

Bullying and harassment:

good practice guidance for preventing and addressing bullying and harassment in health and social care organisations

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Healthy workplace, healthy you
Dignity at work



Contents

Introduction	4
What is bullying and harassment?	5
Harassment	6
Bullying	6
Bullying or performance management	7
Why do we need to address bullying and harassment?	7
The Law and bullying and harassment	8
Good practice	10
Prevention of bullying and harassment	10
Responding to incidents of bullying and harassment	11
Actions for RCN representatives	12
Appendix 1: Sample policy	15
Appendix 2: Investigations	20
References	25
Further information and support	25



Introduction

Many health care organisations recognise the importance of taking a proactive approach when dealing with workplace bullying and harassment. Its effects are harmful to all concerned: the people directly involved in a complaint, team members and the whole organisation.

Furthermore, recent high-profile investigations into failures of health care have highlighted the potential impact of bullying cultures on patient outcomes.

The aim is to achieve a workplace culture in which everybody treats their colleagues with dignity and respect and where all possible steps are taken to minimise the occurrence of bullying and harassment. However, it is also important that organisations have appropriate policies and procedures in place to deal with bullying and harassment when they happen.

This guidance outlines the moral and legal case for tackling bullying and harassment and provides guidance for health and social care managers and RCN representatives on good practice in dealing with workplace bullying and harassment.



What is bullying and harassment?

Experience of bullying and harassment is unique to the individual and not necessarily the result of what had been intended. It is up to the individual to decide if they are being bullied or harassed because they find the behaviour unacceptable. Witnessing a colleague being bullied or harassed can also be distressing or offensive.

The entire culture of the organisation is shifting, becoming hard line and unforgiving. As pressure builds up on individuals, some respond by exhibiting bullying behaviour to others.

Respondent to Beyond breaking point survey (RCN 2013).

Bullying or harassment may be by an individual against an individual, for example by someone in authority such as a manager or supervisor or may involve groups of people. RCN members have also described a culture of 'corporate bullying' (RCN 2013) where bullying has become entrenched in their organisations. This is often described as being linked to organisational change, as well as an increased emphasis on meeting targets and performance within tight budgetary constraints. Managers working in such cultures can resort to bullying behaviours in response to these pressures.

Bullying or harassment can be obvious and public, such as a manager criticising an individual's work in front of colleagues, or more insidious, such as social isolation. There is evidence to suggest that bullying is experienced more by black and minority ethnic nurses.

(RCN 2013, Kline 2014).

Examples of bullying and harassment



Harassment

Harassment is defined under the law as: 'unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating of intimidating, hostile, degrading, humiliating or offensive environment for that individual'. (Equality Act 2010)

Harassment is unwanted conduct that is related to one of the following: age, disability, gender reassignment, race, religion or belief, sex or sexual orientation.

Harassment is unacceptable if:

- it is unwanted, unreasonable and offensive
- it is used as the basis for employment decisions
- it creates a hostile or ineffective working environment.

Harassment can be:

- repeated events
- a single serious incident
- physical abuse such as unwanted physical contact
- verbal abuse such as anonymous answerphone messages, using offensive language or innuendo, telling offensive jokes, name calling or spreading malicious rumours
- written abuse such as letters, e-mails, texts, social media and displaying offensive pictures or posters
- obvious and direct abuse such as mimicking the effect of a disability or explicit threats
- unseen and covert abuse such as social isolation and non-co-operation, implicit threats and pressure for sexual favours
- abuse that occurs at work or outside but is work-related, such as stalking.*

(This list is not exhaustive.)

Bullying

Workplace bullying is the misuse of power or position. It can lead to poor work performance, and to feelings of fear, anger, powerlessness and hurt. It can lead to physical and physiological ill health and subsequent absence from work.

Bullying is:

- sadistic or aggressive behaviour over a period of time
- exclusion from meetings
- humiliation or ridiculing
- criticism in public designed to humiliate
- persistent, unwarranted criticism in private
- treatment of colleagues as children
- changing of work responsibilities unreasonably or without justification
- deliberate withholding of information to affect a colleague's performance
- constant changing of work deadlines or work guidelines.

(This list is not exhaustive.)



* Stalking is also a specific offence and does not need to be related to age, disability, gender reassignment, race, religion or belief, sex or sexual orientation.

Bullying or performance management?

Sometimes performance management can be mistaken for bullying behaviour. It is important for employees to receive feedback on performance and for managers to set targets and objectives. Feedback may not be welcomed but should be delivered in a respectful manner, and the manager should seek reasons for poor performance and try to put measures in place to support the employee. Employees and team members should be consulted about changes to work practices and involved in decisions affecting the team.

Conversely, where managers make no attempt to identify the reason for poor performance or offer support, impose new practice on teams and individuals or fail to consult, these would be examples of bullying behaviour.

The Chartered Institute of Personnel and Development (CIPD) and the Health and Safety Executive (HSE) have developed a framework of management competencies which can be used to assess behaviours in managers (HSE 2015).

Why we need to address bullying and harassment?

