

Trust Policy
 Human Resources Department
 Bullying & Harassment Policy

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Policy and Procedure for Challenging Bullying and Harassment in the Workplace

Policy ID: SE 3.7 (Safe Environment)

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Abbreviations and Acronyms

◆	Board	Board of Directors
◆	CD	Clinical Director
◆	CBU	Clinical Business Unit
◆	GM	General Manager
◆	ID	Identification
◆	AUP	Email Acceptable uses Policy
◆	HR	Human Resources
◆	Datix	Incident Risk Report

POLICY FOR CHALLENGING HARASSMENT IN THE WORKPLACE

STATEMENT OF INTENT

It is the policy of the Barnsley Hospital NHS Foundation Trust to make every effort to provide a working environment free from harassment and intimidation, and any other form of unacceptable behaviour (e.g. bullying) that is personally offensive. In this respect the Trust will not condone any harassment particularly that which involves abusive or offensive behaviour with regard to age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership, pregnancy and maternity (Equality Act 2010) and trade union activity.

1 Introduction

- 1.1** The Trust, as part of its commitment to valuing diversity and equal opportunities recognises that all employees have the right to be treated with consideration, dignity and respect at work. Where harassment occurs it creates an intimidating environment, which adversely affects job performance and leads to anxiety, stress and even sickness absence. The Trust is committed to the elimination of harassment in all its forms. The Trust has a Equality and Human Rights Policy in place.
- 1.2** The Policy for Challenging Harassment in the Workplace (PfCHW) is intended to eliminate all forms of offensive behaviour, but it should be particularly noted that sexual and racial harassment are forms of sex and race discrimination and are, therefore, unlawful behaviour contrary to the Sex Discrimination Act (1975/1986) and the Race Relations Act (1976).
- 1.3** All employees have a personal and legal responsibility not to behave in a manner that could be offensive to others. Managers and supervisors have a responsibility for investigating any complaints of harassment against a member of their staff, and for communicating this policy to employees.
- 1.4** Whilst breach of this policy could render the person(s) responsible liable for disciplinary action the aim of the policy is to draw attention to, and thereby prevent, all forms of offensive behaviour.

2 Policy Statement

- 2.1** It is the policy of the Trust to make every effort to provide a working environment free from harassment and intimidation, and any other form of unacceptable behaviour (e.g. bullying) that is personally offensive. In this respect the Trust will not condone any harassment particularly that which involves abusive or offensive behaviour with regard to age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership, pregnancy and maternity (Equality Act 2010) and trade union activity.

3 Policy Aims

- 3.1** To ensure that all employees are aware of the types of behaviour, which may constitute harassment and their responsibilities for preventing such behaviour.
- 3.2** To ensure that all employees understand that harassment is intolerable and unacceptable and that disciplinary action may be taken against offenders.
- 3.3** To ensure that the sensitive nature of complaints of harassment is recognised and the Trust accepts that employees have a right to advice and support from the organisation when deciding whether to make a complaint under the policy.
- 3.4** To ensure that the decision to progress a complaint of harassment under the policy rests with the victim of harassment except where the situation is so serious that by not taking action the Trust would be prejudicing its reputation and welfare responsibilities.
- 3.5** To ensure that all allegations of harassment are responded to positively and with the complaint's confidentiality protected as far as possible.
- 3.6** To promote a climate in which employees feel able to bring forward complaints of harassment without fear of victimisation and/or repercussion.

4 Management Arrangements

4.1 The Trust

- 4.1.2** The Trust recognises that it is liable (together with its managers and employees) for any act of unlawful discrimination by its staff committed during the course of their employment unless it can demonstrate that it did all that was practicable to prevent the act. The Trust has primary legal and moral responsibility for ensuring that discrimination does not occur.

In recognition of the sensitivity of the subject, a procedure has been established within which to consider complaints of harassment.

4.2 Managers/Supervisors

- 4.2.1** It is the responsibility of managers/supervisors within the Trust to address workplace harassment and bullying wherever it occurs and regardless of whether an informal or formal complaint has been made. Managers and supervisors have a responsibility to ensure appropriate action is taken.

4.2.2 The Trust, through its managers and supervisors, has a duty to ensure the physical and psychological health, safety and welfare of employees at work under health and safety legislation. This includes the elimination of harassment and bullying from the work environment.

