

HARASSMENT AND BULLYING AT WORK POLICY

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REVISIONS/AMENDMENTS SINCE LAST VERSION

Date of Review	Amendment Details
Nov 2013	<p>The original PCT document has been revised to:</p> <ul style="list-style-type: none">• Reflect the Clinical Commissioning Group Establishment• Reflect the Clinical Commissioning Group structure• Align to the Clinical Commissioning Group Human Resources and Organisational Development Policies and procedures
September 2017	<ul style="list-style-type: none">• Amended to reflect new organisational structure• Reference to Employee Assistance Programme

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DEFINITIONS

Harassment

Harassment is defined as any conduct which is:

- Unwanted by the recipient
- Is considered objectionable by the recipient
- Causes humiliation, offence and distress (or other detrimental effect)
- Any of the above witnessed by a third party

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

Harassment may be an isolated occurrence or repetitive; it may occur against one or more individuals. Harassment may be, but is not limited to:

- Physical contact – ranging from touching to serious assault, gestures, intimidation, aggressive behaviour
- Verbal – unwelcome remarks, suggestions and propositions, malicious gossip, jokes and banter, offensive language
- Non-verbal – offensive literature or pictures, graffiti and computer imagery, isolation or non-co-operation and exclusion or isolation from social activities
- Unwanted conduct related to a protected characteristic which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, humiliating or offensive environment for that individual.

Protected characteristics under the Equality Act 2010 covered by this policy are:

- Age
- Disability
- Gender reassignment
- Race
- Religion or belief
- Sex; and
- Sexual orientation

Bullying

Bullying can be defined as:

- Unacceptable behaviour as perceived by the employee, which subjects the individual or group to unwelcome attention, intimidation, humiliation or ridicule or violation of an individual's dignity.

- Offensive, abusive or insulting behaviour, abuse of power or unfair sanctions which makes the recipient feel upset, threatened or vulnerable.
- Deliberately undermining a competent employee by imposing unreasonable workloads or frequent unjustified criticism.

Examples of unacceptable behaviour that are covered by this policy are provided, but are not intended to be an exhaustive list, are set out in Appendix 1.

Victimisation

Victimisation can be defined as:

Where an employee is subjected to detriment because they have, in good faith, raised a concern or complained, either formally or informally, that they have been bullied or harassed, or supported someone to raise a concern or complaint or given evidence in relation to a complaint.

SECTION A – POLICY

1. Policy Statement, Aims and Objectives

- 1.1. NHS Doncaster Clinical Commissioning Group promotes a safe, healthy and fair work environment that is free from harassment and bullying. The CCG firmly believes that it is the right of all employees to be treated with dignity and respect and to be protected from harassment, intimidation and bullying of any form at work.
- 1.2. All allegations of bullying and harassment will be taken seriously and fully investigated and if, appropriate disciplinary action will be taken against the perpetrator.
- 1.3. The CCG will not tolerate victimisation of a person for making an allegation of bullying and harassment in good faith or of an individual supporting someone to make such a complaint.
- 1.4. The CCG's liability may extend to both 'official' and 'unofficial' social activities. These may be deemed to be an extension of the workplace. The CCG may have a duty of care in respect of such matters and will investigate all complaints of inappropriate or improper conduct whether they are alleged to have occurred in or outside of the workplace.
- 1.5. The development of this policy:
 - Ensures that all complaints of harassment are dealt with objectively, quickly, sensitively and confidentially
 - Ensures the CCG provides a safe working environment where the threat of bullying and harassment is significantly reduced
 - Enables employees who become the victim of bullying and harassment to use this policy and procedure as a mechanism to protect themselves from further victimisation
 - Enables appropriate support to victims of bullying and harassment
 - Is not intended to deal with occasional lapses of good manners unless a pattern of behaviour emerges that is perceived to be offensive or intimidatory

2. Legislation and Guidance

- 2.1. The following legislation and guidance has been taken into consideration in the development of this procedural document.
 - Equality Act 2010
 - Employment Rights Act 1996
 - Data Protection Act 1998

3. Scope

3.1 This policy applies to those members of staff that are directly employed by NHS Doncaster CCG and for whom NHS Doncaster CCG has legal responsibility. For those staff covered by a letter of authority / honorary contract or work experience this policy is also applicable whilst undertaking duties on behalf of NHS Doncaster CCG or working on NHS Doncaster CCG premises and forms part of their arrangements with NHS Doncaster CCG. As part of good employment practice, agency workers are also required to abide by NHS Doncaster CCG policies and procedures, as appropriate, to ensure their health, safety and welfare whilst undertaking work for NHS Doncaster CCG.