There are numerous reports and surveys that demonstrate that bullying and harassment are a significant problem in many workplaces. The RCN's *Beyond breaking point* survey (2013) found that nearly half of respondents had experienced workplace bullying by either a manager or colleague.

Consecutive staff surveys have also identified significant levels of bullying behaviour within the NHS.

Impact on the individual

Bullying and harassment can cause a range of symptoms affecting both physical and mental wellbeing. Examples of symptoms include:

- sleeplessness
- loss of confidence or self-esteem

- loss of appetite
- headaches, nausea
- self-doubt
- hypervigilance
- anxiety, inability to relax or switch off from work

In severe cases it can lead to depression and suicidal thoughts and, although rare, there have been cases of suicide related to bullying or harassment at work.

There is clearly a moral case to do more to prevent and promptly respond to complaints of bullying and harassment.

Impact on the organisation

Where bullying behaviours and harassment are prevalent in an organisation and are ignored, they can have a damaging impact on the organisation. Examples of impacts on an organisation include:

- poor productivity
- low morale
- high absenteeism (often due to stress-related illness)
- lack of engagement
- loss of respect for management
- rapid turnover of staff
- financial impacts including recruiting and retraining staff, dealing with litigation cases and staff/management time spent dealing with grievances and conciliation. Estimated annual cost of bullying to UK organisation's is £13.75 billion including the cost of sickness absence and the need to replace staff who have left their jobs because of bullying (Giga S et al 2008.)
- adverse publicity leading to loss of reputation and public confidence in the service
- failure of duty of care and potential enforcement action by regulatory bodies such as the HSE.

"I have had to take time off with work-related stress and leave employment because of bullying and intimidation from manager and colleagues."

Respondent to *Beyond breaking point* survey (RCN 2013)

"I left one job as there was continued and systematic abuse by a few band sixes/sevens, thankfully not often directed towards myself but it was difficult to work in that atmosphere. It was reported by the junior staff member but nothing was done"

Respondent to *Beyond breaking point* survey (RCN 2013)

Impact on patients

High-profile reports, including the Francis report, into standards of care at Mid Staffordshire NHS Trust, have illustrated the impact that bullying behaviours can have on patient care. Staff who fear or have witnessed bullying as a consequence of raising concerns are less likely to report poor standards of care.

Recent research (West and Dawson 2012) has found "a strong negative correlation between whether staff report harassment, bullying or abuse from other staff in the NHS staff survey and overall patient experience" and "a strong negative correlation between whether, in the NHS staff survey, staff reported harassment, bullying or abuse from other staff and whether patients reported being treated with dignity and respect".

One study also linked bullying behaviours to an increased risk of medical errors (Wright and Khatri 2015). We know that when nursing staff feel cared for and supported in their organisation, this leads to better patient outcomes. Conversely, where organisations do not support their nursing staff, be that in relation to responding to bullying behaviours or reducing work-related stress, patient outcomes are affected (NIHR 2012).

The Law and bullying and harassment

Employers have responsibilities for the health and safety of their employees. There are a number of different legal duties under the Health and Safety at Work etc. Act 1974, the Equality Act 2010 and the Protection from Harassment Act 1997.

There are a number of possible legal actions that can be taken in bullying and harassment cases.

- Failure by an employer to deal with stress and bullying-related issues may result in a breach of an employee's contract.
- Where bullying involves an element of unlawful discrimination related to protected characteristics the employee may bring a complaint under the Equality Act 2010 (see page 5).
- Employees may also make civil claims under the Public Order Act and the Prevention from Harassment Act.
- If the mutual trust and confidence between the employer and employee are fundamentally broken through bullying and harassment then an employee can possibly resign and claim constructive dismissal. (As constructive dismissal cases are often difficult to prove, RCN members should seek advice first before taking action).

Furthermore, action in the form of an improvement notice may be taken by the HSE for organisations that fail to deal with work-related stress linked to bullying. Care regulators may also take action if they have concerns about a bullying culture within an organisation and its potential to impact on patient care.

Personal injury claims

If bullying or harassment have led to stress-related ill health it may be appropriate to pursue a personal injury claim. Personal injury claims on the grounds of psychiatric injury are hard to prove. The employer owes you a duty of care, but a lot turns on the 'reasonableness' of the employer's actions, including what steps could have been taken, based on the employer's knowledge, to avoid psychiatric harm being caused.

Time limits

The time limits for bringing a personal injury claim are strict. Legal proceedings must be begun no later than three years from the date when you knew you were suffering from stress as a result of work. A late claim will be time-barred and you will not be able to sue for compensation without special permission of the courts, which they do not readily give.

Alternatives to trial at court

Having a case decided by a judge is not necessarily the best way of resolving a dispute involving stress. The courts actively encourage the parties (the employer and employee) to try alternative dispute resolution or mediation instead, although they cannot force the parties to follow this route.

