

**BULLYING AND DISCRIMINATION POLICY
AND PROCEDURE
AUGUST 2019**

This policy supersedes all previous policies for Bullying and Discrimination Policy and Procedure

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DO NOT AMEND THIS DOCUMENT

Further copies of this document can be found on the Foundation Trust intranet.

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1. INTRODUCTION

1.1 Camden and Islington NHS Foundation Trust recognises that discrimination and bullying can create a threatening and intimidating work environment, which can adversely affect health and wellbeing and performance of employees. The Trust believes that employees have a right to work in an environment free from bullying or harassment.

1.2 Camden and Islington NHS Foundation Trust believes that it is a mutual benefit to the Trust and its employees to work in partnership with Staff side. This policy has been developed and agreed by management and Staff side, in order to ensure that staff are treated consistently and fairly.

2. SCOPE OF THE POLICY

2.1 This policy and procedure applies to all employees of the Trust including doctors in training and Trust doctors. Agency workers, bank staff and third party staff working under contract are also required to adhere to the principles identified within this policy and may use this policy to raise concerns about the behaviour of substantive Trust employee(s).

2.2 The policy does not form part of any employee's contract of employment and it may be amended at any time. The Trust may also vary any parts of this policy, including any time limits, as appropriate in any case.

2.3 The Trust also expects staff members to uphold the Trust Values while carrying out their responsibilities to ensure compliance with the policy.

3. AIMS AND OBJECTIVES

3.1. The aims of the policy are to set out the framework to provide proper redress for individuals facing discrimination and bullying and to assist in identifying and dealing with these issues, in line with the Trust's Equality, Diversity and Inclusion Policy. This procedure is designed to support all Trust staff who feels they have suffered from bullying or discrimination (including harassment and victimisation) from another Trust employee(s). It is not intended for use in relation to complaints from members of the public concerning service delivery and related matters. Neither does it apply to discrimination or bullying of employees by patients/service users.

3.2 This policy encourages consideration of informal resolution in the first instance. Individuals or groups of staff who consider themselves to be subject to bullying or harassment should first take steps to try and resolve it themselves. People may not be aware that their behaviour or some aspects of their behaviour is perceived as bullying or harassment. Individuals or groups may need support in doing this and there are many ways this support can be provided.

4. DUTIES AND RESPONSIBILITIES

4.1. Managers

- Managers have a particular responsibility for ensuring a culture of respect and dignity through role modelling positive behaviours and promoting health and wellbeing of people who work at the Trust;
- To maintain a working environment free from bullying and discrimination
- To ensure employees are aware of the Bullying and Discrimination Policy and Anti-Bullying and Harassment Initiative;
- Take prompt action to stop bullying and discrimination as soon as it is identified;
- To promote informal resolution in the first instance when issues occur;
- Where necessary, to conduct formal investigations in a timely manner;
- To maintain confidentiality at all times without exception;
- To seek guidance from the Employee Relations Team when necessary.

4.2. Staff Members

- To treat colleagues, visitors and patients with respect and dignity;
- To take personal responsibility to ensure a working environment free from bullying and discrimination;
- To familiarise themselves with the Bullying and Discrimination Policy and Anti-Bullying and Harassment Initiative;
- To ensure that patients, visitors and the people we employ are treated equally and not discriminated against;
- To be prepared to receive constructive feedback and change behaviour where perceived by others in a negative way and to ask for help/support if this is required.
- To feedback to colleagues in a timely and professional manner where behaviour is considered unacceptable.

4.3. The Employee Relations service

- Provide guidance and support to all employees and management with regard to the implementation and execution of this policy.
- Encourage and support resolution without requiring a formal investigation.
- Support investigating managers to ensure that any formal investigations are conducted within an agreed time.

4.4 Trade Unions

- To support union members in reaching informal resolutions or during a formal investigation, where necessary;
- To work in partnership with managers to tackle bullying and harassment at work.

