



BULLYING AND HARASSMENT POLICY MANAGERS' GUIDE

(This Guide relates to the Bullying and Harassment Policy available on the Trust Intranet. It will be subject to review by March 2015).

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1 Policy Statement on Bullying and Harassment

- 1.1 The Trust is committed to being an organisation in which equality of opportunity is a reality and in which every individual can seek, obtain and continue employment without unfair discrimination. This is supported by the unions recognised by Sheffield Care Trust.
- 1.2 The Trust and these Unions are working together to create a working environment where harassment and bullying is not acceptable and where all employees support the rights of their colleagues to be treated with dignity and respect.
- 1.3 Definition and examples of bullying and harassment are given in Appendix B of the Policy which is available on the Trust Intranet. The scope of the Policy is given in Section 5.
- 1.4 Harassment and bullying are not acceptable in. Every effort will be made to deal with allegations on an informal basis in the first instance. Any employee, regardless of band / grade / position responsible for inciting, perpetrating or condoning harassment or bullying may be disciplined, and can be held personally liable if the person who has been harassed undertakes legal proceedings. Some types of harassment are classed as criminal offences that could lead to prosecution.
- 1.5 Any employee who believes him or her self to have been harassed or bullied should, if possible, ask the perpetrator to stop. If this is not possible, or if it continues following the request to stop, he/she has the right to complain and should contact his or her line manager or Human Resources. This should be done by completing the Harassment and Complaint report form or submitting a written complaint. The matter will be dealt with quickly and in confidence. Anyone complaining about harassment and bullying has a right to be supported at every stage by his or her union.
- 1.6 The alleged harasser or bully may be transferred to another work area during the investigation process, or suspended. If investigation shows that the complaint is well founded, the Trust's primary aim will be to prevent recurrence of the behaviour. Disciplinary action - up to and including dismissal - may be taken. If it is necessary to separate the people concerned, every effort will be made to move the harasser and not the person who has been harassed, unless it is the stated wish of the latter to move.
- 1.7 All managers and leaders are responsible for ensuring that harassment or bullying is dealt with, whether or not it is brought formally to their attention.
- 1.8 The Trust will not tolerate intimidation, victimisation or unfair discrimination of any employee who makes a complaint of or who assists in an investigation of alleged harassment or bullying. Retaliation against an employee who complains of harassment or bullying can be expected to lead to disciplinary action and may be a criminal offence resulting in prosecution.

2. Overview / Background

2.1 Purpose

This managers' guide is designed to support managers in the effective implementation of the Bullying and Harassment Policy. The policy and associated procedure focus specifically on complaints of harassment, bullying and victimisation.

It does not replace the Grievance Procedure which applies to grievances outside the scope of harassment, bullying and victimisation.

The policy has been agreed with the unions and reflects external good practice. These notes go through the process for handling such complaints at work. Most complaints can be dealt with informally, and there is guidance on how to do this. However, a detailed set of guidelines on carrying out an investigation are also provided should issues need to be dealt with formally. The Guide also outlines the review stage of the process, and how to ensure cases are effectively resolved. Every case is different and the guidelines cannot cover every eventuality. If you need assistance at any stage of the process contact your Human Resources Team. This document needs to be read in conjunction with the policy itself.

3 BULLYING AND HARASSMENT - overview

3.1 What is Harassment and Bullying

Harassment can take many forms. Often we think first of sexual or racial harassment but colleagues can also suffer because of other personal characteristics e.g. age, religion, sexual orientation, nationality, family status, because they have a disability, or just because they don't "fit in" with the group. (See Appendix B of the policy).

Workplace bullying is intimidation on a regular and persistent basis, which serves to undermine the competence, effectiveness, confidence and integrity of the person on the receiving end. The bully misuses their power, position or knowledge to criticise, humiliate and destroy a subordinate or even those who hold a more senior role

3.2 Verbal Conduct

The criterion for verbal conduct to be harassment is again that it is **unwanted** by the recipient, or affects the dignity of any individual or group of individuals. For example:

- comments, jokes, banter, insults, and language related to any personal characteristic and those which are offensive to an individual or group of individuals
- bullying and intimidation
- uninvited and unwanted propositions for sexual activity, demands for sexual favours, whether or not accompanied by threats to the individual's job or career, or promises of promotion
- questions, jokes or banter about aspects of an individual's private life, spreading rumour and gossip
- suggestive remarks, innuendoes etc. offensive or unwanted comments about dress or physical appearance which are unrelated to the requirements of an individual's job

3.3 Non-Verbal Conduct

For example:

- racially or sexually-based graffiti referring to an individual's personal characteristics or private life
- display of pornographic or sexually suggestive pictures, postcards, pin-ups and calendars of either sex
- leering, whistling and suggestive gestures
- stalking
- display of offensive objects or materials

- refusing to engage with someone as part of normal interaction
- mistreating personal property
- offensive emails and text messages on mobile telephones

3.4 Behaviour

Unwanted physical contact including:

- horseplay
- unnecessary touching or brushing against
- attempted or actual kissing, hand-holding or cuddling
- assault, including sexual assault

Harassment very often takes the form of joking, or "a bit of fun" and people say things like "Can't he take a joke" or "What's all the fuss about" etc. Just because an individual or group of individuals think something is a joke doesn't mean that someone else isn't offended by it. It may also be the case that behaviour, which was initially a joke for all, becomes offensive through frequent repetition or a change of circumstances. However the evidence shows that harassment can be a very serious problem and the effects range from feeling uncomfortable right through to severe depression.

3.5 Action is Important

Harassment in the workplace affects:

- Performance
- Morale
- Absenteeism

which could lead to:

- Increased expenditure
- Bad publicity
- Legal proceedings
- Increased employee turnover

Any employee who harasses another can be held personally liable if the latter undertakes legal proceedings. Managers can also be held personally liable if they do not take action.

There is no limit on the compensation that a tribunal can order an employer or employee to pay in discrimination cases and employees do **NOT** have to leave an organisation before they can go to an Employment Tribunal. An employee can claim injury to feelings if a harassment complaint wasn't handled properly even if they are still working for the organisation.

