

NHS Employers guidance – Bullying and harassment

April 2006

Introduction

The NHS 2004 and 2005 staff surveys identified staff-on-staff bullying and harassment as a key issue to address, with 10 per cent of NHS staff reporting experiencing bullying, harassment and abuse from colleagues in the past 12 months and 7 per cent reporting experiencing bullying, harassment and abuse from managers/supervisors. More worryingly, only 54 per cent of staff actually reported the incidents.

Bullying and harassment is not just confined to the health service, it is now being recognised as a problem across all sectors. The costs of bullying and harassment include increased sickness absence, low productivity, high staff turnover, costs of potential litigation and damage to the reputation of the organisation.

Research has indicated that bullying and harassment can have the same negative impact on the observers as it does on the people being bullied, to the extent that observers may choose to leave the employer, particularly if they do not perceive the employer to be dealing with the bullying and harassment in a satisfactory manner.

Stereotypical images of bullying and harassment in the NHS often focus around junior doctors being berated by irate senior consultants. Although junior doctors may be more vulnerable to bullying and harassment, in reality it reaches all levels of the organisation, affecting anyone from directors down. This guidance is intended for all staff throughout the NHS in England and in the case of junior doctors will supplement work being carried out by NHS Employers Equality and Diversity team.

What is bullying and harassment?

It is important to clarify the distinction between the terms bullying and harassment as this is an area which causes much confusion. The Advisory, Conciliation and Arbitration Service (ACAS) definitions help clarify the terms.

- Harassment, in general terms, is unwanted conduct affecting the dignity of men and women in the workplace.
- It may be related to age, sex, race, disability, religion, sexual orientation, nationality or any personal characteristic of the individual, and may be persistent or an isolated incident.
- The key is that the actions or comments are viewed as demeaning and unacceptable to the recipient.
- Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient.
- Bullying or harassment may be by an individual against an individual (perhaps by someone in a position of authority such as a manager or supervisor) or involve groups of people.
- It may be obvious or it may be insidious.

Whatever form it takes, it is unwarranted and unwelcome to the individual.

More information is available on the ACAS website at www.acas.org.uk

Examples of bullying and harassment

- Bullying by exclusion – this may take the form of social isolation and/or exclusion from meetings.
- The deliberate withholding of information with the intention of affecting a colleagues performance.
- Unfair and destructive criticism.
- Intimidating behaviour.
- Verbal abuse and spreading of unfounded rumours.
- Humiliation or ridicule.
- Setting of unrealistic targets which are unreasonable and/or changed with limited notice or consultation.
- Copying memos that are critical about someone to others that do not need to know.

The effects of bullying and harassment

A recent survey by one of the UK's leading authorities¹ on bullying at work has found that:

- 53 per cent of HR professionals have been bullied at work
- 55 per cent cite their immediate manager as the culprit
- 60 per cent say they were subjected to intimidating behaviour
- 57 per cent say it took the form of ridicule and humiliation
- 35 per cent suffered for more than a year
- 71 per cent became worried about going to work
- 17 per cent had to take time off work
- 56 per cent started looking for another job
- 17 per cent needed to see a doctor.

The Andrea Adams Trust is following up this piece of research with a long-term survey which provides a view of workplace bullying from the point of view of the victim. Feedback so far indicates that the largest group of staff perceived to be bullying is immediate line managers and that bullying takes many forms including unfair criticism, intimidating behaviour, being given unreasonable targets and having responsibilities taken away.

This not only has an effect on the organisation but also on the staff concerned and often results in loss of confidence, loss of self-esteem, sleep loss, anxiety and panic attacks and increased consumption of alcohol and tobacco.

Reality v perception

In a recent review by the Healthcare Commission on tackling bullying and harassment in an NHS trust it was found that a proportion of what was reported by staff as bullying and harassment was in fact an adverse reaction to a merger and the consequent change programme that had been introduced.

In organisations that are merging or planning major change programmes it is important that a communication strategy is in place to facilitate two-way communications between staff and management right from the beginning. Only if employees are aware of what is happening, and why, can any misperceptions about change being a form of bullying be erased.

This is not to say that bullying and harassment do not happen during a change process, but rather that the process itself should not be seen, or reported, as a form of bullying.

¹ Andrea Adams Trust, *Survey of HR professionals, 2005*

Fair/firm management or bullying and harassment?

The differences between a manager who is firm but fair and a manager who is bullying and harassing staff are often ambiguous. The Department for Work and Pensions equality team have developed a framework to make clear distinctions between the two management styles (see table below).