4.2.3 Managers and supervisors will:

- a) Ensure through their own actions, remarks or behaviour that they do not conduct themselves in a manner which may be perceived as harassment by other employees.
- b) Ensure that the Trust's policy is implemented within their area of responsibility, by ensuring that all of their staff are aware of the policy. Managers and supervisors have a duty to establish that all of their staff are aware of this policy. Managers and supervisors have a duty to establish and maintain a working environment free from personal harassment.
- c) Treat each allegation of harassment seriously and sympathetically.
- d) Ensure that effective steps are taken promptly to remedy the situation and ensure that there is no victimisation of the complainant by work colleagues.
- e) Contact the HR Directorate for advice and assistance in handling all harassment allegations and/or departure from this policy.
- f) Take appropriate positive action to encourage equality of opportunity in the workplace.

4.3 Employees

4.3.1 All employees will: -

- a) Conduct themselves in such a manner so as not to harass anyone whilst at work.
- b) Be personally liable for any behaviour that causes harassment to another in the workplace.
- c) Operate within and actively promote actions to create a harassment free working environment and must be active in informing management of such issues.

4.4 Trade Union Representatives

- 4.4.1** Trade Union Representatives are able to assist their members who are being harassed or bullied, including supporting them in taking complaints forward. The Trust encourages all trade union members who are concerned about bullying at work to speak to their trade union representative. Trade unions have an important role both to represent the complainant and also to represent the person accused.
- 4.4.2** A full list of trade union representatives is available from the Human Resources Department.

4.5 Occupational Health & Wellbeing

- 4.5.1** Harassment and bullying can affect a person's mental and physical wellbeing. Counselling can help workers cope better with the stress of being bullied.
- 4.5.2** Members of staff who feel they are being subjected to harassment or who have had allegations of harassment made against them, may wish to seek the support of one of the Staff Counsellors. The individual can be referred by their manager, the Occupational Health Practitioner or a HR Business Partner, or via the Non-Clinical Risk Manager.
- 4.5.3** All Counselling interviews are strictly confidential.

4.6 Diversity Champions

- 4.6.1** Any member of staff who is experiencing or being accused of harassment can contact a Diversity Champions within the Trust. These Diversity Champions are a point of contact for employees and can provide impartial and confidential advice to individuals, primarily by telephone, during work time. The Diversity Champions are a team of trained volunteers. They do not act as advocates or representatives on individual's behalf. However, they can provide information on relevant agencies for advice and support and be a confidant to either party.
- 4.6.2** The Diversity Champion should not be involved in any form with the investigation themselves. They will have received appropriate training in respect of confidentiality, advice, time off work, accessibility and any professional issues that may arise.
- 4.6.3** Managers should actively encourage and enable staff to access the Diversity Champion service in order that staff can explore issues confidentially and examine whether something ambiguous constitutes harassment or not. (See Appendix 1 for further examination of Diversity Champions)

5 **Monitoring**

The policy will be monitored through the use of the ESR employee relations module in terms of progress of cases and through the Equality and Diversity annual report in respect of the profile of cases.

Formal bullying allegations will be recorded on the Datix incident reporting system. Informal bullying resolutions will be noted in HR.

6 **Review**

This policy will be formally reviewed every 24 months in conjunction with staff representatives.

PROCEDURE FOR DEALING WITH ALLEGATIONS OF HARASSMENT AND BULLYING AT WORK

1 Introduction

Barnsley Hospital NHS Foundation Trust, together with recognised partner trade unions, affirms that harassment at work in any form is a wholly unacceptable and potentially illegal practice, and seeks at all times to ensure that all workers enjoy a working environment in which the dignity of individuals is respected.

This procedure seeks to:

- 1.1 Define harassment and provide a clear statement of what is considered to be inappropriate behaviour at work;
- 1.2 Confirm that the Trust's policy applies equally to all employees of the Trust;
- 1.3 Explain how complaints of harassment will be dealt with;
- 1.4 Establish harassment as a disciplinary offence;
- 1.5 Make plain that allegations of harassment will be taken seriously and treated confidentially by managers at all levels, and that there will be no victimisation of any worker making, or assisting others to make, a complaint of harassment;
- 1.6 Emphasise that each member of staff carries a responsibility for his or her own behaviour under the policy.
- 1.7 The Trust considers that complaints made with malicious, vexatious or frivolous intent will be treated with the utmost seriousness, and potentially render the complainant liable to disciplinary proceedings. Members of staff should understand that normal and lawful direction by managers is not harassment, and trade unions have a duty to advise their members accordingly.

For incidents involving patients, visitors and other members of the public who are violent or abusive towards Trust Staff, please refer to the Policy and Procedure on Dealing with the Withdrawal of Treatment, or Other Action, Relating to Violent or Abusive Behaviour from Patients and Visitors.