Record keeping

Members suffering from stress at work should keep accurate records and seek help as soon as possible. They should:

- keep a record of all dates, events and symptoms suffered and copies of any relevant documentation
- keep a personal record of all working hours, including those outside the normal place of work
- make complaints in writing to their employer about unfavourable conditions and keep copies

- seek medical advice from their doctor and occupational health department, and make sure that a clinical diagnosis is noted in medical certificates (rather than describing the symptoms as 'stress')
- when a particular incident has occurred (for example, serious bullying or harassment), complete an accident report form and ensure the incident is recorded as an industrial accident by completing
- Complete (and keep completed copies of) form BI95 from the Government website <https://www.gov.uk/industrial-injuries-disablement-benefit/overview>



Good practice

Prevention of bullying and harassment

Promote a healthy workplace culture

Minor tensions or conflicts can occur in any work team, and in healthy organisational cultures those tensions can be a valuable force for initiating change. But if unhealthy tensions are not resolved swiftly, bullying and harassing behaviour can start to occur. An open and transparent culture where employees are treated with respect, are consulted, problems discussed, incidents learnt from and concerns identified and acted upon is less likely to encourage bullying and harassment than a closed authoritarian culture. Partnership working with trade union representatives can help promote a healthy workplace culture and support better staff engagement. Some organisations have workplace dignity champions who can promote positive cultures and provide support to staff who may be experiencing bullying.

The RCN's *Working with care* toolkit (RCN 2015) can support the promotion of a healthy workplace and team culture.

Identify the risks and warning signs

Health and safety legislation requires risk assessment to be carried out on all workplace hazards so that action can be taken to prevent harm. Exposure to bullying and harassment can lead to both physical and psychological ill health and is therefore a hazard. The employer must take action to eliminate the risks.

Access to information is an important part of the process of assessing risk and identifying warning signs. Existing management information systems provide some indications of stress-related problems resulting from bullying or harassment.

Signs that might need further investigation include:

- sickness absence
- increase in patient complaints
- increase number of employees receiving counselling
- increase in grievances
- poor working relationships
- exit interview data
- staff turnover.

These indicators do not have a single root, and further investigation, for example in the form of an audit or questionnaire to staff, may be useful.

The Health and Safety Executive's *Management standards* (HSE 2015) provides framework for risk assessing the work-related causes of stress, which include factors linked to bullying such as relationships at work or management support.

Ensure competent leaders

Leadership styles are an important factor in fostering a healthy environment. Senior and line managers need to lead by example and display respectful and dignified relationships with all work colleagues. Effective people management is the most successful counter to bullying and harassment.

Have an effective policy

Most organisations will have a bullying and harassment/dignity at work policy of some form. However, a policy is worth little unless it is backed up by other supportive measures including top-level commitment from senior managers. Nevertheless a policy is an important requirement for any organisation and sets out responsibilities and the process for dealing with complaints of bullying.

A written policy should be developed jointly by managers in full consultation with staff and RCN representatives. It is important that all individual's within the organisation are subject to the policy and associated sanctions.

The policy should have a broad statement of commitment to creating a climate or working environment where all employees are treated fairly and with dignity and respect. This should be supported by policy aims, roles and responsibilities, definitions, procedures and support available for staff. There should also be an equality impact assessment and information on how the policy will be evaluated and monitored. A sample policy can be found in the Appendix on page 14.

Raise awareness of the policy

All employees need to be made aware of the bullying and harassment/dignity at work policy, including:

- individual responsibilities
- familiarity with, and understanding of acceptable behaviour
- recognition of continued commitment by senior management.

Information on the intranet, newsletters and more formal training sessions are ways of raising awareness.

Information about the policy should also be given to new staff as part of their induction. Team and ward level discussions about the policy and procedures can help to embed the policy aims into the culture.

Specialist training for people investigating bullying and harassment complaints or those supporting staff, such as dignity champions or advocates and trade union representatives, is also required.

Responding to incidents of bullying and harassment

Policies will outline processes and actions to be taken in the event of an incident, which include informal and formal resolution.

This could be:

- where the person directly approaches the alleged harasser in person or via email/letter
- a senior manager or HR manager approaches the person with the complainant consent; or
- a meeting between the two parties is facilitated by a neutral manager or HR representative with appropriate skills.

Where informal action has not worked or is deemed as inappropriate and a formal complaint is made an investigation will ensue.

Appendix 2 outlines good practice in relation to an investigation.

After completing the investigation the investigator will decide whether there is a case to answer. If there is no case to answer, the reason for the decision must be made clear to you. If there is a case, the employer may offer independent mediation as an option if both parties agree. In some instances disciplinary action against the perpetrator may be appropriate, in which case there will be a disciplinary hearing.

Mediation is a completely voluntary and confidential form of alternative dispute resolution. It involves an independent, impartial person helping two or more individuals or groups reach a solution that is acceptable to everyone. The mediator can talk to both sides separately or together. Mediators do not make judgements or determine outcomes – they ask questions that help to uncover underlying problems, assist the parties to understand the issues and help them to clarify the options for resolving their difference or dispute.

The overriding aim of workplace mediation is to restore and maintain the employment relationship wherever possible. This means the focus is on working together to go forward, not determining who was right or wrong in the past.

