

**TRUST-WIDE NON-CLINICAL POLICY DOCUMENT**

# DIGNITY AND RESPECT AT WORK

Policy Number:	HR14
Scope of this Document:	All Staff
Recommending Committee:	HR Policy Group
Approving Committee:	Executive Committee
Date Ratified:	May 2015
Next Review Date (by):	March 2020
Version Number:	Version 3
Lead Executive Director:	Executive Director of Workforce
Lead Author(s):	Human Resources Business Partner

**TRUST-WIDE NON-CLINICAL POLICY DOCUMENT**

2017– Version 3

Quality, recovery and wellbeing at the heart of everything we do

## TRUST-WIDE NON-CLINICAL POLICY DOCUMENT

# DIGNITY AND RESPECT AT WORK

### Further information about this document:

Document name	HR14 Dignity and Respect at Work
Document summary	This policy outlines the Trust's commitment to creating and sustaining a working environment free from discrimination and bullying and the process for staff and managers and staff to follow if such behaviour arises.
Author(s) Contact(s) for further information about this document	Julie Flannigan Human Resources Business Partner Telephone: 0151 473 2755 Email: <a href="mailto:julie.flannigan@merseycare.nhs.uk">julie.flannigan@merseycare.nhs.uk</a>
Published by Copies of this document are available from the Author(s) and via the trust's website	Mersey Care NHS Foundation Trust V7 Building Kings Business Park Prescot Liverpool L34 1PJ Your Space Extranet: <a href="http://nww.portal.merseycare.nhs.uk">http://nww.portal.merseycare.nhs.uk</a> Trust's Website <a href="http://www.merseycare.nhs.uk">www.merseycare.nhs.uk</a>
To be read in conjunction with	SA06 Management of Complaints and Concerns SA13 Being Open SA07 Health and Safety and Wellbeing SA02 Risk Management SD18 Recognition, prevention and therapeutic management of aggression and vilolence SA32 Systematic Approach to the analysis and learning from incidents, complaints and claims HR09 Zero Tolerance HR01 Disciplinary HR06 Concerns at work about patient care/business misconduct(whistleblowing) and impact assessment HR18 Knowledge and Skills(KSF) Gateway progression HR13 Stress Prevention and management in the workplace and impact assessment HR10 Equality HR02 Grievance Procedure
This document can be made available in a range of alternative formats including various languages, large print and braille etc	
Copyright © Mersey Care NHS Foundation Trust, 2015. All Rights Reserved	

### Version Control:

Version History: V3, February 2017

Review Version 1	Trust Corporate Review Group	February 2015
Review Version 2	Trust HR Policy Group	May 2015
Review Version 3	HR Business Partner	February 2017

**SUPPORTING STATEMENTS** – this document should be read in conjunction with the following statements:

### **SAFEGUARDING IS EVERYBODY'S BUSINESS**

All Mersey Care NHS Foundation Trust employees have a statutory duty to safeguard and promote the welfare of children and vulnerable adults, including:

- being alert to the possibility of child/vulnerable adult abuse and neglect through their observation of abuse, or by professional judgement made as a result of information gathered about the child/vulnerable adult;
- knowing how to deal with a disclosure or allegation of child/adult abuse;
- undertaking training as appropriate for their role and keeping themselves updated;
- being aware of and following the local policies and procedures they need to follow if they have a child/vulnerable adult concern;
- ensuring appropriate advice and support is accessed either from managers, *Safeguarding Ambassadors* or the trust's safeguarding team;
- participating in multi-agency working to safeguard the child or vulnerable adult (if appropriate to your role);
- ensuring contemporaneous records are kept at all times and record keeping is in strict adherence to Mersey Care NHS Foundation Trust policy and procedures and professional guidelines. Roles, responsibilities and accountabilities, will differ depending on the post you hold within the organisation;
- ensuring that all staff and their managers discuss and record any safeguarding issues that arise at each supervision session

### **EQUALITY AND HUMAN RIGHTS**

Mersey Care NHS Foundation Trust recognises that some sections of society experience prejudice and discrimination. The Equality Act 2010 specifically recognises the *protected characteristics* of age, disability, gender, race, religion or belief, sexual orientation and transgender. The Equality Act also requires regard to socio-economic factors including pregnancy /maternity and marriage/civil partnership.