3.6 Harassment by Email

The increasing availability of the electronic mail has created a potentially powerful vehicle for bullying or harassment. Suggestive and unwanted remarks, graphics or threat-centred, abusive messages may constitute bullying. This also applies to comments made on social network sites.

3.7 The Responsibilities of Managers

All managers and others who lead groups of employees are responsible for ensuring that harassment or bullying does not occur in their work area. They must ensure that:

- they fully understand the Bullying and Harassment Policy and are able to offer advice on the procedure when required to do so
- they advise and inform their team to increase awareness and understanding of the Bullying and Harassment Policy
- they publicly promote the Policy
- their work environment is free of visual harassment, e.g. pin-ups and graffiti
- they are alert to physical and verbal harassment in their work area and deal with it immediately, whether or not it is brought formally to their attention
- they are supportive of individuals who state that they have been harassed, and take full account of their feelings and perception of the situation
- they maintain complete confidentiality relating to all aspects of cases of harassment at all times and only mention or discuss the case with someone else on a NEED to know basis
- they follow up alleged harassment to ensure there is no victimisation
- they discourage, do not participate in, encourage or condone gossip relating to cases of actual or alleged harassment, and take appropriate steps to prevent or stop such gossip in their work area
- they initiate and complete investigations of alleged harassment in line with the procedures and this guide.
- they document all complaints and copy to their Human Resources Team.

Make sure that every member of your team knows that any kind of harassment is unacceptable in any part of the organisation. Check that your working environment and communal areas are free from pin-ups, offensive material and graffiti and be mindful that "banter" may not be acceptable to everyone. Where graffiti is found it should always be documented before removal (take a photo if possible). Where references to specific individuals are made you should conduct a sensitive enquiry and check the welfare of the person(s) named.

Sensitive enquiries should also be made about a surprise request for a transfer as sometimes employees who feel that they are being bullied or harassed will ask to move just to get away from the situation.

3.8 Third Party Harassment

The policy also applies where an employee is being harassed by a third party during the course of their employment (e.g. from clients / patients). This can be a difficult area but it is very important that managers actively consider any such occurrences or potential occurrences in order that reasonable steps can be explored to try and prevent any re-occurrence. At a minimum this would involve discussing the matter fully with the employee concerned to fully understand the nature of the issues, how they feel about it and what options are available. All such discussions should be written up and shared with the individual. Advice should be sought from the Clinical Governance Team and HR. This is essential where there is any reasonable expectation that such an issue may re-occur.

4 MANAGING COMPLAINTS

This section looks at how complaints should be managed using the new Bullying and Harassment Complaints Procedure. It considers the need for addressing complaints informally before entering the formal Investigation stage and Review stage of the procedures.

4.1 Key Aspects

The key to dealing with a case effectively is to:

- Try to resolve issues informally unless it is inappropriate to do so. Make a note of the outcome and check that it has worked. This may avoid the need for a formal investigation and nips issues in the bud before they become complicated. Be sure that the way you are handling it is appropriate, and is in line with leadership values.
- Resolve it as fast as possible, and within the specified timescales, to reduce the risk of further problems and increased liability at Employment Tribunals. It is recognised that some cases are particularly complex or time consuming and may take longer, but these are also the cases where taking action is important.
- Treat all parties involved in the case sensitively and do not enter an investigation with pre-conceived ideas. This will enable you to come to a fair conclusion and ensure everyone involved feels they have been treated appropriately.
- Ensure the case is dealt with in confidence, by all parties involved, and also by you as the investigator, avoiding further complaint during or after the investigation.
- Follow the procedures, we have tried to make the procedures simpler, but they must be followed, otherwise however thorough your investigation is, procedural errors may still affect the outcome of the case internally or externally.
- Ensure that you conclude the case by making a decision on each of the issues and that your decision and the outcome/remedy to them are communicated to the appropriate parties. This reduces the likelihood of complaints re-occurring.

4.2 INFORMAL APPROACH - for all complaints

The informal approach is a key element of this Procedure. The approach aims to provide a mechanism through which an individual can clarify the extent to which they are in dispute with another party and determine the remedial actions required to resolve the issue(s) without using the formal procedure. Wherever possible (and appropriate) every effort should be made to resolve the situation on an informal basis in the first instance unless it is clearly inappropriate to do so (i.e. in serious cases of harassment). In some cases where no attempt has been made by the complainant to resolve their issue informally they should be requested to do so before entering the formal investigation stage.

Where a resolution cannot be reached through use of the informal approach, or in cases of particularly severe harassment or bullying, complaints may be progressed formally.

The general principles underpinning the informal approach are to:

- identify the issue of dispute, be it in relation to behaviour or application of a policy or procedure.
- understand why the issue is unacceptable to one of the parties.
- determine whether facilitation from another party would aid resolution.

- agree a remedy which is acceptable to the parties.
- advise that the issue is to be raised formally where agreement can not be reached.

4.2.1 Process

When it is considered that an individual's action or omission, be it in relation to the application of a policy or procedure or a behavioural issue, is unsatisfactory the aggrieved party should approach the individual and discuss the issue with them. This approach should normally be made at the time of the incident occurring so that it is fresh in the minds of both parties.

The purpose of this discussion is to advise the individual of the issue of concern and agree an appropriate remedy/outcome. Depending on the nature of the complaint this may include an undertaking to modify behaviour in future.

Where an individual feels unable to approach the person about whom the complaint is against they may write to them. Alternatively, they may ask a friend, colleague, union representative or their line manager (or another manager if appropriate) to discuss the issue, and ask him/her to attempt to resolve it on their behalf. This still remains an informal part of the process.

This approach should normally be sufficient to resolve the issue, and where this is the case the process is concluded. The nature of the issue and the action taken should be written up and shared with the relevant parties. If the issue remains unresolved it is important to raise it formally and the aggrieved should inform the other party of his/her intent to do so at this stage.

4.2.2 Initial Complaint

Once a complaint has been made, or a situation has come to your attention the aim, in all cases, is to resolve the complaint without delay or prevent a recurrence of harassment.