Acas definition of mediation (Acas 2015)

Supporting individuals

Experience has shown that complaints and investigations of bullying and harassment may induce stress and anxiety in all those involved. As well as the person complaining and the alleged harasser, this may include witnesses, investigators, staff representatives and supporters. Appropriate support should be provided to these individuals.

Many health care employers offer independent counselling or employee assistance programmes in the workplace to all staff. They can give everyone involved in a complaint much-needed support and help people to identify the best course of action for them.

Counselling may also be accessed through GP services. RCN members including representatives are able to use the RCN counselling service, which provides professional and confidential counselling (see page 25 for contact details).

Actions for RCN representatives

All three representative groups play an important role in the prevention and management of bullying and harassment at work. By working together, representatives can improve the working environment and experiences of RCN members.

RCN learning representatives

- RCN learning representatives can ensure that employers are taking adequate steps to raise awareness of the policy and provide appropriate training. They can ensure that managers allow staff time off to attend training on bullying and harassment and dignity at work.
- Where members have been off sick for a period of time or lost confidence, learning representatives can support members in identifying and accessing any learning and development needs.
- Learning representatives can also work with management to ensure a fair appraisal system and the existence of a learning culture, which can assist in creating a healthy workplace culture.



RCN safety representatives

RCN safety representatives can play a key role in preventing bullying and harassment by:

- identifying signs of bullying such as high sickness absence levels or stress and raise concerns via the health and safety committee
- working with stewards in the development of the policy
- ensuring that employers are risk assessing the work-related causes of stress
- supporting the implementation of a healthy workplace culture
- negotiating access to counselling services for members affected.

RCN stewards

RCN stewards can work with safety representatives in the development of jointly agreed policies and raise concerns where there is evidence of bullying behaviours. On an individual level they are key to supporting members who are experiencing bullying or harassment at work. In addition to following the RCN case management procedures the steps detailed below should be followed.

- Arrange to meet the member somewhere private.
- Reassure the member that if he/she wishes the matter will be kept confidential.
- Spend time with the member and get a clear picture of what has led the member to seek help.
- Try to listen without prejudice, and without making judgements and assumptions or jumping into solutions before getting the full picture.
- Find out what the member has done to manage the problem. How far is this working?
- Have you made them aware of *Bullying and harassment at work: a guide for RCN members*? Have they used the sample diary template it contains?
- Ask them why they have chosen now to seek help.
- Ask them if there are any witnesses.
- Discuss with the member how they would like the matter pursued. Can this be brought about informally or will it need formal action? What does the member feel capable of doing?
- Obtain a copy of your employer's policy and make sure that the procedure is followed.
- Agree a contract for who is to do what, clarifying issues such as confidentiality, contacts, availability and so on.
- Advise the member to report the matter to the appropriate manager and offer to assist him/her to do so.
- Work with safety representative to find out whether other members are being bullied in the same department (for example, by looking at survey results or sickness absence data).
- Offer to accompany/represent the member at any stage of the formal enquiry into his/her complaint.
- Try to ensure that the complaint is dealt with as quickly as possible.
- Make sure that both you and the member take all relevant documents to any meetings.
- Ask for a record to be made of the meeting and for a copy to be sent to you and the member as soon as possible.
- Ensure that the member is kept informed of developments.
- If the member is unhappy with the decision on their complaint, seek advice from the RCN on an appeal.
- If the member wants to pursue legal avenues advise them to contact RCN Direct.

Remember to take care of yourself as a representative. Supporting members with bullying cases can be demanding and sometimes upsetting. Agreeing a contract at the beginning for who is to do what, and clarifying issues such as confidentiality, and contacts, and availability will help in the long run. If you get into difficulties don't be afraid to ask for help from the RCN or the RCN counselling service.



Appendix 1: Sample policy

The following model policy can be used as a template to develop anti-bullying and harassment policies appropriate to your organisation.

Introduction

This organisation, together with the Royal College of Nursing and other staff organisations, is committed to providing a healthy working environment where all staff are treated with the dignity and respect they deserve.

The organisation values the contribution that all its employees make to deliver efficient, and high quality services. The organisation recognises that to deliver these services to the best of their ability employees need an environment that is free from harassment and bullying in all its forms.

Bullying and harassment is morally, legally and professionally unacceptable. Team working is undermined and staff morale is reduced. This in turn lowers productivity and increases staff sickness absence and turnover. It also costs time and money, affects quality of service delivery and damages the organisation's reputation.

For all these reasons bullying and harassment will not be tolerated and is likely to lead to disciplinary action.

Policy aims

This agreement relates to all staff, managers, contractors and voluntary workers (a separate policy addresses the management of bullying and harassment by patients and other members of the public).

This policy aims to:

- create a culture where bullying and harassment is not tolerated
- minimise the risk of bullying and harassing behaviour

- encourage a proactive approach to the early recognition of bullying and harassment
- resolve such conflicts effectively and speedily if they occur.

Principles

Organisational culture

All staff must treat colleagues with respect and dignity. Anyone who supports or encourages harassment or bullying by others may be liable to disciplinary action.