2. What is "Harassment?"

- 2.1 The two most frequently referred to grounds of harassment, are '**Racial Harassment**' and '**Sexual Harassment**'. Other grounds of harassment exist, such as **bullying**, and whilst other forms are harder to define these will be treated equally under the Trust's procedure.

2.2 **Racial Harassment**

This can be manifest in many forms including:

- D racial abuse
- D racially explicit derogatory statements
- D offensive jokes of a racial nature
- D an offensive manner of communication towards people of different racial groups
- D use of racial stereotyping

2.3 **Sexual Harassment**

The European Community Code of Practice on Sexual Harassment has defined it as “unwanted conduct of a sexual nature or other conduct affecting the dignity of women or men at work.”

Sexual Harassment includes:-

- unwanted sexual advances of a verbal or physical nature
- sexually explicit derogatory statements
- sexually discriminatory remarks which give offence to the worker involved.

Whilst it can take other forms, sexual harassment can involve one or more of the following:-

- wolf-whistling
- leering
- unnecessary touching/unwanted physical contact
- lewd, suggestive or over familiar behaviour
- sexually suggestive displays
- suggestive, insensitive jokes or pranks
- compromising invitations
- displays of pornographic/sexually explicit pictures or objects
- offensive written material
- verbal assault (bullying)
- physical assault
- speculation about a person's private life and sexual activity
- threats of dismissal, lack of promotion etc for refusal of sexual favours
- It should be noted that the trust recognises harassment can occur on the grounds of sex without being of a sexual nature in relation to employment decisions made about individuals e.g. access to training, leave policies etc.

2.4 **Bullying**

Bullying is defined as any unsolicited or unwelcome act that humiliates or undermines the individual involved. No form of bullying will be condoned at work if it had a bearing on the working relationship.

Examples of bullying behaviour include:

- derogatory remarks
- insensitive jokes or pranks
- insulting or aggressive behaviour
- ignoring or excluding an individual
- setting unrealistic deadlines
- public criticism
- substituting responsible tasks with menial or trivial ones
- withholding necessary information
- constantly undervaluing effort

This list is not exhaustive. The actions listed above must be viewed in terms of the distress they cause the individual. It is the perceptions of the recipient that determine whether any action or statement can be viewed as bullying.

2.5 **Other grounds of Harassment**

Anyone who is perceived as different, or who is in a minority, or who lacks organisational power, runs the risk of being harassed. This may include for example harassment or victimisation on the grounds of:-

- Political convictions
- Religion
- Sexual orientation
- Place of origin or birth
- Industrial Relations
- Trade Union membership/non membership
- Age (or youth)
- Disability
- Status as ex-offenders
- Real or suspected infection with HIV/AIDS

2.6 **E-Mail**

The increasing use of e-mail and the intranet is lending itself to a new form of harassment. The immediacy of the process tends to generate carelessness leading to brief and inflammatory messages being sent via electronic means. Electronic messages should not be used for vindictive harassing, discriminatory or abusive comment concerning anyone, whether they are an employee or third party. All email messages should be treated as if they were

hard copy and drafted and checked in the same way to avoid accusations of harassment.

The use of e-mail and the internet should always be in accordance with the Trust's Internet and E-mail Acceptable Use Policy (AUP).

2.7 Scope of Harassment

2.7.1 Behaviour is likely to be considered as harassment and is unacceptable if:

- it is unwarranted, unreasonable or offensive to the recipient; or
- the recipient's rejection of, or submission to, such conduct is used
- as a basis for decision making in respect of that individual; or
- it creates an intimidating or humiliating work environment.

2.7.2 In relation to all forms of harassment it is vital to recognise that it is for each individual to determine what behaviour is acceptable to him or her and what conduct he or she regards as offensive. Sexual attention becomes harassment if it is persisted in although one single incident may still constitute sexual harassment if sufficiently serious. It matters not that the perpetrator was only joking, flirting or intending to be friendly.

2.7.3 Extreme forms of harassment, such as sexual or racial assault may constitute offences under criminal law.

2.7.4 Apart from the fact that harassment is morally and socially unacceptable, failure to deal with allegations or incidents of harassment at work may expose the Trust to a number of civil law consequences under Equal Opportunities law.

2.7.5 Complaints of harassment under the informal and formal procedures described in paragraph three must be made immediately or as soon as practicable

3. Complaints of Harassment

Harassment can have a devastating effect on the health, confidence, morale and performance of those who are its complainants and those that are accused. This is a sensitive subject, which often can be trivialised and those affected isolated.

In recognition of the sensitivity, processes have been put in place to assist staff.

4. Resolving a Complaint Informally [INFORMAL STAGE]

It is expected that the majority of complaints of 'bullying' or 'harassment' will be resolved informally.