The trust is committed to equality of opportunity and anti-discriminatory practice both in the provision of services and in our role as a major employer. The trust believes that all people have the right to be treated with dignity and respect and is committed to the elimination of unfair and unlawful discriminatory practices.

Mersey Care NHS Foundation Trust also is aware of its legal duties under the Human Rights Act 1998. Section 6 of the Human Rights Act requires all public authorities to uphold and promote Human Rights in everything they do. It is unlawful for a public authority to perform any act which contravenes the Human Rights Act.

Mersey Care NHS Foundation Trust is committed to carrying out its functions and service delivery in line with a Human Rights based approach and the FREDA principles of **F**airness, **R**espect, **E**quality **D**ignity, and **A**utonomy

## **CONTENTS**

		<b>Page</b>
<b>1</b>	<b>Purpose and Rationale</b>	<b>2</b>
<b>2</b>	<b>Outcome Focused Aims and Objectives</b>	<b>2</b>
<b>3</b>	<b>Scope</b>	<b>2</b>
<b>4</b>	<b>Definitions</b>	<b>3</b>
<b>5</b>	<b>Duties</b>	<b>3</b>
	5.1 Trust Board	3
	5.2 Lead Executive Director	3
	5.3 Policy Lead	3
	5.4 Management	4
	5.5 All Staff	4
	5.6 Trade Union Representative	4
	5.7 Occupational Health/Staff Support Services	5
	5.8 Human Resources	5
	5.9 Mediation Services	5
<b>6</b>	<b>Process and Procedure</b>	<b>5</b>
	6.1 Mediation Services	5
	6.2 Raising a Complaint	6
	6.3 Investigating the Facts	6
	6.4 Informal Procedure	7
	6.5 Formal Procedure	7
	6.6 After a decision has been made	9
<b>7</b>	<b>Consultation</b>	<b>10</b>
<b>8</b>	<b>Support</b>	<b>10</b>
<b>9</b>	<b>Monitoring</b>	<b>11</b>
<b>10</b>	<b>Supporting Documents</b>	<b>12</b>
<b>11</b>	<b>Glossary of Terms</b>	<b>13</b>

## 1 PURPOSE AND RATIONALE

- 1.1 **Purpose** – This policy sets out the framework and process to deal with issues regarding bullying and harassment.
- 1.2 **Rationale** – Evidence shows that levels of performance, job satisfaction, employee health and wellbeing, attendance and sickness are all influenced by the culture of the organization and how positive people feel about working in their particular working environment.
- 1.3 In line with the Trust’s value Respect, this policy is about creating and sustaining a working environment in the Trust that is marked by mutual respect, tolerance and understanding and a working culture based on dignity and respect across our services and departments. This means recognising that bullying and harassment in the workplace is a serious issue that must always be addressed whenever it occurs.
- 1.4 The Trust’s CARE values and Staff Charter have been developed to support and promote a culture based on respect which is free from discrimination and harassment. The Staff Charter outlines the Trust’s expected values and behaviours of continuous improvement, accountability, respect and enthusiasm.
- 1.5 As a responsible employer the Trust has a legal and ethical responsibility to ensure that our staff are not subjected to inappropriate and disrespectful or discriminatory behaviours that may affect their performance and health and wellbeing.

## 2 OUTCOME FOCUSED AIMS AND OBJECTIVES

- 2.1 For this Dignity and Respect at Work policy the aims and objectives are as follows :
  - 2.1.1 To define the behaviours which may constitute bullying, harassment and victimisation
  - 2.1.2 To ensure that all managers and staff are aware of their responsibilities in creating and sustaining a work environment which is free from bullying and harassment
  - 2.1.3 To outline the process for dealing with complaints of bullying and harassment

## 3 SCOPE

- 3.1 The policy covers any behaviours which result in people feeling that they are not being treated with dignity and respect including bullying and harassment in the Trust and in any work-related setting outside the workplace, e.g. business trips and Trust social events.