Self-definition

It is important to remember that bullying and harassment are not determined by the intention of the person who has caused offence, but by the effect it has on the recipient. It is up to that person to decide if they are being bullied or harassed because they find the behaviour unacceptable.

Impartiality

Independent procedures are available to establish what happened in any alleged incident(s) as far as that is possible.

Fair treatment

Both parties to a complaint will be treated fairly. They will both be offered support and guidance throughout the investigation and/or grievance/disciplinary procedures.

Non-victimisation

Employees will be protected from victimisation for making or being involved in a complaint.

Confidentiality

As far as possible, confidentiality will be maintained but cannot be guaranteed once the investigation process is set in motion.

Roles and responsibilities

The organisation

The organisation will ensure that:

- all staff are made aware of their personal responsibilities under this policy
- formal training to support this policy is provided to appropriate staff. This applies to particular people who investigate formal complaints, and those who support and advise individuals who complain or are complained about
- all staff are informed about the contents of this policy and the complaints procedures
- all staff have access to independent counselling if they wish
- policy provisions comply with UK law
- the policy and procedures are monitored and reviewed formally on a regular basis with staff representatives
- a senior manager (insert name and/or job title) will be accountable for the effective implementation of the policy.

Managers

Managers are essential in implementing this policy. They do this by:

- ensuring good communication with staff and between staff by operating an open-door policy, and discussing bullying and harassment issues at team meetings
- setting examples and standards of behaviour in the workplace; this includes not bullying or harassing staff, and being aware of how their behaviour affects other people
- creating an environment and culture where destructive forms of behaviour are not tolerated, and where everyone is treated with respect and dignity
- creating an environment where concerns raised by staff are listened to and acted on

- recognising destructive behaviour and taking action where it occurs
- ensuring staff know about this policy and know how to raise harassment and bullying issues
- working to find solutions to bullying and harassment cases
- supporting staff who may feel they are being harassed or bullied
- dealing with any complaints fairly, thoroughly, quickly and confidentially, respecting the feelings of all concerned
- ensuring that there is no retaliation against the person who made the complaint
- recognising that gossip about bullying and harassment can be destructive.

Staff

All staff are responsible for adhering to this policy. They are required to:

- treat all colleagues with dignity and respect and be aware of how their behaviour can affect other people. For example, they must ensure that normal workplace banter enhances, rather than undermines, teamwork
- support colleagues who are being bullied or harassed and bring it to the attention of their line manager, or other appropriate senior manager.



Harassment in the workplace

Harassment is defined under the law as unwanted conduct related to a relevant protected characteristic (age, disability, gender reassignment, race, religion or belief, sex or sexual orientation), which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual. (Equality Act 2010)

Harassment can take many different forms:

- persistent incidents
- a single serious incident
- unwanted physical contact
- verbal abuse such as anonymous answerphone messages, offensive language or innuendo, telling offensive jokes, name calling or spreading malicious rumours
- written abuse such as letters, faxes, e-mails or graffiti (these may be anonymous) or displaying
- offensive pictures or posters
- explicit behaviour such as mimicking the effect of a disability, threats
- covert or disguised behaviour such as social isolation and non-co-operation, implicit threats, and pressure for sexual favours
- incidents associated with work such as stalking.

Such behaviour is unacceptable if:

- it is unwanted, unreasonable and offensive to the recipient
- it is used as the basis for employment decisions
- it creates a hostile or ineffective working environment.

Bullying in the workplace

Bullying is the misuse of power or position that undermines a person's ability, or leaves them feeling hurt, frightened, angry or powerless. Features of bullying behaviour include:

- sadistic or aggressive behaviour over time
- exclusion from meetings
- humiliation or ridiculing
- criticism in public that is designed to humiliate
- persistent, unwarranted criticism in private
- treatment of colleagues as children, not as adults
- undermining of staff by replacing their areas of responsibility unreasonably or without justification
- withholding of information to deliberately affect a colleague's performance
- constant changing of work deadlines or work guidelines.

Procedures

The following procedures aim to help resolve complaints of bullying and harassment carefully and sensitively by:

- clarifying how complaints should be made and resolved
- ensuring that complaints are dealt with promptly, fairly and consistently
- protecting the rights of both the complainant and the alleged bully/harasser.

Further guidance for staff is usually provided in the employer's guide for employees.

Options for action

Members of staff who believe they are being bullied or harassed should take the following steps:

- informal action
- formal action.

Informal action

In some cases talking directly with the person who is causing the bullying or harassment problem may be enough. This approach may be appropriate if the person complaining believes that the destructive behaviour is unintentional and the perpetrator is unaware of its impact. The person complaining can take this approach alone, or with help from a friend or trade union representative.

The person complaining should clearly:

- explain how the behaviour makes them feel
- explain how it is interfering with their work
- ask for it to stop.

The person complaining should keep a note of everything that is said.

A direct approach can also be made in writing to the individual.

If a direct approach fails or is inappropriate, informal action by a line manager or personnel manager may be more effective.

The advantages are:

- it provides an opportunity for the manager to be satisfied that the individual being complained about fully understands the requirements of the policy
- it produces quick and effective solutions
- it keeps embarrassment and the risk of confidentiality breaches to a minimum
- it minimises disruption at work.