With the support of Trade Union Representatives, Diversity Champions or members of the HR Team, issues, relationship problems, differences of opinion, misunderstandings can be identified and resolved. Early intervention in resolving a problem can often prevent deterioration in working relationships.

- 4.1** In the first instance, wherever possible, the employee should ask the alleged harasser to stop, or should make it clear a particular type of behaviour is unwanted, unwelcome or offensive.
- 4.2** In circumstances where it is too difficult or embarrassing for the individual to do this him or herself, he or she may ask a friend, his or her line manager, trade union representative or a work colleague or confidant to raise the issue with the alleged harasser on his or her behalf.
- 4.3** It is advisable that all parties to any discussion keep a short confidential note recording the details of any informal discussion.

In many instances, the initial approach by the employee, or someone acting on his or her behalf, to the alleged harasser will clear up misunderstandings and enable the problem to be resolved satisfactorily.

- 4.4** If the initial approach does not result in the harassment ceasing, the issue should then be reported to the complainant's manager or above, where appropriate. The complaint may be made orally at first, but must be confirmed in writing, giving details of relevant incidents and any relevant discussions with the alleged harasser. Again the complainant can make this complaint themselves or can ask a friend, trade union representative or a confidant to do it on his or her behalf.
- 4.5** The individual, on the basis of the prima facie evidence available, must make a judgment whether the issue should be dealt with formally or informally. A record of the complaint should be made in writing by this manager, and this should be sent to the relevant HR Business Partner or HR Officer. The HR department will then, for monitoring purposes only, complete a record detailing whether an informal or formal approach has been taken and how the complaint was resolved if an informal approach has resolved the issue.
- 4.6** If the complaint of harassment is against the line manager or if the individual complaining of harassment prefers, for personal reasons, he or she may report the matter to a HR Officer or HR Business Partner in the Human Resources Department who will ensure that the matter is dealt with within this procedure.
- 4.7** If the manager to whom the complaint is reported is not the alleged harasser's manager (e.g. because he/she works in a different department), the complainant's manager will, with the agreement of the complainant, immediately notify the alleged harasser's manager of the complaint. In order

to protect all parties the complaint must be treated as a priority, seriously, and with the utmost sensitivity and confidentiality.

- 4.8 The aim of any meeting or discussion arranged by the manager is to resolve the problem satisfactorily, with both parties' agreement, at an informal stage.
- 4.9 In any meeting or discussion both the person making the complaint and the person complained about will have the right to be accompanied by a representative, friend or colleague.
- 4.10 In all cases of harassment that may constitute gross misconduct under the Trust's disciplinary rules the complaint should proceed immediately to the formal disciplinary stage.

5. Resolving a complaint formally [FORMAL STAGE]

- 5.1 If informal resolution of the complaint cannot be achieved then the matter of alleged harassment or bullying or in cases that constitute gross misconduct must be reported directly to the relevant Senior HR Business Partner through the incident reporting system and the completion of a **Datix** form. The relevant Operational Director will be notified as appropriate and the incident investigated with the support of the HR Department.

All matters will be handled in strict confidence.

- 5.2 The formal complaint should be in writing and, where possible, state:

- Y Name and job title of the alleged harasser
- Y The nature of the harassment
- Y Dates and times when harassment occurred
- Y Names of any witnesses to incidents of harassment
- Y Any action already taken by the complainant to stop the harassment
- Y The complaint should be handed to the complainant's manager.

- 5.3 On receipt of a formal complaint, unresolved through informal procedures, the manager of the alleged harasser and the complainant's manager, in consultation with the Senior HR Business Partner/Director of Human Resources & Organisational Change, should consider what action should be taken to protect both parties and the working environment.

5.4 Screening of complaint

The originating complaint and any initial evidence will be reviewed at the earliest possible opportunity by the relevant Senior HR Business Partner and the Chair or Secretary of the Staff Side (recognising the need for neutrality); Together they will determine that this is a bona-fida complaint and is not made with

any frivolous, vexatious or malicious intent, or if the complaint should best be dealt with directly via the Trust's Disciplinary Procedures.