If you receive a complaint you should:

- Handle the issues sensitively and confidently and in complete confidence. Do not discuss details of the case with your colleagues.
- Remember that it is the individual's view which is important, take the complaint seriously even if it seems trivial to you.
- In cases of harassment, unless the claim is very serious, (e.g. physical assault) find out if the complainant has spoken to the individual they are accusing of harassment and asked them to stop.
- If they haven't spoken to them are they willing to do this?
- If they feel unable to speak to the person themselves establish if they can get a friend to speak on their behalf, or if they would like you to speak to the person informally.

Any action taken by the individual to prevent further harassment should be recorded with a note of the date and what all those involved said, in case this is needed as evidence should the harassment continue or subsequently recur.

4.2.3 Counselling and support (most likely to be appropriate for cases of harassment/ bullying)

The Trust operates an 'open door' philosophy to enable someone with workplace problems, etc, to fully discuss the matter with their line manager, a more senior/second line or other

manager or a member of the Human Resources Department on an informal and confidential basis.

In some situations, it may be appropriate for an employee to be offered a 'sympathetic listener' and this would be arranged by the Human Resources Department but not necessarily someone from that Department. A 'sympathetic listener' would be someone who could be available to offer support while the issue is ongoing.

An individual who has been harassed may wish to contact the Workplace Wellbeing service, in confidence, at any stage, who can provide counselling and support should this be necessary. It is vital that psychological health is maintained as far as possible, and if the individual does not wish to speak to the Workplace Wellbeing Advisor he/she should, where appropriate, be advised to contact the Occupational Health Service or his / her GP. An individual who is the subject of a complaint of harassment may also wish to discuss the matter in confidence with Workplace Wellbeing.

4.2.4 Conciliation (most likely to be appropriate for cases of harassment/ bullying)

Following any form of individual complaint and investigation the parties involved can feel aggrieved. For example, the complainant may consider that the person against whom the allegation has been made has not been treated appropriately or that person may consider the complaint unfounded. Whatever the circumstances of the case, managers should consider offering a conciliation stage. However, this should only be done with the agreement of the complainant. The aim of conciliation is to bring the two parties together to try and rebuild the working relationship. Managers will need to decide on the appropriateness of such a meeting and the most appropriate timing. Where the case is complex or serious, conciliation would probably be suggested at the end of the investigation. In others conciliation may be sought earlier.

Conciliation is voluntary and managers should suggest it as a way forward but agreement must be gained from both parties. In particular a person who made the complaint should never be forced into a situation that is traumatic for him or her.

When organising a conciliation meeting the manager should act as facilitator, allowing both parties to discuss their point of view in a calm, safe environment. The manager should also aim to build an agreement between the two parties about behaviour and future conduct. He or she should see each of them separately to ensure they are happy with the outcome, and to establish whether they require further support. The manager will then need to be watchful of the relationship between the two parties.

Further advice may be sought from Human Resources.

4.2.5 What happens if the complaint cannot be resolved informally?

Most complaints are resolved at this stage; however, if this has not been possible, the complaint may have to be dealt through the formal stage of the procedure. However;

- Individuals may be reluctant to proceed formally, e.g. they may fear the fuss that will be created. You must take their wishes into account, but counselling by e.g. Workplace Wellbeing, may help encourage them to pursue the complaint; however no undue pressure should be exerted. If the complainant does not wish to proceed with a formal investigation, you should keep a record to this effect.
- If you are unsure at any point contact Human Resources.

5 FORMAL COMPLAINTS.

These guidelines should be used if you receive a formal complaint made under the Bullying and Harassment Complaints Procedure. They have been developed to supplement the approach outlined in sections six of the policy.

5.1. The Initial Complaint

Where an individual feels it necessary to make a formal complaint under the Bullying and Harassment Complaints Procedure they should do so at the earliest opportunity to enable a full and timely investigation to be undertaken. Some complaints will be made on the day in which the issue arose; but it is possible that a few months may have elapsed, particularly in cases of harassment where the alleged victim has found it difficult to come forward. We would normally expect all complaints to have been made within three months of the event complained of but there may be exceptional circumstances where this has not been possible. In the event of a complaint being received that is more than three months old you should seek advice from Human Resources.

Complaints will normally be brought to you by the alleged victim but it is always possible that another party may raise the complaint on behalf of somebody who they believe has been treated inappropriately; this may include, for example, a work colleague, service user, carer or relative. Regardless of the source of the complaint the organisation has a duty to investigate fully. It is not acceptable to say that the individual chose not to raise the complaint so nothing can be done about it. Our aim must always be to investigate all complaints of harassment, bullying or victimisation and prevent recurrence of the alleged inappropriate behaviour.

5.2 Who Should Investigate Complaints?

Complaints should normally be investigated by the line manager of the alleged victim. In some circumstances it may be appropriate for the complaint to be investigated by another manager for example:

- Where the individual's line manager is the source of the complaint, in which case the second line manager would normally investigate the complaint.
- Where the case is one of serious sexual or racial harassment such that it would be preferable for it to be investigated by a manager of the same sex/race as the complainant.
- Where the case is of a significantly sensitive or complex nature such that the first line manager feels unable to deal with the issues.
- Where it could be argued that the judgement of the investigating manager could be tainted, as s/he is a relative or close personal friend of one of the parties involved in the complaint.
- Where it is otherwise specified by Human Resources that independent investigation would be preferable. This may be decided upon receipt of the Bullying and Harassment Complaint Report Form or at a later stage.

If in any doubt advice should be sought from Human Resources.

Where the case is of a significantly sensitive or complex nature, it may be decided that the line manager (or senior person) identified by the Trust, would have responsibility for the overall process but that the actual investigation would be delegated to others as specified investigator(s). In such situations the terminology 'Case Manager' and 'Case Investigator' would be applied. The Case Manager will then be responsible for specifying the terms of reference for the Case Investigator(s). It will be for the Case Manager to decide what action should be taken based on the conclusion reached by the Case Investigator(s). The

Case Manager should indicate at the outset whether the Case Investigator(s) would be asked to make any recommendations as part of the Report. If it has not been requested, the Case Manager may still seek such recommendations upon receipt of the Report. The decision whether to act on any such recommendations remains with the Case Manager.