5. DEFINITIONS

5.1. "**Discrimination**" is defined as an act which has the effect of treating a person less favourably than another on the grounds of sex, race, religion, religious or philosophical belief, disability, sexual orientation, gender reassignment, age, or part-time or fixed-term working status. In addition discrimination can occur by association. Discrimination can also include harassment and/or victimisation, which are defined as follows:

5.2. "**Harassment**" is defined as any conduct based on sex, race, religion, religious or philosophical belief, disability, sexual orientation, age, or part-time or fixed-term working status which is unreciprocated or unwanted or affects an individual's dignity at work or creates an intimidating, hostile, degrading, humiliating or offensive environment for an individual. **(see examples of behaviour – appendix 1)**

5.3. "**Bullying**" at work is behaviour that is threatening, aggressive or intimidating; or abusive, insulting or offensive; or cruel or vindictive; or humiliating, degrading or demeaning. Bullying will inevitably erode the victim's confidence and self-esteem. It normally relates to negative behaviours that are repeated and persistent, and deliberately targeted at a particular individual. Bullying is often an abuse of power, position or knowledge, and may be perpetrated by the victim's manager, his or her peers or even by subordinates. The reasonable, legitimate and appropriate exercise of management responsibility does not constitute bullying. **(see examples of behaviour – appendix 1)**

5.4. "**Victimisation**" is defined as
Victimisation broadly refers to bad treatment directed towards someone who has made or is believed to have made or supported a complaint under the Equality Act.

It includes situations where a complaint hasn't yet been made but someone is victimised because it's suspected they might make one.

If an individual gives false evidence or makes an allegation in bad faith, then they are not protected from victimisation under the Act. (The Equality Act 2010)

5.5. Bullying or harassment may take place face to face, in writing or by phone. It may be targeted at an individual or a group of people.

6. ADVICE, SUPPORT AND UNION REPRESENTATION

6.1. The Trust provides a range of support that an employee can access if they feel they are subject to bullying, harassment, or discrimination:

- 6.1.1. Occupational Health - staff can self-refer or be referred by their manager. The Trust's Occupational Health Service can be contacted PAM OHS on 0203 8666600.
- 6.1.2. Anti-Bullying & Harassment Ambassadors via email NoBullying@candi.nhs.uk or by telephoning to 020 3317 6307. This is a private & confidential service;
- 6.1.3. Freedom to Speak Up Guardian by telephoning to 078 2450 9792 or email raising.concerns@candi.nhs.uk The purpose of the Freedom to Speak Up role is to support whistle blowers, or those who wish to raise concerns, by being available as an independent and impartial person for staff who wish to discuss issues informally
- 6.1.4. Employee Assistance Program – Confidential Support, Counseling and Guidance helpline available 24/7, 365 days a year. EAP can be accessed by phoning 0800 882 4102;
- 6.1.5. Mediation services – staff can access the services by contacting one of the members of the Employee Relations Team <https://intranet.candi.nhs.uk/contact-employee-relations-team>

7. PROCEDURE FOR MAKING A COMPLAINT OF BULLYING OR DISCRIMINATION

7.1. KEEPING A RECORD

- 7.1.1. It is recommended that cases are dealt with as soon as possible after an incident takes place. The longer an issue is left unreported, the more difficult it may be to resolve it.
- 7.1.2. It's important to identify the behaviours that are being experienced as unpleasant or bullying. It's helpful to make sure that the specific incidents are clearly defined in terms of the time, content and frequency of behaviours.

7.2. STAGE 1: Informal Resolution

- 7.2.1. Every effort should be made to resolve the issue informally in the first instance, if this is appropriate and safe to do so; This response is most appropriate when the working relationship is still reasonably positive and when the unwanted behaviour is recent. A mutual willingness to discuss the issues and to work for a win-win solution is a good indicator of success and can preserve good working relationship;
- 7.2.2. As soon as possible after an employee considers that an incident of bullying/discrimination has occurred, the employee should make it

clear to the offender(s) that s/he does not like the behaviour and if possible ask the offender(s) to stop behaving in this way.