This approach should not be taken if the person complaining wishes to take formal action or if the seriousness of the incident(s) makes it inappropriate. After discussing the issue with the person complaining, the manager should speak to the alleged harasser/bully to attempt to resolve the issue. This informal and confidential discussion should explore:

- how the person complaining is feeling as the result of their behaviour
- the alleged harasser/bully's view of the situation

- how the behaviour may be contrary to the harassment and bullying policy
- the required standards of behaviour
- the likely consequences of continuing the behaviour
- how the situation will be monitored.

The manager should make a note of both discussions.

Following these discussions the manager should provide feedback to the person complaining. If appropriate the manager can offer to facilitate a joint meeting with both sides to re-establish effective working relations.

Formal action

The matter should be reported to a human resource or personnel manager. The complaint must be made in writing, confirming the dates and details of the incidents and any approaches asking the alleged harasser/bully to stop.

The procedure

- The human resource manager gives the complaint high priority and arranges for another senior manager to investigate. The senior manager will not have line management responsibility for either the person complaining or the alleged bully, and will have had specific training.
- The senior manager will gather facts and statements relating to the incident from everyone concerned.
- Everyone involved is guaranteed a fair and impartial hearing.
- A friend or trade union representative may accompany the person complaining to meetings about the complaint. This also applies to the alleged bully/harasser.

- After an initial investigation the senior manager will decide whether:
 - there is a case to answer. If there is no case to answer, all records of the matter will be disregarded. The person complaining will receive feedback on the reasons for this decision
 - the matter can be dealt with through mediation or conciliation. If both sides agree to this, the alleged bully/harasser's manager will be informed confidentially
 - there is justification for further investigation in a formal disciplinary hearing.
- The results of the preliminary investigation will take no longer than three weeks to prevent additional stress and anxiety to both sides of the complaint.
- If the matter is investigated in a formal disciplinary hearing it will happen as soon as possible, in accordance with the organisation's disciplinary procedure.
- It may be necessary to suspend a member of staff to protect them or to aid the investigation.
 - The decision will always be made in consultation with the human resource or personnel department.
 - The suspension will be for the shortest time possible.
 - The suspension is NOT disciplinary action, and this should be made clear to everyone involved.
- A decision to suspend a member of staff will only be taken where there could be a serious threat to:
 - the health and safety of staff
 - the security of the organisation.
- If appropriate it may be preferable to move a member of staff.

Outcomes

- If the preliminary investigation finds that the disciplinary procedure is not required, then there will be conciliation, mediation or provision of appropriate training for the people involved.
- If the investigation supports the allegations the organisation's disciplinary procedure will be used. To ensure impartiality the complaint investigator(s) will not conduct the disciplinary process. The bully/harasser will be disciplined in line with the employer's procedures. In serious cases this may mean instant dismissal.
- The person complaining will receive verbal feedback on the outcome of their complaint this will later be confirmed in writing.
- Frequently the person complaining and the bully/harasser are based in the same workplace. If the complaint is upheld it may be necessary to separate them. In most situations it will be the bully/harasser who is moved.
- Sometimes it is necessary to separate both sides even where the complaint is not upheld, to maintain good working relations.
- The organisation recognises that it employs a diverse workforce where individual staff may have different expectations about what is acceptable workplace behaviour.
- The organisation recognises that all staff have the right to be treated with dignity and respect, and the employer will consider all complaints of harassment or bullying in this context.
- Staff are encouraged to raise valid complaints and can expect them to be taken seriously by their employer, and investigated promptly, sensitively and fairly.
- Malicious complaints will be regarded as gross misconduct and disciplinary action will be taken.

Appendix 2: Investigations

Investigating complaints

Preparation and planning

The aim of an investigation is to discover what took place and why, and to propose steps to resolve the conflict. Investigations are a vital part of any anti-harassment initiative, and the way they are conducted sends clear messages about the organisation's commitment to promoting a healthy workplace culture.

They should begin at the earliest opportunity after a complaint has been made, but certainly within five days. Investigations are not easy to conduct, but with careful preparation and clear and agreed procedures the challenges can be minimised.

Consider the following set of questions before drawing up an action plan.

- Who will lead the investigation and who will make up a panel if this is required by the policy? Panel membership should be determined by the needs of the particular case. For example, it may be appropriate to consider the ethnic background and gender mix of panel members. People involved in the conduct of an investigation must:
 - be neutral – not part of the line management and reporting arrangements of either party to the complaint, and not close colleagues or friends
 - have received dedicated training on the organisation's bullying and harassment policy and procedures
 - have received dedicated training on interviewing skills and how to conduct an investigation.
- Who will need to be interviewed? This will usually be the person(s) complaining, the alleged harasser/bully and witnesses. As the investigation progresses it may be necessary to expand the list.

- What other information may provide supporting evidence? For example, this could include absence records, training provision, development reviews and copies of local procedures.
- What is the anticipated timescale involved, taking account of the number of interviews that need to be conducted? The timescale should be adhered to as far as possible. But if serious slippage occurs everyone involved in the complaint should be informed and told why.