Where medical staff are involved in either making the complaint or are the subject of a complaint, advice must be sought from HR on who the appropriate person would be to investigate the issue. In particular, for training grade doctors, the role of the Deanery will need to be clarified. For all medical staff there will be a need to be aware of any interrelationship with the relevant policy and procedure relating to Discipline, Capability and Health of Medical Staff. This is available on the HR site of the Trust Intranet.

This is particularly important if it is felt that the alleged perpetrator may need to be moved or suspended pending the outcome of the investigations.

5.3 How/When Complaints Become Formal.

Some complaints arise from genuine misunderstandings, many of which can be resolved using the informal approach outlined above. This is often also the case with complaints of harassment but employees will sometimes need to use the formal approach, which is outlined here.

Complaints are regarded as formal when an individual submits a completed a “Harassment and Complaint Report Form” or submits a formal written complaint. In some circumstances the employee may ask line managers to assist with completion of the form and you should make time to do so. These forms should be available and displayed in work areas and copies are also available from Human Resources.

In some circumstances the person making the complaint may decide to involve the second line manager. This may be, for example, in cases where the first line manager is the source of the complaint. In such cases it will be necessary for the second line manager to investigate the complaint and speak with the first line manager as part of his/her investigation.

Exceptionally, the complainant may decide to bypass line management altogether and forward the form to Human Resources. This may be where line management are the source of the complaint or where the individual believes that there are other specific and appropriate reasons why line management should not deal with the complaint at this stage. If this is the case then the individual should have specified the reasons on the form. Human Resources will then decide who the most appropriate person to investigate is. Where there is no valid reason for bypassing the line this may include the first or second line manager.

5.4 Roles and Responsibilities:

- First Line Managers have a defined role in the process to investigate all complaints that are brought to their attention. In doing so they should establish the full facts of the case though interviewing the complainant, any witnesses and the person(s) against whom the complaint is made. Managers must also reach a decision on the complaint, take action as appropriate and communicate the outcome. Details of the approach to be used are outlined later in these guidelines.
- Second Line Managers will normally fulfil the role outlined above where the First Line Manager is the source of the complaint.
- Human Resources have a responsibility for acknowledging all complaints received, determining who should be the investigating manager (in cases where they receive two copies of the form) monitoring progress with cases, supporting line managers by providing advice and guidance on the policy and procedure and providing higher

management with information on cases progressing within their area of control. Human Resources use a database to record and track case progress and it is important that managers liaise with them, particularly if there are any difficulties or delays during the investigation.

5.5 Investigation/Fact Finding

The most difficult part of any investigation is obtaining information. In many cases such information may be less obvious than in other areas which may lead to disciplinary action. The process is made easier however, by the fact that there is a defined structure to be followed. The background to the complaint should have been outlined by the individual at section one of the Harassment and Complaint Report Form. This may be passed to the investigating manager by the person making the complaint or alternatively forwarded by Human Resources where they believe that it would be appropriate for the manager concerned to conduct the investigation. This forms the first part of the fact-finding stage.

Where the form has been forwarded by Human Resources they will have already recorded receipt, acknowledged this and advised the individual who the investigating manager will be. A copy of the letter sent to the employee will accompany the form sent to the manager by Human Resources.

Where the complaint has been brought direct to line management it will be necessary for the investigating manager to notify Human Resources. Human Resources will then record receipt of the complaint and send a letter to the complainant, advising them that the complaint has been received and that the manager to whom they submitted the complaint will be responsible for the investigation. A copy of this letter will also be sent to the investigating manager for information. The manager must not delay the investigation whilst acknowledgement is awaited from Human Resources; it must commence at the earliest possible opportunity.

5.6 Investigation Timescales:

In the majority of cases the investigating manager will be able to speak with the person making the complaint at the time of the complaint being made. Where this is not possible or where the complaint is passed to the investigating manager by Human Resources s/he should aim to contact the individual within three working days of receiving the complaint. The aim should be to have completed the investigation within four weeks. In some cases (e.g. where the investigation is of a particularly complex nature) the investigation may extend beyond this period. Where this is the case the investigating manager must advise the individual accordingly.

5.7 Allegations of a criminal nature

Where it appears that the allegation is of a **criminal** nature please seek assistance immediately from Human Resources.

If at any stage there is a **suspicion** of criminal activity, seek advice immediately.

6. APPROACH TO INVESTIGATION/FACT FINDING:

The skills and knowledge required to investigate complaints as per this procedure are not dissimilar to those used in investigations/interviews under other procedures such as the Capability Procedure and Disciplinary Procedure. All such investigations should be conducted in accordance with our organisation values in a fair and timely manner. The Guiding Principles, Employee Rights and Obligations can be found at sections one to four of the Bullying and Harassment Policy.

6.1. Key Considerations and Order of Fact Finding.

In preparation for fact finding the following points should be kept in mind:

- It is vital that the investigation is dealt with sympathetically and effectively and with due regard for the feelings of everybody concerned.
- All parties have a right to be accompanied by a trade union representative or by a work colleague from within The Trust at all stages of the investigation.
- The guidelines below should be used as the basis for planning and undertaking an investigation.
- Where a note taker is used to assist it is essential that full confidentiality is maintained and note takers should be briefed accordingly.
- The complainant should normally be interviewed first, with the aim of obtaining as much detail about the complaint as possible.
- Where there are any witnesses to the complaint they should be interviewed next.
- Finally, the person against whom the complaint has been made should be interviewed. Again, this interview must be conducted sympathetically and in complete confidence. Managers should be mindful of the fact that the complaint requires full investigation before it can be regarded as substantiated. Written notes and documentation etc., from the complainant or witnesses should generally not be shown to the alleged harasser, at this stage. This, however, is a matter of judgement dependent on the circumstances and it may be appropriate to divulge some documentation if it is felt that this will assist with the investigation.
- If the complainant or the alleged harasser is on sick leave for more than a few days managers should not necessarily delay the investigation until they return. This can be a tricky situation to handle and advice should be taken from the Human Resources Team in such circumstances.
- It may be necessary to consider separating the parties during an investigation and further guidance on this point can be found below (see 'Interim Action'). If in any doubt advice should be sought from Human Resources.