- 7.2.3. The employee who feels bullied/discriminated against should discuss the issue with their manager and, if they feel unable to take action personally, they can ask for assistance from their line manager to facilitate a conversation. If the complainant's line manager is the person alleged to have carried out the bullying or discrimination, the matter should be reported to the next-in-line manager above her/him. Alternatively, advice can be sought from the Employee Relations Team. This approach is most appropriate when there are strong emotions and there is a need for support in resolving the problem. The aim of these meetings is to re-establish effective working relationships. The focus is on how both parties communicate with each other, manage differences of opinion and conflict, and keep each other informed of respective areas of work that impact on each other.
- 7.2.4. If staff would like to access the mediation service, they can find further information on the Trust's intranet: <https://intranet.candi.nhs.uk/mediation-service-staff>

7.3. STAGE 2: Making a Formal Complaint

- 7.3.1. In circumstances where the informal resolution was not successful or is not appropriate, staff can raise a formal complaint. They should report such incidents in writing to their line manager (or if the complaint is being made against their line manager, their manager's manager), providing them with details of the incidents, dates, possible witnesses, etc. Alternatively, the complainant can raise the issue via the Employee Relations Team;
- 7.3.2. Once a formal complaint is made, the matter should be escalated to a more senior manager to the line manager of the alleged perpetrator who may commission a formal investigation and appoint an investigating manager in line with the Trust's HR Investigation Policy and Procedure;
- 7.3.3. Investigations are required when:
- 7.3.3.1. there have been allegations of very serious behaviours, or
 - 7.3.3.2. the options of speaking directly to the person or addressing the concern through facilitated or mediated conversations have proved to be unsuccessful.
- 7.3.4. An investigation to establish the facts of a case will be carried out by an investigating manager before a decision is made on whether formal disciplinary action is required;

- 7.3.5. If, as part of the investigation, it is found that the allegations of bullying/harassment/victimisation/discrimination are substantiated, the matter will proceed to a disciplinary hearing under the Trust's Disciplinary Policy. In these circumstances the investigation report produced as part of this policy will be used in the disciplinary proceedings.

8. APPEALS

If the complainant disagrees with the outcome of the investigation, they have the right to raise an appeal within 10 working days from the receipt of the outcome letter. The appeal will be dealt with under stage 3 of the Trust's Grievance Policy. This will be the last stage of the policy.

9. POLICE INVOLVEMENT

In cases of alleged assault or alleged behaviour that is considered to be a criminal offence, the Trust will contact the Police for their appropriate action if the complainant so wishes and/or if the incident is considered to be a serious criminal matter.

10. PRIVACY/CONFIDENTIALITY

At all times both parties' right to privacy will be respected and no information about the complainant will be imparted unless absolutely necessary, and will always be discussed with the parties involved prior to the release of information. It is recognised that confidentiality is essential, and those investigating complaints will make arrangements to ensure secure storage of papers etc. The complainant and the person against whom the complaint is made will have the right to see all the relevant evidence gathered, including notes of meetings, regardless of the outcome.

11. TRAINING

There are no specific training requirements in order to implement this policy. However, managers will be able to access advice from the HR Department on the implementation and interpretation of this policy.

12. DISSEMINATION AND IMPLEMENTATION ARRANGEMENTS

This policy will be available to employees on the Trusts intranet. Copies can also be obtained by contacting the Employee Relations team. The Employee Relations team will advise on the interpretation and implementation of this policy. Reviews of this policy will be subject to consultation and agreement with Staff Side partners through the Trust's Joint Policy Sub Group.

10. ASSOCIATED DOCUMENTS

- Grievance Policy
- Disciplinary Policy
- HR Investigations Policy and Procedure

11. MONITORING

Elements to be monitored	Lead	Method for monitoring compliance	Frequency	Reporting (Committee/Group responsible for overseeing implementation of actions)	Parent Committee(Board sub-committee that receives assurance)
The application of this procedure to resolve complaints of bullying and discrimination will be monitored against the protected characteristics defined by the Equality Act 2010.	HR	Audit	Quarterly	Workforce Committee Equality and Diversity Committee	Required changes to practice will be identified and actioned within a specific timeframe. Lessons learnt will be shared with appropriate stakeholders.