Every effort should be made to complete an investigation as soon as possible. An extended process can cause difficulties. Evidence becomes less reliable as people's memory of the event fades. The ongoing stress and anxiety experienced by people involved in the investigation can have a devastating effect on their health. In addition, the uncertainty can impact on people not directly involved. In the RCN's experience whole teams have disintegrated as a result of a protracted investigation. This has a significant effect on organisational performance and reputation.

Suspending attendance at work during an investigation

Where a staff member has been suspended from work (see model policy on page 14 for the circumstances of suspension), the requirements about contact with colleagues must be clarified in writing. The letter should include instructions not to discuss the complaint with work colleagues, other than their RCN steward or staff representative, hospital counsellor, or occupational health adviser. It should be pointed out that contact with colleagues may be interpreted as an attempt to influence the outcome of the investigation, or as further harassment/bullying. The letter may also instruct the suspended person to inform the human resources/personnel department or line manager if they want to visit the workplace/hospital site. Where relatives and/or close friends are also employees the organisation should not attempt to limit normal social contact with suspended staff.

Conducting interviews

The rights of all people interviewed must be protected. Both parties to the complaint should be encouraged to have either their trade union representative or an appropriate friend or colleague to accompany them. Witnesses may also wish to be accompanied. At the start of the interview investigation process should be explained, the importance of confidentiality emphasised, and the intended timescales clarified. Interviewees should be reminded of the organisation's commitment to ensuring the person(s) complaining is/are protected from inappropriate behaviour and victimisation.

It is very important that interviews are conducted in a manner that sets people at ease and gives them support. Nevertheless, it is essential to probe and clarify any apparent discrepancies in statements. But the style of questioning should always be objective and non-accusatory.

Comprehensive notes of the interviews should be made. They should be signed by the interviewee as accurate and reflecting the discussion. The interviewee must be able to make written comments about any section of the notes that they do not agree with. A copy of the signed interview note should be given to the interviewee. Tape recorders should only be used if the interviewee gives permission in advance. If this happens the interviewee should be given a copy of the tape.

Interviewing the person complaining

The person(s) investigating the complaint should first find out the facts from the point of view of the person complaining. At interview, ask questions such as:

- What happened?
- In what context did this happen?
- Who was involved?
- When did the incident take place?
- How did you react?
- Was this the first time this has happened?

- Tell me about the other occasions?
- Did anyone see/hear this or a previous incident?
- Is there any physical, documentary, or other evidence of the incident?
- Have you talked about this incident to anyone?
- How has it affected you?
- What do you want to happen to resolve this situation?

Questions that should not be asked include:

- What were you wearing at the time?
- Did you do anything to lead him/her on?
- Surely he/she was only joking?
- I know the person you are talking about. I can't believe he/she would do something like that. Are you sure that there hasn't been a misunderstanding?
- Do you really want me to take this complaint further?



Interviewing the alleged harasser or bully

The alleged harasser or bully must be given a full and fair opportunity to explain his or her version of the events that have taken place. It is helpful to know the complainant's version of events before seeing the alleged harasser/bully. Questions to the alleged harasser/bully should include:

- x has described an incident to me and says that you were involved. Can you tell me anything about it?
- x has told me that he/she asked you not to behave in this way. Why do you think x asked you this?
- are there any witnesses who saw what happened?
- how did x react when this incident took place?

Often in cases of harassment the alleged harasser/bully may give one of the following explanations:

- I did it, but I thought x wanted me to
- I did it, but I didn't think it bothered x
- I always behave like that with other staff
- I did not do it.

If the explanation is one of the first two listed, the person investigating should find out what led them to believe this. Harassment and bullying are unwelcome, and no one actively solicits or invites unwelcome conduct. The alleged harasser/bully may claim that he or she thought that their behaviour was welcome or acceptable. He or she may not deny that the conduct or behaviour occurred, and might state that it was freely entered into. He or she may say that the allegation is being made because of a particular action or decision in the workplace that has adversely affected the person complaining. They may suggest that this is an opportunity to "get back" at him or her.

In an interview with an alleged bully it is important to ask why he or she thinks the person complaining feels they are being bullied. The alleged bully may respond that they have

a particular style of working that the person complaining finds difficult to cope with. Find out what it is about their behaviour that causes these problems. If the person complaining's work performance is the relevant issue:

- look back over previous appraisals
- establish what the alleged bully has been doing to help the person complaining meet the standards or targets
- check that training and support is provided if new tasks are allocated
- identify whether the person complaining thinks that the standard of their own work has dropped
- check if work is programmed with realistic deadlines and clear instructions
- establish whether goal posts get changed, and if the person complaining is criticised for failing to anticipate this.

There are some warning signs that indicate bullying has taken place. The person investigating should establish:

- has there been a new line manager?
- have jobs changed recently?
- do complaints sound trivial?
- is there a pattern of ill treatment?
- are there accounts of persistent undermining?
- have the complainant's personal standards been consistent?
- does the complainant believe the mistakes are their own fault?
- is the person complaining under close scrutiny?