6.2. Interview Preparation

Before the interview managers should:

- Re-read the Harassment and Complaint Report Form and any other reports or letters, which may have already been obtained (for example where the complaint was made anonymously or by a third party).
- Plan the interview by noting down any points which need clarification or additional information required. Managers will have to use the information from the individual making the complaint as a basis for interviewing any other parties involved so they need to obtain as many details as possible.
- Advise the individual they may be accompanied by a union representative or colleague, but this person must not be a witness.

6.3. Starting the Interview

At the start of the interview:

- Advise that the interview is confidential and that it must not be discussed with colleagues or friends as this could prejudice the investigation.
- Introduce all parties and clarify roles and responsibilities e.g. if you have a note-taker present.

- If there is no note-taker, explain that you will be taking notes so that you have an accurate record, and that it is important that their own words are written down.
- Explain that a record of the interview will be prepared for their signature, and that they will be able to read, comment and make any changes necessary before they sign it.

6.4. During the Interview

- Ask the individual to talk through the complaint and make full notes, using the individual's own words.
- Ensure you get as many details as possible of the incident(s), seeking clarification where necessary as this will help when you interview other parties. Managers should specifically look for dates of incidents, specific details; (e.g. things said, non verbal actions), names of all witnesses, what action they or others took if any (e.g. in cases of harassment did they ask the person to stop or report it to a manager)
- Where the complaint is one of verbal harassment ask them to say or write the exact words spoken to them.
- Bear in mind that this is probably a very uncomfortable situation for both you and the complainant, particularly if delicate personal issues have been talked about. It is however important that you get these details. If the complainant is a member of the opposite sex to you and feels unable to discuss very personal issues then you may need to seek the assistance of a manager of the same sex as the complainant. However, every effort should be made to ensure that very personal issues only have to be discussed once.
- Should the interviewee become distressed or aggressive during the interview, the interview should be suspended for a short period, to allow the individual to regain their composure, or terminated. Where it is necessary to terminate interviews it is recommended that you discuss the next steps with Human Resources.
- Explore with the individual what they are seeking by way of a remedy/outcome in making the complaint, but be careful not to make any commitment to potential solutions given that you have yet to establish all of the facts. You may think that the remedy is obvious but it is always useful to establish what the individual's expectations are in the early stages of the investigation.

6.5. At the End of the Interview

- When you are satisfied that you have explored and collected as much pertinent information as you are able, ask the employee if there is any other information that they wish to add, check that they have identified all incidents so you don't have to consider new allegations further into the investigation.
- Allow them to ask questions but do not be drawn into discussing potential outcomes of the investigation.
- Ask them to let you know if they subsequently think of something else which is important.
- Tell them that you will provide them with a copy of the interview notes to check and sign (for further guidance see 'Interview Notes' below).
- Re-emphasise the need to keep the interview confidential.
- If you get the interview notes typed do not destroy the original hand-written notes. These should be retained with the papers, as they would form part of the evidence in any subsequent Employment Tribunal.
- You may find it useful to transfer the details of the complaints made onto the Case report form that accompanies these guidelines (Appendix 1) at this stage. This will help you to examine the specific complaints and the evidence which the complaint has

provided to support them and will also help you determine where other parties need to be interviewed and plan your questioning for these people.

6.6. Witnesses

When you have interviewed the person who made the complaint you should then interview any witnesses to the incident(s).

- Invite them to interview and advise them that they may be accompanied by a union representative or colleague, but this person must not be a witness.
- Record any reluctance of witnesses to reveal information, as this could be evidence of intimidation.
- Ensure that you get as many details as possible from the witnesses, but be careful you don't put words in their mouth, for example - by asking leading questions. This is very easy to do, if it "fits in" with the complainant's account.
- Give them a copy of their interview notes for checking and signature (for further guidance see 'Interview Notes' below).

6.7. Interviewing The Person Against Whom The Complaint Has Been Made.

The next stage is to interview the person against whom the complaint has been made. You should tell the individual that allegations have been made against him/her and you need to get their account of the incident(s).

- Invite them to interview and advise them that they may be accompanied by a union representative or colleague, but this person must not be a witness.
- Advise that the interview is taking place under the Bullying and Harassment Complaints Procedure, is confidential and that it must not be discussed with colleagues or friends as this could prejudice the investigation.
- Explain that you will be taking notes so that you have an accurate record, and that it is important that their own words are written down.
- Explain that a record of the interview will be prepared for their signature, and that they will be able to read, comment and make any changes necessary before they sign it (for further guidance see 'Interview Notes' below).
- Do not share written evidence from other parties at this stage - remember that you are only investigating the complaints at present and nothing is proven. It would only be appropriate for the individual to be provided with the written statements if they were charged with misconduct at a later date. If this was the case, and the complaint was of serious harassment, it might be necessary to consider minor amendment to statements to protect the anonymity of informants. Where this is the case advice must be taken from Human Resources. (See section 6.1 above)

When the complaint is one of harassment and the alleged harasser is told about the incidents it is likely that s/he will respond in one of two ways:

- a) I did not know the behaviour was unwelcome or offensive, or
- b) Denial that the incident(s) took place.

If the response is a) you should make the individual aware that harassment is any conduct which is unwanted by the recipient or affects his/her dignity at work. It is not their opinion of what is offensive that is important. It may be necessary to consider action under the Disciplinary Procedure.

If the response is b), you will need to use the detailed information obtained in the interviews with the complainant and any witnesses, as well as the alleged harasser's information to determine whether the incident(s) complained of took place.