6. Suspension

6.1 Suspension pending disciplinary investigation

- 6.1.1** In certain cases, for example where, allegations of gross misconduct are made or where there is a risk to Trust property, patients or staff, the Trust may consider suspending an employee pending a disciplinary investigation. Suspension in itself is not a disciplinary measure. It is without prejudice, and is carried out in the interests of all parties.
- 6.1.2** Before making the decision to suspend, consideration may be given as to whether the employee could be temporarily redeployed to an alternative post and/ or location during the investigation. This should only be done where it does not compromise the investigation.
- 6.1.3** Suspension will be on full (average) pay including non-contractual overtime payments and any allowances where applicable. Pay will be based on an average of the last four months worked immediately before the date of suspension.
- 6.1.4** Suspension will normally be authorised by the relevant Trust Director or designated deputy (normally a Head of Nursing/General Manager) and the CBU HR Business Partner will be consulted. If a Professional Head of Service considers that professional standards are at risk, they can instigate disciplinary action or take action to suspend.
- 6.1.5** The initial suspension will be for a period of 14 calendar days, after which time it will be reviewed by the Authorising Officer, along with the investigative team. Their role will be to consider whether the suspension is still warranted or whether the suspension can be lifted whilst the investigation continues.
- 6.1.6** The suspended employee will be advised in writing of the progress of the investigation. Thereafter, the suspension will be reviewed in the same format at least every 14 calendar days, and followed up in writing.
- 6.1.7** A suspension meeting will be arranged by the manager nominated by the authorising Director or manager to advise the employee of the suspension. Wherever possible employees should be given prior notice of the purpose of the meeting. Employees may wish have the right to be accompanied by a representative at the meeting and managers should make all reasonable efforts to facilitate this, but this should not delay the process. Where a suspension meeting is held without the presence of a trade union representative, evidence of the managers' efforts to arrange representation should be provided.

- 6.1.8** If all reasonable attempts to contact an employee to arrange a suspension meeting fail, then they will be informed in writing not to report for duty and to contact a named manager as a matter of urgency.
- 6.1.9** If an employee is off duty and all reasonable attempts to contact them at home fail then they will be informed in writing not to commence duty, but to contact a named officer as a matter of urgency.
- 6.1.10** Staff representatives, if appropriate, will be kept informed of how the investigation is progressing.
- 6.1.11** The employee will receive written notification of the suspension within three days of the suspension meeting. The letter should explain why they have been suspended and outline the grounds of suspension. If accompanied at the meeting, a copy will be sent to the relevant trade union representative.
- 6.1.12** Suspended employees should be contactable during normal office hours (i.e. Monday to Friday 9:00 am to 5:00 pm) and should cooperate fully with the investigation. The manager should check with the employee that they have up to date contact details. They should not attend the Trust's premises without the prior permission of the manager who conducted the suspension meeting, and should not contact anyone else employed by the Trust and / or discuss the investigation with anyone except their representative advising them. Doing so would constitute a disciplinary offence in itself and would be considered at any future disciplinary hearing.
- 6.1.13** Suspended employees may require support during an investigation and Occupational Health are available to provide support, including counselling. If an employee wishes to take annual leave during a period of suspension, or the period of suspension coincides with planned leave, then they should contact the manager to obtain authorisation.
- 6.1.14** Where an employee has been suspended, an investigation will be carried out as quickly as possible. Where a period of suspension will exceed 8 calendar weeks, the case should be referred to the Director of Human Resources and Organisational Development for their review. An explanation and an agreed action plan for the continuing period of suspension must be provided.
- 6.1.15** A suspension will end as a result of the outcome of a disciplinary hearing or if management conclude the investigation and decide that the individual can return to work because dismissal is not a potential outcome.
- 6.1.16** If the matter relates to medical and dental staff the Policy on Maintaining High Professional Standards in the modern NHS should be followed.

7. Investigation

- 7.1** Investigation of formal complaints of harassment will be made by an investigation team, appointed by the Director of HR & OD comprising of a HR Business Partner/ Officer/ Advisor, who will lead and advise the investigation, supported by a designated manager and nominated union representative. (Union nominees will not be from the union of either the complainant or the alleged perpetrator.)
- 7.2** All Investigators will be required to undertake annual joint training in this procedure.
- 7.3** The HR Business Partner shall advise the complainant and alleged perpetrator of the names of the investigation team.
- 7.4** In cases of alleged sexual harassment a 'gender balance' will be maintained. In cases of alleged racial harassment, where possible, one of the investigators will be a member of an ethnic minority group.
- 7.5** The investigating team will carry out a thorough investigation, as quickly as possible, maintaining confidentiality at all times.
- 7.6** An investigation from commencement to submission of formal report should take no longer than two months, unless, in very exceptional circumstances agreed between all those involved. It is the responsibility of the HR Department to agree any extensions with the relevant parties. All employees involved in the investigation are expected to respect the need for confidentiality, and should be advised that failure to maintain confidentiality may result in disciplinary action.
- 7.7** The Human Resources Department will be responsible for keeping the complainant and alleged harasser informed of the progress of the investigation on a monthly basis in writing.
- 7.8** The investigation will be based around statements from relevant witnesses. Statements should not be the result of interviews or discussions between witnesses. Every effort should be made to ensure that statements are a confidential and true record free from outside influences.
- 7.9** The investigating team will decide on the manner of the investigation exercising discretion and sensitivity in the taking of statements and collecting evidence.
- 7.10** Collaboration between witnesses in the formulation of statements is considered a serious disciplinary offence and may result in summary dismissal for gross misconduct. The investigators may wish to utilise a structured interview approach to obtaining statements from witnesses. This may then be used to compile a report of the investigation which does not