4. Accountabilities and Responsibilities

4.1 Overall accountability for ensuring that there are systems and processes to ensure the threat of bullying and harassment is reduced to its lowest possible level and that allegations of bullying and harassment are dealt with effectively lies with the Chief Officer. Responsibility is delegated to the following:

<p><i>Associate Director of HR & Corporate Services</i></p>	<p>Has delegated responsibility for:</p> <ul style="list-style-type: none">• Maintaining an overview of the corporate ratification and governance process associated with the policy.• Leading the development, implementation and review of the policy.• Supporting managers and employees with queries relating to the policy and procedure.• Encouraging individuals who feel they are being bullied/harassed to pursue the procedures within this policy.• Ensuring all complaints of bullying/harassment are treated sensitively and in confidence as far as practicable to ensure a thorough investigation of each case.• Sourcing of relevant training in relation to the prevention of bullying and harassment.• Facilitating access to the relevant support systems available such as occupational health, counselling and mediation.• Ensuring the policy and procedure is
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	reviewed and updated as required.
<i>Appointing Officers</i>	<p>Have delegated responsibility for:</p> <ul style="list-style-type: none"> • Ensuring they understand and adhere to their obligations in relation to this policy. • Ensuring their own behaviour cannot be construed as personal harassment by acting with fairness and equity. • Ensuring third parties are made aware that bullying and harassment of employees will not be tolerated and take appropriate action where necessary. • Promoting a culture that positively emphasises model behaviour and respects the personal dignity of employees. • Ensuring that any employee who has brought, or who is intending to bring any allegations of bullying and harassment are not victimised. • Maintaining the confidentiality of any information relayed to them concerning cases of alleged cases of bullying and harassment. • Acting before a formal complaint is registered. • Actively challenging anything that may constitute a derogatory remark made by a member of staff.
<i>All Staff</i>	<p>Have delegated responsibility for:</p> <ul style="list-style-type: none"> • Ensuring they understand their responsibilities in relation to this policy. • Being responsible for their own behaviour and how that affects others. • Respecting the personal dignity of all colleagues.

5. Dissemination, Training and Review

5.1. Dissemination

5.1.1. The effective implementation of this procedural document will support openness and transparency. NHS Doncaster CCG will:

- Ensure all staff and stakeholders have access to a copy of this procedural document via the organisation's website.
- Develop a culture where employees can discuss concerns they may have regarding bullying and harassment.

5.1.2. This procedural document is located on the CCG website. A set of hard copy Procedural Document Manuals are held by the Governance Team for business continuity purposes and all procedural documents are available via the organisation's website. Staff are notified by email of new or updated procedural documents.

5.2. Training

5.2.1. All staff will be offered relevant training commensurate with their duties and responsibilities. Staff requiring support should speak to their line manager in the first instance. Support may also be obtained through their HR Department.

5.3. Review

5.3.1. As part of its development, this procedural document and its impact on staff, patients and the public has been reviewed in line with NHS Doncaster CCG's Equality Duties. The purpose of the assessment is to identify and if possible remove any disproportionate adverse impact on employees, patients and the public on the grounds of the protected characteristics under the Equality Act.

5.3.2. The procedural document will be reviewed every three years, and in accordance with the following on an as and when required basis:

- Legislatives changes
- Good practice guidelines
- Case Law
- Significant incidents reported
- New vulnerabilities identified
- Changes to organisational infrastructure
- Changes in practice

5.3.3. Procedural document management will be performance monitored to ensure that procedural documents are in-date and relevant to the core business of the CCG. The results will be published in the regular Governance Reports.