6.8 Interview Notes.

Interview notes are generally a summary of the points discussed during the interview but may also include some direct quotations from individuals where there is a need to be clear as to what exactly was said. It is not common for verbatim notes to be taken. Interview notes may be written in the first or third person but should include the following:

- The date time and venue of the interview.
- names of those present and their roles.
- where the interviewee is not accompanied a statement that they were aware of their right to have a friend or work colleague with them and declined.
- a statement to the effect that the investigation is confidential and should not be discussed with other parties.
- a summary of the points discussed and specific allegations made and evidence provided, by the interviewee, to support/contest the allegations.
- where individuals are complaining about things that have been said these should be expressed as quotations.
- a summary of the remedies/outcomes that the individual is seeking in making the complaint, where appropriate.
- reference to the fact that the individual was asked at the end of the interview if there was anything further that they wished to add.
- a statement that the notes of the meeting will be typed and the individual will be provided with a copy to check, and amend if necessary.
- the finish time of the interview.
- an indication of when the individual can expect a decision to be reached.

Investigations can be, unnecessarily, delayed where notes are not produced and agreed promptly. The following points should therefore be borne in mind:

- the notes produced should be a summary of the points discussed during the meeting and not necessarily a verbatim account.
- every effort should be made to produce the typed notes on the day of the interview whilst the points are still fresh in everyone's mind.
- it is for the interviewer to ensure the accuracy of the notes and not the note-taker.
- individuals are asked to check the notes and sign them as a true record of the interview. Where they disagree with any of the notes they are able to amend them or provide additional comments, but managers should also retain the original notes as it is useful to see what changes/additions have been made after the interview.
- managers need to allow individuals time to check and respond to the notes without unnecessarily delaying the investigation. It is therefore recommended that three days be allowed.
- it is recommended that individuals are advised that if the signed notes are not returned, with amendments where required, within three days it will be assumed that they are accepted as a true record of the interview and the investigation will proceed on that basis.
- where individuals are loath to sign off notes managers should record the reasons given and associate with the notes.

Note: Where complaints made under the Bullying and Harassment Complaints procedure are not resolved to the satisfaction of the complainant they may, in some circumstances, be able to pursue it externally through an Employment Tribunal. Written notes and

correspondence are therefore extremely valuable. A tribunal is far more likely to accept the explanation given by an employer if it is supported by documentation prepared at the time. You must therefore keep a file of all paperwork associated with the case. It is useful to keep file notes of any actions taken which might not otherwise be recorded - e.g. telephone calls to chase up outstanding notes etc.

7. INTERIM ACTION

7.1 Separating Individuals

As soon as a complaint is made using this procedure (i.e. where harassment, bullying or victimisation is alleged) the aim is to minimise the risk of inappropriate behaviour and ensure that the investigation can be completed without any interference. In such circumstances it may be necessary to consider separating individuals, and this may be decided either before the investigation has commenced, or part way through the investigation where it becomes clear that there may be a risk of inappropriate behaviour.

In considering whether separation of individuals is necessary it is recommended that you consult with your Human Resources team. The underlying principle however, is that unless the complainant specifically requests otherwise, every effort should be made to move the alleged harasser and not the complainant. In doing so it is necessary to balance the likelihood of recurrence (in that the organisation has a duty of care to the employee or anyone else who may be at risk due to future acts or omissions) with the impact that any separation is likely to have upon the alleged perpetrator. Where a decision is taken to move the perpetrator, managers should consider the implications and, if practicable, move the alleged perpetrator to another duty where s/he will not be financially disadvantaged. In some circumstances this will not be a practicable option and it may be necessary to move the alleged perpetrator to a different shift or unit.

In some cases involving harassment, bullying or victimisation moving the alleged perpetrator(s) to another duty, shift or unit may be considered too great a risk to other employees, the reputation of the organisation or hinder the investigation process. Where this is believed to be the case it will be necessary to suspend the alleged perpetrator(s) from duty as a precaution. It should be noted that such action does not represent a disciplinary penalty and should only be necessary to prevent the risk of further breaches of conduct, to protect employees, property or mail, or to protect the company's good image and standing in the community.

7.2 Trade Union Representatives

In the event of a decision being taken to precautionary suspend a trade union representative the Divisional Representative of the relevant union should be advised. Every attempt should be made to do this at the earliest opportunity following the decision to suspend being taken, and prior to the suspension being made. When the Divisional Representative is unavailable suspension should not be delayed and a message should be left for them to contact the manager dealing with the case at the earliest opportunity.

It is important that you take advice from your Human Resources Team if you need to consider suspension.

7.3 Withdrawn Complaints

During the course of an investigation there is always a possibility that you may be approached by individuals who want to withdraw their complaint or amend a statement which has been given. It is not acceptable for you, as a manager, to accept such a request without fully considering the implications and any sudden changes of heart should be

viewed critically, remembering that we have a duty to fully investigate complaints that are brought to our attention. The reasons for withdrawal or amendment to a statement will generally fall into one of the following categories:

- It has become clear to the complainant that they were not in possession of all of the facts at the point that they made their complaint. As things are now clearer they have decided that they wish to withdraw it.
- The individual has been put under pressure by others to change their story.
- The original complaint was fabricated in an attempt to get somebody else into trouble and the complainant realises that they have little chance of success.
- The individual may feel that the investigating manager has not acted in accordance with the procedure and whilst their complaint is genuine they have lost faith.

All of the scenarios above appear clear cut, but in practice this will not be the case, as such you should:

- Always note of what is said to you but don't jump to a conclusion - reserve judgement
- Seek a full explanation for any apparent change of heart and be prepared to challenge any arguments that are weak, but support/reassure people who may genuinely be in fear of reprisals.
- Make a file note of the reasons which people give and where practicable take an amended statement (always retaining the original) and get this signed
- Take advice from your Human Resources Team before committing yourself to a particular course of action.
- Remember that complaints don't just go away, particularly ones in which serious allegations have been made. Be prepared to follow the case through to its conclusion.

7.4 Further Guidance

Where it is necessary for a complaint, which has initially been investigated under the Bullying and Harassment Policy, to be progressed as a misconduct case there may be a need for separation of parties to continue. Further guidance can be found in the 'Links to Other Procedures' section below.

