop harassment and bullying and create and promote equality of opportunity and good relations between different equality groups.The Staff opinion Survey enables the views of staff to be sought every year and where discrimination is identified this would be looked into. |
| **11** | **Have you developed an Action Plan arising from this assessment?** **If yes, then please attach any plans at the back of this template** | Harassment and Bullying are under constant review in the Trust. Ways of dealing with and preventing harassment and bullying are currently being considered and an action plan arising out of the work on the policy will be devised to implement the policy.Where concerns are identified these are addressed by appropriate actions.  |
| **12** | **Who will approve this assessment and when will you publish this assessment.** | Executive Management Team  |

**APPENDIX 4**

**Version Control Sheet**

*This sheet should provide a history of previous versions of the policy and changes made*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Version** | **Date** | **Author** | **Status** | **Comment / changes** |
| 1.0 | July 2010 | James Corson | Archived | Not the first version of the policy, but the first fully revised version of the Policy since new Foundation Trust created 1/6/09. Changes include reformatting the document, minor updating and the addition of meeting with the complainant at the start of the formal stage to consider alternative approaches in resolving the issue. Also EIA Appx 3 etc |
| 1.1 | Nov 2010 | James CorsonHR Business Mgr | Archived | Minor addition of a paragraph on the provision of harassment training |
| 1.2 | October 2012 | James CorsonHR Business Mgr | Previous  | Updated following Barnsley, Calderdale and Wakefield PCT transaction. Included further information re Equality Act 2010 including amended definitions. There is an even greater focus on trying to resolve issues informally, even at the formal stage.  |
| 1.3 | Jan 2016 | Janet Hirst, Assistant Director of HR – Operations | Previous | Reviewed by Executive Management Team February 2016. Review date extended to October 2017. |
| 1.5 | August 2018 | Ashley Hambling, HR Business Manager | Current  | Review date extended to October 2018. |