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 upon high standards of service in quality of and 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

The difference between constructive and destructive criticism

As part of the ‘everyday management process’ managers are required to provide staff with feedback concerning their performance, conduct, time keeping and so on. If any of these areas have been unsatisfactory the feedback may be critical of the worker concerned. If criticism is delivered in a constructive manner it can be beneficial to the member of staff, providing them with the opportunity to reflect on their behaviour and make any necessary improvements.

Destructive criticism, on the other hand, can have detrimental effects on staff moral and damage the psychological contract between manager and employee.

Macdonald (2005) clearly demonstrates the difference between the two types of behaviour in her book *Wellness at work: protecting and promoting employee wellbeing*.

Constructive criticism will focus upon:

- actions and behaviour, focusing on what the employee has done or not done
- facts, with specific examples of behaviour that has been inappropriate and an explanation of why it was inappropriate
- future improvement, for example requiring the employee to do something differently or make changes.

Destructive criticism, on the other hand, may involve:

- aggressive behaviour, such as yelling
- personal insults or put-downs
- allocating blame rather than responsibility
- focusing on how awful the situation is, rather than on future improvement or rectification of the problem.

Effects of bullying and harassment

For the organisation:

- rising levels of absenteeism
- premature ill-health and retirement
- high levels of staff turnover
- reduced productivity for victims and colleagues
- cost of potential litigation
- damage to reputation.

For the individual:

- sleeplessness
- lethargy
- loss of appetite
- migraines/severe headaches
- mood swings
- skin problems
- anxiety
- stress
- de-motivation

This list is not exhaustive.

More information is available on the Andrea Adams Trust website at www.andreaadamstrust.org

Experts at the University of Manchester Institute of Science and Technology (UMIST) estimate that between one third and one half of all stress-related illnesses is caused by bullying. The effects of stress on organisations include rising levels of absenteeism, increased staff turnover and increased recruitment costs.

For more information on the effects of stress see Chapter 15 entitled Stress management in *The management of health, safety and welfare issues for NHS staff*, published by NHS Employers, at <http://www.nhsemployers.org/practice/healthy-workplaces.cfm>

Current support

A range of support services is currently provided by NHS organisations for their employees. These include:

- **Counselling** The NHS has provided counselling services to NHS staff since April 2000. Counselling often allows the concerns about bullying to be resolved without the need to take formal action.
- **Trained staff acting as support workers** As part of their role, trained staff provide empathetic assistance to employees with complaints of bullying and harassment, explain how the procedures for making a complaint operate both informally and formally, and help establish and provide support for both alleged harassers and complainants through the process.
- **Bullying and harassment hotline** Hotlines provide staff with a confidential service to discuss their problems and access support.
- **External agencies** Employees may be referred to external agencies for support where the employer feels that they are not adequately equipped to provide support.
- **Mediation** Mediators are specially trained to facilitate informal outcomes where possible. Both parties must agree to the use of a mediator.

The legal situation

At present there is no legislation in place in the UK which specifically deals with the issue of workplace bullying. However, there are a number of laws under which action can be taken:

Sex Discrimination Act 1975

Race Relations Act 1976

Disability Discrimination Act 2004

Sexual Orientation Regulations 2003

Religion or Belief Regulations 2003

The above Acts and Regulations provide employees with protection from discrimination, harassment and victimisation on grounds of sex, race, disability, sexual orientation, religion and belief. The Government plans to bring age discrimination legislation into force on 1 October 2006.

Health and Safety at Work Act 1974

The Act places a general duty on employers to 'ensure so far as is reasonably practicable the health, safety and welfare at work of all their employees'. Incidents of bullying and harassment could be deemed to damage employees' health and welfare.

Protection from Harassment Act 1997

The Act states that a person must not pursue a course of conduct which amounts to the harassment of another, and which they know or ought to know amounts to such. As a result of a recent ruling by the Court of Appeal, employers can now be held vicariously liable for incidents of harassment by an employee.

Other relevant legislation includes:

Crime and Disorder Act 1998

Criminal Justice and Public Disorder Act 1995

Employment Act 2002

Employment Rights Act 1996

Policy

Employers can only address cases of bullying and harassment that are brought to their attention. Where levels of under-reporting are high, the organisation will never be able to completely tackle the problem of bullying harassment. Offering victims informal routes, stating that the complaint will be handled with confidentiality and that the complainant will be protected from victimisation may increase levels of reporting.

It is widely recognised that the NHS is a high-pressure working environment with high levels of understaffing, the recent introduction of performance targets and threats of physical violence and abuse from patients. The pressure felt by managers to reach performance targets could be encouraging them to bully employees into achieving the desired results. Managers need to understand that such tactics can backfire, causing stress-related absenteeism and high levels of staff turnover.