need to identify witnesses and their statements directly and can be shared with the alleged harasser and complainant. The advantage of this initial approach is that witnesses may be more forthcoming and there is less departmental or inter-departmental tension.

- 7.11 Witnesses will be provided with written guidance on the investigation process before attending interviews with the investigators. Witnesses may be accompanied to an investigation interview by a person of their choice who may be a staff representative.
- 7.12 After all witnesses have been interviewed by the investigators, the complainant and the alleged harasser should be interviewed again, where appropriate, to clarify any points that may have arisen.
- 7.13 The investigators must be assured that all witness statements have been signed off as accurate and true before they can be included in the investigation report to the Director at the formal hearing. A full witness name list will be included in the investigation report.

8. Hearing

- 8.1 Following investigation a formal complaint hearing will be convened where a **Director with no prior involvement** in the case will consider the evidence presented by the investigators. The investigators report will recommend to the Director whether harassment has occurred or not. The investigation report summary should be made available to both the complainant and the alleged harasser at least 7 days prior to the formal hearing. **Neither complainant nor alleged perpetrator can attend the complaint hearing.** The Director will have access to named witness statements in reaching a conclusion on a prima facie case of harassment.

Present at the complaint hearing will be:

- The three members of the investigating team
- Director
- HR Business Partner

The purpose of the hearing is to allow the Director to be fully aware of all the facts surrounding the case. The Director will, question the investigators over the facts they have collected, the way they have undertaken the investigation and the conclusions drawn as to whether harassment has occurred or not.

The investigators will adjourn after presentation and questioning by the Director.

The Director, advised by Senior HR Business Partner, will consider the case to determine:

- Y Whether harassment has occurred
- Y If harassment has occurred whether it is of a serious nature
- Y The decision of the Director will be communicated to both parties
- Y Orally and then confirmed in writing within 5 working days.

8.2 If harassment is found to have occurred, full disclosure of witness statements would be needed at any disciplinary hearing to both parties. The investigating managers need to ensure that witnesses are aware that witnesses' statements will be made available at any future disciplinary hearing.

8.3 If the complainant is not satisfied with the findings of the hearing he/she must notify the Director of Human Resources & Organisational Change within 7 days of receiving the notification in writing. A review of the investigation and evidence presented will be undertaken by two members (not previously involved with the case) of the Trust Management Executive to be chosen by the Director of HR (one woman and one man, including where appropriate a member of an ethnic minority). This is a single stage appeal and is not subject to the normal Grievance Procedure.

8.4 Action if Harassment is proven

8.4.1 If the Director's verdict is that harassment has occurred, then he/she will produce a report for the line managers involved stating the facts of the case and recommendations for action.

8.4.2 If the recommendation is for disciplinary action then a disciplinary hearing will be convened as soon as possible in accordance with the Trust's Disciplinary Procedure. The manager hearing the case will act on the evidence and conclusions of the hearing as defined in the Director's report. The alleged harasser may wish to enter mitigating information at this stage. The line manager or Head of Department shall present the case against the employee.

8.4.3 The severity of the disciplinary action imposed upon an employee guilty of harassment will be consistent with that detailed in the disciplinary procedure, i.e. gross harassment will be considered an offence for consideration of summary dismissal. Where lesser action is appropriate, e.g. a written warning, this may be coupled with action to ensure that the complainant is able to continue working without embarrassment or anxiety. After discussion with the manager of the complainant the line manager of the harasser/perpetrator may transfer the harasser to a different work area, or arrange for the amendment of working practices to minimise contact between the two employees. In some circumstances the complainant may wish to be moved from one work area to another; such requests will be supported subject to any practical limitations.