8. REACHING & COMMUNICATING YOUR CONCLUSIONS.

8.1 Recording and Balancing Evidence

Some cases may appear clear cut in that one of the parties will admit to the act complained of or there may be overwhelming evidence to suggest that the act complained of did occur. Others will be less clear and there may be contradictory evidence. Where this is the case it may be necessary to see the individual who made the complaint again and discuss the contradictory evidence with them, as it is possible that they may be able to provide further information which helps to explain any inconsistencies.

Once you are convinced that you have carried out a reasonable investigation you should use the summary sheet at Appendix 1 for recording and balancing evidence. Many managers find this format useful because it brings together the evidence of the complainant, witnesses and alleged perpetrator(s) into one document; with supporting evidence listed on one side and contradictory evidence on the other.

You will need to use this information to determine the facts of the case and whether you have a 'reasonable belief' that the act complained of actually did take place.

Where there is no direct evidence, resolution may depend on your assessment of the balance of probabilities and the credibility of the people involved. In doing so it is important

that you carefully consider any personal biases which you may hold and set these aside in making your decision.

It is important to note that there are essentially three things that you need to consider in making your decision:

- you need to believe that the act complained of actually occurred.
- you need to have reasonable grounds for coming to that conclusion, and
- you need to be satisfied that at the point at which you have reached that decision you have carried out as much investigation into the matter as was reasonable in all the circumstances of the case.

In summary, you don't have to be able to 'prove' that the act complained of occurred, but you do have to 'believe' that it did having carried out a full investigation and carefully considered all of the evidence available to you. Crucially, you need to be able to explain why you believe it did or didn't happen.

Where you have decided that the act complained of did occur, you need to establish whether or not it was reasonable in the circumstances. This would depend on the facts of the individual case and is generally more clear cut where the act complained of is based on alleged inappropriate behaviour, for example:

1. Proven harassment would not be reasonable.
2. Refusal to grant overtime or allow annual leave may be reasonable in some circumstances but not in others.

Your conclusions and how you came to them should be recorded on the Case Report Form, which accompanies these guidelines (Appendix 1).

8.2 Determining Good Faith

A guiding principle of the Bullying and Harassment Policy is that managers will treat all complaints seriously. Similarly, there is an obligation upon employees that complaints must be made in good faith.

On completion of an investigation in which you do not believe the complaint to be proven it is necessary to establish whether or not you believe that it was made in good faith. Where you believe that it was not then it may be necessary to take action against the complainant under the Disciplinary Procedure (See 'Links to other procedures' below).

In determining whether a complaint was made in good faith it is necessary to consider whether it was misconceived or unreasonable. A complaint may be misconceived, in that an individual thought that they had been treated unfairly but formed that view in the absence of all of the facts. For example, an individual may have genuinely felt that a decision to refuse them additional hours was unfair, but upon investigation it is established that there was a perfectly sound reason for doing so, but that this may not have been adequately explained and/or understood by the complainant. In such circumstances the complaint may be misconceived but not necessarily unreasonable (i.e. the Investigating Manager might believe that the individual was justified in making a complaint on that basis even though it was misconceived). In determining whether a complaint was misconceived or unreasonable will also need to consider whether or not all of the facts were available to the complainant, whether they could have been easily obtained or whether they were ignored.

For the complaint to be in bad faith you will have determined, through your investigations, that the person making it did so based on misconception and/or unreasonably. As a general guide this will be where you believe that the individual brought the complaint out of

pettiness or malice and without sufficient grounds. This will normally be where the complaint has been made to annoy, irritate, distress or otherwise harm the person(s) against whom it has been made. To come to this decision you will need to ensure that you are aware of any personal bias, and be able to explain why you have reached this conclusion.

In determining whether a complaint has been brought in bad faith it will also be necessary to consider whether the complainant has an ill health condition which may affect their judgement. Some mental ill health conditions may adversely affect an individual's memory or ability to concentrate, learn, evaluate, judge or understand. Where this is the case it would be inappropriate to deal with apparently unreasonable accusations as a misconduct issue if they relate to the individual's capability. If in doubt advice should be sought from Occupational Health Services.

8.3 Remedies

Where you have established that a complaint is substantiated it is necessary to consider what can be done by way of a remedy. This process is made easier where you have established, on commencement of your investigation, the individual's motives in bringing the complaint. Having done this you may have already been able to take steps to ensure that potential remedies have not been closed off during the period of the investigation. In doing so the operational needs of the organisation will have been considered and you will have determined whether an available remedy could be held open whilst the investigation is undertaken. There are likely to be few occasions where, operationally, a decision can be delayed pending the outcome of an investigation but this must be an active consideration and you must not unnecessarily take action which closes off a potential remedy which would have otherwise been available.

Generally speaking the remedies available will depend on the nature of the complaint raised. As a rule of thumb the following points might be considered as appropriate phases to work through in defining remedies:

1. Have I determined that the individual has been treated unfairly? If yes, say so. In many cases this might be all that the individual is seeking.
2. If the individual has been wronged is an apology appropriate? In some, but not all, cases an apology may be appropriate.
3. If the individual has incurred loss as a result is there an opportunity to remedy this, or put something in place to prevent it from happening again in future? Note this should not be financial compensation, but in some circumstances it may be possible to mitigate a loss incurred.

For example, where there is an urgent need for additional hours to be performed this would not be delayed because an individual had complained that s/he had been unfairly excluded. Where there is evidence following the investigation to determine that they were unfairly excluded then the remedy may be:

1. to accept that whilst the decision was taken on the facts known at the time further investigation has determined that it was inappropriate.
2. apologise for the mistake.
3. allow the complainant an opportunity to make up lost earnings with a level of additional hours and/or put in place more robust processes for allocation in future.

8.4 Advising of the Outcome and Production of the summary report

You must inform the complainant and alleged perpetrator(s) as soon as possible and in private, of the outcome of the investigation and the reasons for your conclusion. Where disciplinary action is considered appropriate any misconduct case should be progressed by

the line manager of the individual(s) concerned (see 'Links to Other Procedures' below). Some complainants will wish to know the outcome of any disciplinary action but the most that you can do is assure them that the case has been handled appropriately. In many circumstances the misconduct case will not have been concluded at the point when the individuals are advised of the outcome of the harassment/complaints investigation, but whether or not this is the case the exact nature of any disciplinary action taken should, as is normal practice, remain confidential.