SECTION B – PROCEDURE

1. Principles

- 1.1. Any employee who wishes to make a complaint of bullying or harassment should first discuss this informally with their line manager/other appropriate manager/Human Resources, providing they feel able to do so. Employees may wish to seek advice from their Trade Union Representative.
- 1.2. Managers are required to act promptly upon any complaint of bullying or harassment whether informal or formal. This will normally include an investigatory process. Where a case for bullying or harassment is established corrective action will be taken which will normally be in accordance with the Disciplinary Procedure.
- 1.3. Failure to act upon any complaint of bullying or harassment whether informal or formal will be regarded as misconduct, which if proven, will result in disciplinary action. Details of all complaints should be notified to Human Resources for recording in compliance with legislation.
- 1.4. No employee will be victimised for making a complaint of bullying or harassment. No manager shall threaten either explicitly or implicitly that an employee's complaint of bullying and harassment will be used as a basis for decisions affecting that employee.
- 1.5. If it is considered that one of the parties concerned in a bullying or harassment case should be moved from the workplace, then as a matter of principle, the CCG will normally remove the alleged harasser rather than the complainant. However, this will depend on the nature of the complaint and the circumstances at the time as in some cases it may be more appropriate to remove the complainant. There is no implied guilt on moving either party and this will not have a detrimental effect of the investigation.
- 1.6. Information regarding making a complaint of discrimination which do not include bullying and harassment should be made in accordance with the Equal Opportunities Policy.

2. Confidentiality

- 2.1. An employee who raises concerns regarding bullying and harassment has the same right to confidentiality as any other employee. Wherever possible actions should be taken to protect the confidentiality of the employee where this has been expressly requested and also that of the alleged bully or harasser. A breach of confidentiality will normally constitute a disciplinary offence and will be dealt with in accordance with the Disciplinary Procedure.
- 2.2. Information should not normally be disclosed unless the employee or the alleged bully or harasser is presenting a risk to themselves or others or where the matter is deemed to be so serious that it would be unacceptable not to

investigate the matter further. For these reasons, at the commencement of any discussion with the employee, they must be advised that confidentiality will be, as far as reasonably possible, maintained dependent upon the seriousness of the matter.

- 2.3. A decision to disclose information without consent must be justified. Where information is to be disclosed the employee and the alleged bully or harasser must be advised of this intention and advised of the reasons for this.
- 2.4. Where an employee believes that a breach of confidentiality has occurred which the employee feels is unjustified they have the right to challenge this via the Grievance Procedure.

3. Record Keeping

- 3.1. Human Resources will be responsible for maintaining records of all reported cases of bullying/harassment and will be responsible for the creation, storage and subsequent archiving of case files.
- 3.2. Employees are encouraged to keep notes of any instances of bullying/harassment which may assist them should they wish to pursue a formal course of action.
- 3.3. Managers should maintain accurate records of any discussions, either on an ad hoc basis or via one to one meetings that raise concerns regarding bullying or harassment.
- 3.4. Where a formal complaint is unsubstantiated no records will be held on personal files.
- 3.5. Where a complaint is substantiated or partially substantiated but does not result in a disciplinary sanction, a letter confirming the outcome will be retained on the personal file for a period of 12 months.
- 3.6. Where a case of bullying/harassment results in a disciplinary hearing the records will be stored in accordance with the Disciplinary Policy.

4. Support Services

4.1. Workplace Mediation

- 4.1.1. Mediation is a voluntary, confidential, non-binding and without prejudice method of resolving disputes. Information is shared with a neutral individual known as '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 proceeding and more importantly can result in restoring and maintaining relationships within the workplace.

4.1.2. Mediation can be proposed at any stage and the windows of opportunity for mediation to occur are usually:

- Where an employee recognises there is a difficult working relationship
- After an employee has taken advice and before the situation escalates
- At any stage of a formal procedure
- As an outcome of a formal hearing

4.1.3. Mediators will normally be supplied by the HR Shared Service. In exceptional circumstances the CCG may approach an alternative provider such as ACAS.

4.1.4. Details of the Mediation Service can be found in Appendix 1.

4.2. Staff Side Representatives

4.2.1. The CCG has access to a full time Staff Side Coordinator who may be contacted in relation to any concerns about bullying and harassment. The Staff Side Coordinator may refer employees to Staff Side Representatives from recognised trade unions who can support union members. Details of how to access the Staff Side Coordinator can be found on the CCG website.

4.3. Human Resources

4.3.1. Human Resources will provide support and advice in the instigation of this policy and procedure. A Human Resources representative will be appointed as joint investigating officer for any formal cases of bullying or harassment. Human Resources may also sign post to other support services.