13. APPENDICES

Appendix 1 Examples of Bullying and Harassment

The following is not intended to be exhaustive but to provide some examples of bullying and harassment behaviour, which the trust deems to be unacceptable:

Bullying examples:

- shouting at a colleague;
- persistently negative and inaccurate attacks on a colleague's personal or professional performance;
- criticising a colleague in front of others;
- spreading malicious rumours/making malicious allegations;
- threatening behaviour, both verbal and physical;
- persistently setting objectives with impossible deadlines or unachievable tasks;
- removing and replacing areas of responsibility with menial or trivial tasks
- taking credit for work achieved;
- undervaluing a colleague's contribution, placing unreasonable demands on and/or over-monitoring a colleague's performance;
- withholding information with the intent of deliberately affecting a colleague's performance;
- excluding colleagues by talking solely to third parties to isolate another;
- isolating staff by treating them as non-existent and preventing them accessing opportunities.
- behaving or speaking in a way which makes someone feel bullied because of their actual or perceived sexuality. People may be a target of this type of homophobic bullying because of their appearance, behaviour, and other physical traits or because they have friends or family who are gay, lesbian, bisexual, or transgender or just because they are seen as being different. Biphobia is a source of discrimination against bisexuals, and may be based on negative bisexual stereotypes or irrational fear.

Harassment examples:

- unwanted non-accidental physical contact ranging from unnecessary touching, patting, pinching or brushing against a colleague's body, to assault or coercing sexual relations;
- unwelcome sexual advances, propositions or pressure for sexual activity; offensive flirting;
- continued suggestions for social activity within or outside the workplace, after it has been made clear that such suggestions are unwelcome;
- suggestions that sexual favours may further a colleague's career or refusal may hinder it e.g. promotions, salary increases etc.;
- the display of pornographic or sexually aggressive pictures, objects or written materials;

- leering, whistling or making sexually suggestive comments or gestures, innuendoes or lewd comments;
- conduct that denigrates, ridicules, intimidates an employee because of his or her protected characteristics as per the Equality Act 2010 as defined in appendix 3 as derogatory or degrading remarks, graffiti, which are gender or race related and offensive comments about appearance or dress;
- conduct that denigrates or ridicules a colleague because of his or her race, such as derogatory remarks, graffiti, jokes. Such conduct can be verbal or physical;
- the display or sending of offensive letters or publications with language linked to race and threatening behaviour;
- being “frozen out” of conversations, jostling or assault.

Is it firm but fair management or bullying & harassment?

The differences between a manager who is firm but fair and a manager who is bullying or harassing staff are often ambiguous. The Department of Work & Pensions equality team have developed a framework to make clear distinctions between two management styles.

Firm but fair manager	Bullying or harassment
Consistent and fair	Aggressive, inconsistent and unfair
Determined to achieve the best results, but reasonable and flexible	Unreasonable and inflexible
Knows their own mind and is clear about their own ideas, but willing to consult with colleagues and staff before drawing up proposals	Believes that they are always right, has fixed opinions, believes they know best and not prepared to value other people’s opinions
Insists on high standards or service in quality of behaviour in the team	Insists upon high standards of service and behaviour but blames others if things go wrong
Will discuss in private any perceived deterioration before forming views or taking action and does not apportion blame on others when things go wrong	Loses temper, regularly degrades people in front of others, threatens official warnings without listening to any explanation
Asks for people’s views, listens and assimilates feedback	Tells people what is happening, does not listen