- 8.4.4** If a transfer is a consequence of disciplinary action and in a final written warning in detrimental terms and conditions or downgrading for the harasser/ perpetrator then in such circumstances pay protection will not apply.
- 8.4.5** If the complainant of harassment transfers voluntarily to detrimental terms and conditions then his or her contractual protection rights will not apply.
- 8.4.6** An employee who receives a warning or is dismissed for harassment and or bullying may appeal, in accordance with the disciplinary appeals procedure.
- 8.4.7** In considering disciplinary action short of dismissal, managers may consider that an individual found to have been a harasser needs expert help and support to address an underlying attitude problem. Referral to counselling agencies may be appropriate. The HR Officer involved in the case will discuss appropriate agencies for such support, in conjunction with the Occupational Health & Wellbeing Service.
- 8.4.8** Where the Director having considered the case concludes that the allegation of harassment has been brought with malicious intent then the issue will be referred to the line manager to be considered under the disciplinary procedure.
- 8.4.9** Whatever the verdict support and advice will be available to both parties.

9. Review

- 9.1** The Trust will ensure that after each informal/formal harassment case that learning outcomes from the process will be considered and considerations given to formally amending the procedure as soon as practicable.
- 9.2** In any case, the procedure will be formally reviewed every 24 months in conjunction with staff representatives.

10. Training

- 10.1** The HR Department will provide training in relation to managers who undertake investigations, for harassment advisors and in the use of mediation as a tool to resolve issues.

Staff training will be undertaken in accordance with the Training Needs Analysis.

APPENDIX 1

DIVERSITY CHAMPIONS

Diversity Champions are specially trained staff members who have been designated to deal with complaints of harassment and bullying and to sign post staff to the most appropriate process informal or formal.

The role of Diversity Champion is to:

- Know how to recognise bullying & harassment
- Provide advice and guidance to employees with complaints of harassment and bullying.
- Explain to them how the procedures for making a complaint operate, informal or formal.
- Sign post the staff member to the appropriate support services the decision will be with the staff member.

The Trust will ensure the Diversity Champions receive appropriate training to undertake their role.

Diversity Champion will discuss cases in complete confidence and will not divulge information to any other person without the agreement of the employee.

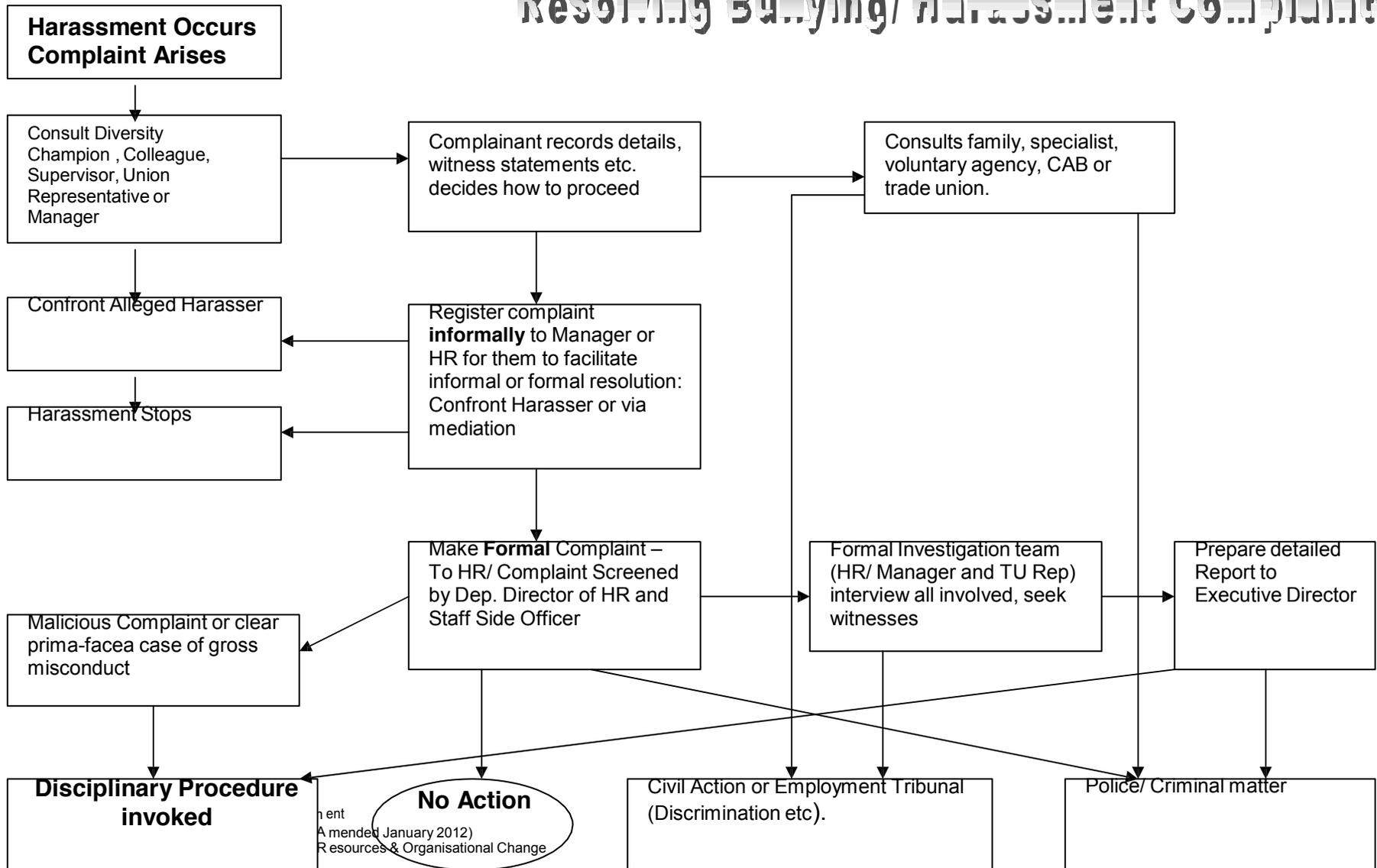
An employee who comes to a Diversity Champion to talk about harassment or bullying is under no obligation to take further action. The Diversity Champion is there to help employees decide what they want to do. Employees who are recipients of bullying are not obliged to refer their complaints to Diversity Champion: it is entirely up to them whether they do so.