It may be that at the end of the investigation you conclude that there is not enough evidence for you to have a reasonable belief that the act(s) complained of actually took place. If this is the case you should record why you have reached this decision.

Regardless of whether or not the complaint has resulted in action under the Disciplinary Procedure you should complete the Case Report Form which details the complaint made, investigation undertaken and resulting actions. The format for this report is attached as at the end of these guidance notes. Please note that a full copy of this is sent to Human Resources and a summary to the complainant and alleged perpetrator. Where you have found that there is a case of misconduct to be answered it may be appropriate to protect the anonymity of witnesses. Further advice on this point should be taken from the Human Resources Team, before the report is sent to the complainant or perpetrator.

You should stress that all parties information must remain in strictest confidence. Furthermore, it should be noted that your decision is not necessarily final as the complainant may request a review, which may result in a different outcome.

8.5 Setting Standards

Regardless of the outcome of the investigation there is likely to be a need to re-set standards within the workplace and ensure that there is no victimisation as a result of the complaint being made. Where an organisation policy has been breached it will be necessary to advise the perpetrator and complainant accordingly, in communicating the outcome of the investigation (see 'Advising of the Outcome' above).

Where you do not believe that the complaint has been proven but there are lessons to be learned as a result of the investigation it may be prudent to re-affirm standards more widely within the workplace, through team briefing or training for example. This may be particularly appropriate where it has become apparent from the investigation that poor standards of behaviour have become the norm within the work place. In such circumstances it would be appropriate to advise the whole team of the standards expected, without reference to the specific case investigated, and how breaches of these standards will be dealt with in future.

The Human Resources Team may be able to help further in these situations.

After resetting standards you will need to keep your eye on the situation to ensure that they are being observed and that the person who made the complaint is not being harassed or victimised in any way.

9. LINKS TO OTHER PROCEDURES.

9.1 Disciplinary Procedure

Where disciplinary action is considered necessary, upon conclusion of an investigation under the Bullying and Harassment Policy, the principles of the Disciplinary Procedure will apply. Any subsequent misconduct should normally be managed within the reporting line. In such circumstances it may be necessary for the manager who has investigated the complaint to determine the potential severity of the misconduct before passing the papers

to the perpetrators first or second line manager as appropriate. Where the Investigating Manager has been appointed from outside the reporting line, advice should be sought from HR on who should take this matter forward.

The evidence gathered under the Bullying and Harassment Complaints Procedure may be used to substitute the fact finding stage under the Disciplinary Procedure; but in some circumstances the perpetrators first line manager may wish to undertake further fact finding before deciding how to proceed with the case. If the case has been passed to the perpetrators second line manager and s/he feels that further fact finding is required s/he may ask the manager who initially investigated the complaint to undertake this before proceeding. Any decision as to the need for further fact-finding is at the sole discretion of the manager dealing with the misconduct case.

Conduct penalties will be implemented in accordance with the principles outlined within the Disciplinary Procedure. However, where it is felt that there could be a risk of further harassment, bullying or victimisation it will be necessary to consider whether the precautionary measures outlined above (see 'Interim Action') and in paragraph 7.3. of the Bullying and Harassment Complaints Procedure are appropriate. Where appropriate these may apply until the misconduct appeal has been concluded and the outcome implemented.

10. REVIEW

If a complainant is unhappy about the outcome of the formal investigation they have the right to have their case independently reviewed if they can demonstrate why they believe that a particular aspect of the investigation has materially affected the outcome.

The onus is on the complainant to apply for a review, the reasons for which must be sent in writing to Human Resources within 10 calendar days of receipt of the conclusions of the initial investigation.

- The Review Manager will write to the complainant asking whether they require a face to face meeting.
- At the meeting the complainant will be required to specify which features of the initial investigation have materially affected the outcome.
- The Review Manager will determine (based on the meeting or written evidence submitted by the complainant) the extent to which further investigation, if any, is necessary.
- The review should be concluded within three weeks and the decision communicated to the complainant, manager who initially investigated the complaint and alleged perpetrator. The Review Manager should apply the principles specified in section 8 of these guidelines in reaching and communicating their decision and any further actions where appropriate.

The review concludes the Bullying and Harassment Complaints Procedure.

APPENDIX 1.

BULLYING AND HARASSMENT COMPLAINTS PROCEDURE SUMMARY CASE REPORT

To : [Human Resources]
From: [Investigating Manager]

Date: [00/00/00]

IN STRICTEST CONFIDENCE

Case Reference No.	HCP / / /
Complainants Name <i>(in full)</i>	
Complainants Pay No.	
Complainants Grade/Job Title	
Complainants Office of Work	
Date Complaint Raised	/ /
Alleged Perpetrators Name <i>(in full)</i>	
Alleged Perpetrators Grade/Job Title	
Alleged Perpetrators Office of Work	
Investigating Manager	
Investigating Managers Job Title	
Investigation Process	Formal / Review
Date Investigations Commenced	/ /

Details of Complaint *(Briefly outline all the allegations made by the complainant below)*

INVESTIGATION CONCLUSION *(Record here your judgement and indicate how you reached your decision)*

REMEDIAL ACTIONS *(Record here any remedial actions that you wish to recommend)*

Record of Interviews (Please give details of all interviews held in relation to this complaint)

Name of person interviewed (in full)	Grade / Job Title	Date of Interview

<p align="center"><u>Supporting Evidence</u> <i>(List here any evidence given by the complainant, witnesses or the alleged perpetrator that supports the allegations)</i></p>	<p align="center"><u>Conflicting Evidence</u> <i>(List here any evidence given by the complainant, witnesses or the alleged perpetrator that contradicts the allegations)</i></p>

Investigating Managers Signature Date

Managers Note - The front page of this report may be copied and issued as the Summary Case Report for both complainant and alleged perpetrator(s). Both pages will also comprise as your Summary Case Report to be sent to the Human Resources Team on completion of the case.