Source NHS Employers Guidance – Bullying & harassment April 2006

Appendix 3

C&I Equality Impact Analysis Guidance Document

1. Please indicate the expected impact of your proposal on people with protected characteristics					
Characteristics	Significant +ve	Some +ve	Neutral	Some -ve	Significant -ve
Age			X		
Disability			X		
Ethnicity				X	
Gender re-assignment:				X	
Religion/Belief:				X	
Sex (male or female)			X		
Sexual Orientation				X	
Marriage and civil partnership			X		
Pregnancy and maternity			X		
The Trust is also concerned about key disadvantaged groups even though they are not protected by law					
Substance mis-users			X		
Homeless people			X		
Unemployed people			X		
Part-time staff			X		
Please remember just because a policy or initiative applies to all, does not mean it will have an equal impact on all.					
2. Consideration of available data, research and information					
<p>Please list any monitoring, demographic or service data or other information you have used to help you analyse whether you are delivering a fair and equitable service. Social factors are significant determinants of health or employment outcomes. Monitoring data and other information should be used to help you analyse whether you are delivering a fair and equitable service. Social factors are significant determinants of health outcomes. Please consult these types of potential sources as appropriate. There are links on the Trust website:</p> <ul style="list-style-type: none"> • Joint strategic needs analysis (JSNA) for each borough • Demographic data and other statistics, including census findings • Recent research findings (local and national) • Results from consultation or engagement you have undertaken • Service user monitoring data (including age, disability, ethnicity, gender, religion/belief, sexual orientation and) • Information from relevant groups or agencies, for example trade unions and voluntary/community organisations • Analysis of records of enquiries about your service, or complaints or compliments about them <p>Recommendations of external inspections or audit reports</p>					
	Key questions (supports EDS Goals)		Your Response <i>Please reference data, research and information that you have reviewed which you have used to form your response</i>		
2.1	What evidence, data or information have you considered to determine how this policy/ development contributes to delivering better health outcomes for all?		Employment case law, Equality Act 2010, ACAS code of conduct		
2.2	What evidence, data or information have you considered to determine how this policy/ development contributes to improving patient access and experience?		N/A		

2.3	What evidence, data or information have you considered to determine how this development/policy contributes to delivering a representative and well supported workforce?	Michael West publications about motivated and engaged workforce
2.4	What evidence, data or information have you considered to determine how this policy/development contributes to inclusive leadership and governance?	N/A
3. It is Trust policy that you explain your proposed development or change to people who might be affected by it, or their representatives. Please outline how you plan to do this.		
Group		Methods of engagement
Staff		B&D advisors, promotion of the policy through leadership in the deivisions
4. Equality Impact Analysis Improvement Plan		
If your analysis indicates some negative impacts, please list actions that you plan to take as a result of this analysis to reduce those impacts, or rebalance opportunities. These actions should be based upon the analysis of data and engagement, any gaps in the data you have identified, and any steps you will be taking to address any negative impacts or remove barriers. The actions need to be built into your service planning framework. Actions/targets should be measurable, achievable, realistic and time framed.		
Negative impacts identified	Actions planned	By who
Ethnicity, Gender re-assignment, religion, sexual orientation	Managers will be made aware of the policy and the imporance of encouraging employees to speak up	ER and HRBPs
5. Sign off and publishing		
Once you have completed this form, it needs to be 'approved' by Service Director, Clinical Director or an Executive Director or their nominated deputy. If this Equality Impact Analysis relates to a policy, procedure or protocol, please attach it to the policy and process it through the normal approval process. Following this sign off by the Sub Policy Group your policy and the associated EqIA will be published by the Trust's Policy Lead on the website. If your EqIA related to a service development or business /financial plan or strategy, once your Director or the relevant committee has approved it please send a copy to the Equality and Diversity Lead (equalityanddivesity@candi.nhs.uk), who will publish it on the Trust's website. Keep a copy for your own records.		
I have conducted this Equality Impact Analysis in line with Trust guidance		
Your name:		Position
Signed:		Date:
Approved by:		
Your name:		Position
Sign:		
Date		

Requesting a formal investigation

NB: This is a quick reference guide only. All employees should ensure that they have read and understood this policy. All line managers must attend training.