The role of the Diversity Champion is an additional means of ensuring that such employees are not discouraged from bringing forward complaints.

A list of Diversity Champions is available from:

- Main notice boards
- Managers
- Occupational Health
- Chaplain
- Human Resources
- Trade Union Representatives
- Staff Counsellors
- Trust Intranet Site
- Equality & Diversity Manager

Resolving Bullying/ Harassment Complaints



**Equality Impact Analysis
Template**

The purpose of Equality Analysis is to ensure that the Trust does not unwittingly discriminate against any groups recognised under the Equality Act 2010. These are: Age, Disability, Gender reassignment, Sexual Orientation, Race, Religion or Belief, Sex, Sexual orientation, Marriage & Civil partnership, Pregnancy and Maternity. An EqIA is a process which ensures the Trust eliminate unlawful discrimination, foster good relations between others and promote equality of opportunity in the take up of its services and employment practices.

Division/Department	Human Resources	
Policy/Service	Bullying and Harassment in the Workplace	
Is this policy/service New/Existing	Existing	
Name of Assessor(s)	Emma Lavery	
Date of EqIA	26.6.15	
Aims/Objectives/ Purpose Of Policy/Service	<p>To ensure that all employees are aware of the types of behaviour, which may constitute harassment and their responsibilities for preventing such behaviour.</p> <p>To ensure that all employees understand that harassment is intolerable and unacceptable and that disciplinary action may be taken against offenders.</p>	
Associated Objectives for this Service e.g. National frameworks, Equality Act.	Trust's Internet and E-mail Acceptable Use Policy (AUP) Trust's Grievance and Disciplinary Policies Equality Act 2010	

Does this policy/service Affect patients or the workforce?	Workforce		
What outcomes do you want to achieve from this process?	All employees have the right to be treated with consideration, dignity and respect at work.		
What factors could contribute/detract from the effective delivery of this policy/service?	Contribute	Detract	
	Mediation Service Diversity Champions Occupational Health Datix incident reporting system	Managers failure to deal promptly and take seriously any concern or complaint	
Are there any concerns that this service or policy could have a differential impact on or due to the following:	Race	/no	What existing equality evidence either presumed or otherwise do you have for this response? Wide policy consultation to ensure all strands of potential harassment and bullying have been covered in the policy and procedure for handling all employees' concerns.
	Age	/no	
	Disability	/no	
	Gender Reassignment	/no	
	Religion/Belief	/no	
	Sexual Orientation	/no	
	Pregnancy Maternity	/no	
	Marriage Civil Partnership	/no	

	Sex	/no	
	Human Rights	/no	
If you have answered yes to any of the above, please describe or attach any evidence of action which will mitigate your EqIA and ensure your policy/service will be able to show: <ul style="list-style-type: none"> • Eliminate discrimination • Promote equal opportunities • Foster good relations between others 			
Should the EqIA proceed to a full EqIA for the areas identified for attention?		No	Comments
Comments			
Send to: Equality and Diversity Advisor for signature and authorisation	B Powell		
Send to: Line Manager for signature and authorisation	E Lavery		
Head of Department Responsible for policy or service	J Fernandez		
When is the next review (please note review should be immediate on any amendments to your policy etc)			
1 Year			
2 Year			
3 Year			