All NHS organisations should have in place a bullying and harassment policy which is easily accessible to staff and managers alike and which is monitored on a regular basis by senior managers.

NHS organisations' policies on bullying and harassment should include:

- statement of commitment from senior management to tackle bullying and harassment in the workplace
- clear definitions of the terms accompanied by examples of unacceptable behaviour
- a statement that bullying and harassment will not be tolerated and that such behaviour could result in disciplinary action
- details of the formal and informal complaints procedures, including relevant timescales for action
- statement that complaints will be handled with confidentiality and that the complainant will be protected from victimisation
- sources of support and guidance
- legal implications
- responsibilities of supervisors and managers
- responsibilities of personnel/HR department
- training for managers and staff
- details of prevention measures taken by the organisation
- details of how the policy is to be implemented, reviewed and monitored.

See NHS Employers website to download a model policy on bullying and harassment <http://www.nhsemployers.org/practice/practice-906.cfm> which can be used as a template.

Once a policy has been agreed it should be widely publicised to both new and existing staff. Information about the policy could be introduced during the staff induction and during mandatory training sessions for existing staff. Such a training programme should include all levels of staff; failure to include managers would be unproductive as they are often the main perpetrators of bullying and harassment.

To support the policy employers need to create a culture where staff feel confident about making complaints concerning bullying and harassment. The 2004 NHS staff survey revealed that only 54 per cent of staff actually reported incidents of bullying and harassment. Reasons for under-reporting include:

- fear that it will make matters worse or nothing would happen
- concerns about confidentiality
- fear of possible victimisation
- concerns about being labelled a troublemaker.

Employers can only address cases of bullying and harassment that are brought to their attention. Where levels of under reporting are high, the organisation will never be able to completely tackle the problem of bullying harassment. Offering victims informal routes, stating that the complaint will be handled with confidentiality and that the complainant will be protected from victimisation may increase levels of reporting.

It is widely recognised that the NHS is a high pressure working environment with high levels of understaffing, the recent introduction of performance targets and threats of physical violence and abuse from patients. The pressure felt by managers to reach performance targets could be encouraging them to bully employees into achieving the desired results. Managers need to understand that such tactics can backfire, causing stress related absenteeism and high levels of staff turnover.

Case law

One recent case, which is currently being appealed, is *Majrowski v Guy's and St Thomas NHS Trust* (2005). This case set a precedent at the Court of Appeal and has far-reaching implications for individuals who are victims of bullying and harassment in the workplace and the organisations they work for.

Bill Majrowski is a former employee of Guy's and St Thomas NHS Trust, where he worked as an audit co-ordinator. He claims that he was harassed by his line manager for a period of around 18 months whilst working for the trust. He claims he was subjected to unfair criticism, rude and abusive behaviour, social isolation and the setting of unrealistic targets for his performance.

Majrowski's case was the first to establish in the Court of Appeal that employers can be liable for harassment by an employee, under the Protection from Harassment Act 1997. This is likely to create a more effective route to compensation for workplace bullying and harassment.

Example of best practice: Barnsley Hospital NHS Foundation Trust

In a bid to tackle bullying and harassment, the trust appointed 10 harassment support workers in November 2003. As part of their role they provide empathetic assistance to employees with complaints of bullying and harassment, explain how the procedures for making a complaint operate both informally and formally and help establish and support both alleged harassers and complainants through the process.

The support workers are representative of all levels in the organisation and their appointment followed a rigorous selection process designed to ensure a thorough understanding of the role and the boundaries within which it operates and that management and union roles were not undermined.

Since introducing the new service, levels of staff on staff bullying and harassment in the trust have decreased. The percentage of staff experiencing harassment, bullying or abuse from their manager/supervisor in the previous 12 months decreased from 8 per cent in 2004 to 7 per cent in 2005. The percentage of staff experiencing harassment, bullying or abuse from their colleagues decreased from 12 per cent in 2004 to 11 per cent in 2005.

More examples of best practice are available on the Department of Health website at www.dh.gov.uk

Useful links

- The Dignity at Work Partnership – www.dignityatwork.org
- Amicus the Union – www.amicustheunion.org

Suggested procedure for dealing with bullying and harassment claims

Where an individual believes that they have been bullied or harassed there are a number of options available to them, dependent upon the circumstances of their own particular situation. These options are listed below.

1.1 Informal stage

This will involve the individual approaching the alleged bully or harasser in order to tell them that their behaviour is found to be offensive and why, and to ask them to stop using such behaviour. The employee may ask a colleague, trade union official or equivalent representative to be present for moral support.