The person investigating must come to a conclusion about which version of events is most credible, and resist any temptation to apply their own standards to the seriousness of the complaint. The person on the receiving end is the judge of whether particular behaviour is offensive.

Evidence

People should be encouraged to keep records of harassment/bullying experiences that include:

- date of the incident(s)
- location
- time
- nature of the incident(s)
- their response
- their feelings at the time
- any action taken by them
- the names of any witnesses.

There may be other evidence the person investigating could collect:

- have sickness absence levels increased? The reason for absence may be given as stress, anxiety or depression
- has staff turnover increased? People being harassed or bullied may leave, and other staff who witness the bullying behaviour may also decide to leave
- has the working atmosphere changed? A content and productive workplace may become strained, with good working relationships deteriorating
- do appraisal reports show a changed perception about an employee's performance? The work standards an employee sets themselves may not change, but bullying/harassment may have had an adverse effect on their performance
- are there previous complaints about the alleged bully/harasser that have been disregarded?
- are there any common features to a series of complaints?
- have exit interviews with staff revealed any problems?

The investigation may make use of evidence collected by the person complaining:

- accounts of incidents of harassment
- accounts of meetings or exchanges in which the individual or his/her professional competence were attacked
- dates, times and locations of harassing behaviour
- slurs on their character
- copies of annual appraisals or letters relating to their ability to do their job.

Harassment and bullying often take place without witnesses, so the resolution of a complaint may depend on the credibility of the two parties. The investigation must reveal what evidence there is to support the version of events given by the person complaining. Supervisory staff and, where appropriate, colleagues should be asked what they know about the alleged harassment/bullying, and if they saw how the person complaining behaved after the incident. If the person complaining discussed the incident with anyone else they should be interviewed too.

General points

If the alleged harasser/bully denies that the incident took place, the person investigating must decide whose version of events seems more likely. The case of the person complaining will be stronger if he or she complained at the time, or made notes of the incident and the response. However, take into account that the person complaining may have been too upset or distressed to do so, or may not have thought of it at the time.

In harassment cases where the alleged harasser says that the behaviour had been welcomed on a previous occasion, he or she must be able to show how and where this occurred and that the person complaining welcomed it.

Someone who is being harassed or bullied may delay complaining as they fear repercussions. They may believe that they can sort out the situation themselves. If there has been a delay in complaining, the investigation must find out why.

If the alleged harasser/bully admits “I did it, but I didn’t think it bothered x”, the situation may be relatively easy to resolve. It could be implied that if they had known that the behaviour or conduct was offensive they would not have acted in that way. This explanation is not acceptable where the person complaining has previously told the alleged harasser/bully that the behaviour is unacceptable.

It may be possible to resolve this type of complaint informally, and for both parties to resume their working relationship without further repercussions. A way of encouraging this is for a manager to explore with both parties why the behaviour was offensive, and the effect it had on the person complaining. With an improved understanding of the impact of their behaviour, the alleged harasser/bully is less likely to act in a similar way in the future.

Dealing with stress

Participating in an investigation as the person(s) complaining, alleged bully/harasser, or as a witness creates considerable stress and anxiety. Lack of information and/or understanding of the process adds to this stress.

Investigators and staff representatives should address the following issues:

- inadequate preparation for the investigation process
- lack of understanding of the investigation process
- lack of understanding about the use of statements
- lack of understanding of how evidence is interpreted and used
- the role of the trade union representative
- knowledge of people’s rights and responsibilities
- timing and duration of interviews.

Dealing with group complaints

There are occasions when several complaints are made about a person at the same time. In the RCN’s experience this usually happens when the alleged bully/harasser is a manager and the complaints are made by their staff. Where the RCN has been involved in such cases, the people complaining have said they chose to lodge a group complaint because they believed:

- the complaint would be taken more seriously
- they would be better protected against victimisation.

When a group complaint is lodged, each complaint is investigated separately. However, group complaints indicate low staff confidence in the organisation’s bullying and harassment procedures. Key personnel responsible for policy implementation should review events in the light of this, and ensure that useful lessons are taken on board and efforts are made to rebuild confidence.

Monitoring and review

To ensure there is no repeat bullying/harassment or victimisation/retaliation, it is imperative to put in place procedures for monitoring and regularly reviewing the situation.



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Further information and support

RCN Direct

0345 772 6100

RCN (2015) *Bullying and harassment at work – a guide for RCN members*.

Available at www.rcn.org.uk/healthyworkplace

RCN Membership Support Services

Contact the counselling service on 0345 408 4391 seven days a week 8.30am- 8.30pm to make an appointment or email mss@rcn.org.uk For more information visit www.rcn.org.uk/mss

Bullying and harassment at work: a guide for employees.

Available at www.acas.org.uk

National Stalking Helpline 0808 802 0300 www.stalkinghelpline.org



Notes







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A decorative graphic consisting of several overlapping, wavy bands of color in shades of purple, blue, green, yellow, and orange, creating a sense of movement and depth.

To find out more about the RCN's healthy workplace campaign, visit www.rcn.org.uk/healthyworkplace