4.4. Occupational Health

4.4.1. Employees who experience symptoms of ill health as a result of bullying and/or harassment may self- refer or be referred via their line manager to Occupational Health for assessment and advice on the management of their symptoms and impact on their ability to undertake their duties safely. Further information can be found in the Management of Work Related Stress Policy.

4.5. Employee Assistance Programme

4.5.1. Employees may access the Employee Assistance Programme directly. The service includes counselling. In addition where appropriate alternative counselling sessions can be arranged and will be funded for a limited period of time by the CCG. For further information employees should refer to the Workplace Wellbeing Policy or contact Human Resources.

5. Informal Resolution

5.1. Often people are unaware that their behaviour is unwelcome or perceived as offensive and an informal discussion can lead to greater understanding and agreement that the behaviour will cease.

- 5.2. Employees are advised, where they can, to deal with bullying and harassment in the first instance informally making it clear to the alleged harasser that their actions are unwanted and should not be repeated. This may be done verbally or in writing.
- 5.3. It is recommended that employees keep a record of any incident(s) including dates, times, witnesses, and written documentation.
- 5.4. Individual circumstances will determine the exact nature of informal intervention. The individual may resolve their informal complaint by taking the following action:
- Taking a direct approach and stating to the person carrying out the unwanted conduct that their behaviour is offensive, unwelcome and/or that it interferes with the complainant's work. The complainant should make it clear that if the bullying/harassing continues then they will make a formal complaint. This approach can only be taken if the complainant feels able to approach the alleged bully/harasser.
 - Taking a direct approach to the person carrying out the unwanted conduct via the immediate line manager. The line manager will act as mediator and discuss the issues/situation with both parties.
 - Requesting mediation. This may be helpful if the line manager is the line manager of both parties involved or if the complainant feels unable to approach their line manager.
 - Contacting Human Resources who can offer support and advice on how the policy and procedure works and can signpost to the relevant support services and/or act as mediator.
 - Contacting a staff side representative for support and facilitation of a meeting between the complainant and the alleged bully/harasser.
 - Seeking independent advice from Occupational Health Services and/or an independent staff counsellor who may be able to assist the employee in discussing the matter and offering appropriate support.
- 5.5. If the employee's own immediate line manager is the source of the alleged bullying/harassment then the matter may be raised with the next highest level of management within the team. This level of management should take appropriate action to resolve the matter informally between the two parties and if successful no further action will be necessary.
- 5.6. An individual who is made aware that their behaviour is unacceptable should:
- Listen carefully to the complaints and the particular concerns raised

- Respect the other persons point of view and that they have a right to work in an environment that is free from bullying, harassment or intimidation
 - Remember that it is the other persons reaction/perception to their behaviour that is important
 - Agree the aspects of the behaviour that they will change
 - Review their general conduct/behaviour at work and with workplace colleagues
- 5.7. Notes should be made of any meeting between the complainant, the alleged bully/harasser and any independent party and should be signed as an accurate record by all parties. The notes should be retained for future use should formal action be taken if the matter is not resolved.
- 5.8. In all cases if the matter is unable to be resolved informally the complainant should be advised of the right to make a formal complaint.

6. Making a Formal Complaint

- 6.1. If the informal action has failed to resolve the problem or where the incident has reoccurred, or is of such a serious nature that informal resolution is not possible, a formal complaint should be made.
- 6.2. Formal complaints should be made to the complainant's line manager or next highest level of management if appropriate, a staff side representative or to Human Resources. Whoever receives the complaint should inform the complainant of all options and possible outcomes and the implications of the CCG taking disciplinary action against the alleged bully/harasser.
- 6.3. The complainant must put their complaint in writing and submit it within 5 working days of the informal discussions taking place. The written complaint will serve as a formal statement and must be signed by the complainant. The statement should include:
- Name and job title of the alleged bully/harasser
 - The nature of the bullying/harassment
 - Dates and times when the bullying has occurred
 - Names of any witnesses to incidents of bullying/harassment
 - Any action previously taken to stop the bullying/harassment
 - The impact of the bullying/harassment on the complainant
 - The outcome sought
- 6.4. If not already aware, the alleged bully/harasser's line manager will be informed of the formal complaint and the alleged bully/harasser will be

informed verbally and then in writing of the complaint. Both will take place on receipt of the formal statement.