If the individual would find confronting the alleged bully or harasser too difficult but still wishes to pursue the matter informally they can ask either their trade union official or equivalent representative, line manager or human resources representative to speak to the person concerned.

Another option may be for the individual to write directly to the alleged bully or harasser detailing the offensive behaviour and confirming the requirement to stop any further bullying or harassment.

The individual should keep a record of any informal action taken, along with a note of the date and what those involved said. This is necessary should evidence be required at a later date should the bullying or harassment continue or subsequently recur.

The organisation may at its discretion arrange for both parties to attend external counselling and facilitation where it is agreed by both parties that this approach may be useful in resolving work relationship issues.

Where the informal approach is unsuccessful or the individual has chosen to go straight to the formal stage of the procedure the following arrangements will apply.

1.2 Formal stage

A formal complaint should be made to the employee's line manager or supervisor, human resources representative or to the line manager of the alleged bully or harasser. Any formal complaint should be made in writing, making it clear that it is a formal complaint under this procedure and detailing the basis upon which the alleged bullying or harassment has taken place.

1.3 Investigation

The complaint shall be investigated by an appropriate manager who (where possible) is not directly involved in the matters being investigated. This manager may involve others to assist with the investigation process (a human resources representative, for example). The organisation may, at its discretion, use an external investigator where this is deemed appropriate. This may be necessary where the alleged bully or harasser is a director or chief executive. The investigation shall normally be conducted in accordance with the process outlined in Appendix 1.

Employees are entitled to be accompanied by a colleague, trade union official or equivalent professional representative during any investigation meeting. A representative from the human resources department may accompany the investigating manager.

At the end of the investigation a report should be prepared that outlines the facts of the case and a chronology of the investigation. The report should outline the investigating manager's recommendations, outlined in the Appendix (step 8).

1. Take no action, as the allegation has not been substantiated or there is insufficient evidence.
2. Proceed to a disciplinary hearing, as the investigation has found that there may be a case to answer.
3. Take alternative management action, as the evidence and/or nature of the complaint does not justify formal disciplinary action. This could include
 - a recommendation for facilitated discussion/counselling for both parties, where both parties agree to this
 - a recommendation for redeployment of one or both parties, either on a temporary or permanent basis
 - setting up arrangements to monitor the situation
 - required attendance on training courses (such as equality and diversity awareness training)
 - making arrangements for the complainant and alleged bully/harasser to work as separately as possible within the same workplace with regular monitoring from the line manager
 - a period of special leave to enable working arrangements to be put in place.

2 Police involvement

In cases of alleged assault or behaviour that is considered to be a criminal offence, the organisation may (where appropriate) contact the police or support an employee in contacting the police if the complainant so wishes.

3 Redeployment considerations

If disciplinary action is taken, management must consider whether contact between the parties is likely to occur during the course of their job and whether this is acceptable. Management will consult with the complainant. In cases where contact is considered unacceptable, every effort should be made in the first instance to redeploy the person against whom the complaint has been made. However, it will be for the manager and the human resources representative to consider which party may be most appropriately redeployed having fully considered the views of the complainant.

Where disciplinary action is not taken following a full investigation, then the person who alleged harassment may request redeployment. In this case the manager, in consultation with the human resources department, will try to accommodate this request.

4 Keeping management records

The arrangements for storing information after a complaint should be as follows:

- where the matter proceeds to a disciplinary hearing, the disciplinary procedure should be followed and where warnings are imposed the timescales for the retention of such warnings will be as specified in the disciplinary procedure
- where a complaint has been made and not substantiated by an investigation, no record will be kept on the alleged bully/harasser's personnel file
- if an employee makes a complaint to their manager or human resources department but does not wish to proceed with a formal complaint at that stage, no record will be kept on the alleged bully/harasser's file. The employee should make a note of the meeting that took place.

5 Action when the complainant or alleged bully/harasser is dissatisfied

If the complainant disagrees with the decision taken by the investigating manager or disciplinary panel, they have the right to raise this matter under the organisation's grievance procedure.

If the alleged bully or harasser does not accept the outcome of the investigation or disciplinary hearing, he/she is entitled to pursue action through the appeals procedure set out in the organisation's Disciplinary Procedure.

Appendix 1: Investigation procedure for a complaint of bullying and/or harassment

All cases must be treated seriously and dealt with promptly, as this will prevent additional stress and anxiety to both sides of the complaint. Failure to do so may result in disciplinary action being taken against the investigating manager for neglect of duties.

Step 1: Initial response

Following receipt of the letter of complaint the investigating manager has five working days to inform the employee that an investigation will be undertaken and ensure that the employee is made aware of the process that will be adopted during the investigation, and what their role may be at any subsequent disciplinary proceedings that may take place.

The person against whom the complaint is made should also be informed at the outset of the investigation of the complaint against them and given a copy of the letter of complaint.

Step 2: Possible suspension or redeployment during the investigation

The investigating manager should consider the appropriateness of suspension or redeployment for the duration of the investigation to relieve the stress and pressure on one or both parties and/or to prevent the risk of further incidents or victimisation occurring.

Suspension of the alleged harasser may be considered where a manager feels that it is in the interest of either the individual, the organisation or both. It may be appropriate in some cases for both parties to be suspended. It will be made clear at all times that suspension under this procedure is not a disciplinary act and does not imply that there has been any misconduct, or that there is any suggestion of guilt.

Temporary redeployment of one or both parties can also be considered. In normal circumstances it is appropriate that the alleged bully/harasser should be redeployed rather than the complainant. The complainant could, however, be offered the option of redeployment where appropriate. In some circumstances both parties may be redeployed.

Step 3: Meeting with the complainant

Following receipt of the letter of complaint the investigating manager has 10 working days to sensibly and sensitively arrange and conduct a meeting with the complainant. The purpose of the meeting is for the investigating manager to take a detailed written statement of the incident(s). A trade union official, equivalent professional representative or a colleague may assist the complainant. The complainant should be given the opportunity to nominate witnesses whom they wish to be interviewed by the investigating manager.

Step 4: Meeting with the person against whom the complaint has been made

The investigating manager will meet with the person against whom the complaint has been made and hear what they have to say about the alleged incident(s) – having previously been informed of the allegation against them. Their trade union official, equivalent professional representative or a colleague may assist them. Notes of the meeting will be taken. The employee should be given the opportunity to nominate witnesses whom they wish to be interviewed by the investigating manager.

Step 5: Meeting with the witnesses

The investigating manager will meet with the witnesses nominated by the complainant and the alleged bully/harasser. Employees identified as witnesses to incidents may be assisted at the meeting by their trade union official, equivalent professional representative or a colleague. Notes of the meeting will be taken.

Important notes for steps 3–5

- The purpose of these meetings is to establish the facts. They are not disciplinary hearings of any sort. All those giving information to the manager or designated investigating officer will do so privately and not in the presence of any other person involved in or present during the alleged incident(s).
- Notes taken during these meetings will be made available to all those involved in their particular meeting and comments can be made if appropriate.

Step 6: Further clarification

The investigating manager may decide to meet any of the employees again to clarify or gain further information. He/she must also ensure that they obtain copies of any written material that may be used as evidence.

Step 7: Consideration of information

Having obtained all the information possible, the investigating manager and human resources representative will review the information and decide whether the complaint is substantiated. In cases of sexual harassment, in no circumstances will evidence of the complainant's experience, sexual attitudes or behaviour be taken as relevant information.

In some cases there will not be any witnesses and it will be one person's word against another's. In these cases the investigating manager and human resource representative will consider whether on the balance of probabilities the incidents/actions occurred.

Step 8: Further action

The investigating manager and human resources representative will consider the facts and will recommend one of the following:

1. take no action, as the allegation has not been substantiated or there is insufficient evidence
2. proceed to a disciplinary hearing, as the investigation has found that there may be a case to answer
3. take alternative management action, as the evidence and/or nature of the complaint does not justify formal disciplinary action. This could include:
 - a recommendation for facilitated discussion/counselling for both parties, where both parties agree to this
 - a recommendation for redeployment of one or both parties, either on a temporary or permanent basis
 - setting up arrangements to monitor the situation
 - required attendance on training courses (such as equality and diversity awareness training)
 - a period of special leave to enable working arrangements to be put in place.

The preliminary investigation procedure will take no longer than four weeks.

NHS Employers is the employers' organisation for the NHS in England. Our aim is to help employers improve the working lives of staff who work in the NHS and, through them, to provide better care for patients. NHS Employers is part of the NHS Confederation, but we have our own director, policy board and assembly. In striving to make the NHS an employer of excellence, we have four key roles: negotiating on behalf of employers; representing employers; supporting employers; promoting the NHS as an employer.

Contact us

www.nhsemployers.org
E-mail enquiries@nhsemployers.org
NHS Employers
29 Bressenden Place
London SW1E 5DD

2 Brewery Wharf
Kendell Street
Leeds LS10 1JR

The NHS Confederation (Employers) Company Ltd
Registered in England. Company limited by guarantee: number 5252407