- 6.5. Exclusion from work may be an action that may be considered to protect either party. In these circumstances the exclusion is not a disciplinary measure but will be undertaken in accordance with the Disciplinary Procedure.

7. The Investigation

- 7.1. A thorough and impartial investigation will commence within 5 working days of receiving the signed complaint/statement. A Human Resources representative will be assigned to undertake the investigation with either the line manager or the next highest level of management if appropriate.
- 7.2. The investigation will seek to establish the facts of the case and will include interviewing the complainant, the alleged bully/harasser and any witnesses identified by either party. All parties will have the right to be accompanied by a staff side colleague or colleague during the interview.
- 7.3. Detailed statements will be taken and any other evidence will be collated.
- 7.4. The investigation will be completed in a timely manner and the investigating officer will be responsible for keeping the complainant and the alleged bully/harasser informed of the progress of the investigation, in writing, on a regular basis.
- 7.5. Upon conclusion of the investigation the investigating officers will produce a full written report which will be submitted to the appropriate level of management for consideration.

8. Consideration of the Investigatory Report

- 8.1. Upon receipt of the investigatory report the receiving manager should convene a disciplinary hearing in accordance with the Disciplinary Procedure.
- 8.2. The investigating officers will present the investigatory report to the hearing panel. The hearing panel will comprise of the alleged bully/harasser's manager (Chair), the complainants manager or appropriate alternative level of manager and a Human Resources Representative not previously involved.
- 8.3. The complainant will be required to attend the disciplinary hearing as a witness unless there are exceptional circumstances that prevent them from doing so. The alleged bully/harasser will be required to attend. Both parties have the right to be accompanied by a trade union representative or colleague.

- 8.4. Prior to the disciplinary hearing the panel, the complainant and the alleged bully/harasser will have access to the investigatory report and named witness statements.

9. Possible Outcomes from Hearing

- 9.1. The complaint may be found to be unsubstantiated in which case there is no requirement for further action unless the complaint is found to have been made frivolously or maliciously. Should this be the case the matter will be investigated and, if appropriate, addressed via the Disciplinary Procedure.
- 9.2. Where the complaint is upheld there are a number of possible outcomes for the bully/harasser depending on the evidence presented and the circumstances. These could include but are not limited to:
- Dismissal
 - A formal warning
 - A recommendation of redeployment of the harasser, either on a temporary or a permanent basis. This will not be on any less favourable terms and conditions of employment.
 - Implementation of other sanctions as detailed in the Disciplinary Policy which may include demotion in which case pay protection arrangements will not apply
 - Mediation
 - Making arrangements for both parties to work as separately as possible within the same workplace
 - Attendance at training courses
- 9.3. It should be noted that the complainant may also wish to move departments depending on the nature of the complaint and the people involved. Appropriate consideration should be given to this request and the outcome and the rationale for that outcome provided to the complainant.

10. Appeals

- 10.1. Appeals by a complainant about the outcome of any investigation will be dealt with in accordance with the appeal process outlined in the Grievance Policy.
- 10.2. Appeals against a disciplinary sanction will be dealt with in accordance with the appeals process outlined in the Disciplinary Policy.

EXAMPLES OF UNACCEPTABLE BEHAVIOUR

This is not an exhaustive list:

- Intrusion by pestering, spying, stalking
- Unnecessary or unwanted physical contact or invasion of personal space
- Sexually suggestive behaviour or compromising sexual invitation or demands
- Harassment in relation to any of the protected characteristics including jokes or graffiti
- Displaying offensive material
- Unwarranted or suggestive remarks
- Verbal or written abuse including non- communication and deliberate and/or inappropriate exclusion from social events
- Derogatory name calling and insults
- Threats of a physical or psychological nature
- Victimisation because of someone's protected characteristics
- Overbearing behaviour or language that causes fear or distress to others
- Abuse of power by someone in authority, or intimidation by junior staff towards a member of senior staff
- Incitement of others to commit harassment
- Abuse of CCG power over agency/temporary staff
- Messages or displays (including electronic) of sexually suggestive pictures, literature (including email and text message) or clothing
- Inappropriate or derogatory remarks in connection with performance or appraisal
- Inappropriate literature, pictures, books, tapes etc.
- Victimisation of an employee who has raised a grievance, made an allegation of bullying/harassment or used the Whistle Blowing Policy