- 3.2 This policy applies to all staff employed by the Mersey Care NHS Foundation Trust as well as those who act as volunteers, those who hold an honorary contract, bank, agency and contracted staff.
- 3.3 Each member of staff carries personal responsibility for their own behaviours in relation to this policy.

## 4 DEFINITIONS

- 4.1 The relevant terms and their definitions (within the context of this policy document) are outlined below:

**Table 1: Definitions**

Term	Definition
Protected Characteristics	as defined by the Equality Act 2010 e.g. age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, sex, sexual orientation, race (including ethnic group, nationality, caste or skin colour) and religion or belief.
Membership, or non-membership	of a staff association/trade union;
Stigma	e.g. ex-offenders, mental health status, real or suspected infection with HIV/AIDS, Hepatitis C.
Raising a complaint or concerns under the policy	e.g. willingness to challenge harassment, leading to victimization.

## 5 DUTIES

- 5.1 **Trust Board** – The Chief Executive has overall responsibility for ensuring compliance with all statutory regulations and guidance related to dignity and respect at work including bullying and harassment. This responsibility can be devolved to Directors, Heads of Departments and Managers. The Trust Board has a duty to ensure a management regime is in place to effectively manage legislation requirements.
- 5.2 **Lead Executive Director** – the lead Executive Director for this policy the Executive Director of Workforce has strategic responsibility for ensuring that systems are in place, which will ensure compliance with the Dignity and Respect at Work policy. They will ensure that all Directors, Managers, Human Resources Strategic Business Partners, Human Resources Business Partners, Human Resource Advisors and staff are aware of the Dignity and Respect at Work policy and of their responsibilities.

The Executive Director of Workforce will ensure that all managers are made aware of their responsibilities through publication of this policy and provision of

training which will cover issues of harassment and bullying and conducting a fact finding investigation under the terms of the policy.

- 5.3 **Management** - It is the duty of managers to establish and maintain an environment free from harassment and bullying by:
  - 5.3.1 ensuring their own working practices reflect the above duty
  - 5.3.2 ensuring that all employees in their area of work are made aware that this policy exists, and that they have a right not to be harassed or bullied at work. All employees will be made aware that this kind of behaviour is unacceptable and where appropriate will be treated as a disciplinary matter.
  - 5.3.3 taking prompt action to stop harassment and bullying. By pointing out that the behaviour is unacceptable, managers may be able effectively to put a stop to the problem without the need for further formal action.
  - 5.3.4 setting a positive example by treating others with respect and setting standards of acceptable behaviour; also promote a working environment where harassment is unacceptable and not tolerated
  - 5.3.5 ensuring that offensive or potentially offensive material is not displayed in the workplace.
  - 5.3.6 ensuring all complaints of harassment and bullying are treated seriously and sympathetically and with confidence by management.
  - 5.3.7 ensuring that staff members understand that victimisation of any employee making or helping someone to make a complaint is unacceptable and where appropriate will be treated as a disciplinary matter.
  
- 5.4 **All staff** – All employees have a responsibility to:
  - 5.4.1 ensure they are supportive to individuals who state they have been bullied or harassed and take full account of their feelings and perceptions of the situation;
  - 5.4.2 encourage those individuals to seek help from an appropriate source;
  - 5.4.3 refrain from participating in, encouraging or condoning gossip related to cases of alleged or actual bullying or harassment;
  - 5.4.4 take appropriate steps to prevent or stop gossip in their area of work;
  - 5.4.5 attend training sessions which may be arranged to increase their awareness of the issues involved in bullying and harassment.
  - 5.4.6 All employees of Mersey Care NHS Foundation are encouraged to report incidents of harassment and bullying in the knowledge that complaints will be dealt with in a sensitive manner.
  
- 5.5 **Trade Union Representative** – Trade Union Representatives are encouraged to assist their members who allege they have been bullied, including supporting them in making complaints and offering informal, confidential advice.

- 5.5.1 The Trust recognises that members of a Trade Union are entitled to representation at every stage of the procedure and would encourage staff to seek this assistance at the earliest possible opportunity.
- 5.5.2 Stress at work in general contributes to workplace bullying, and the Trust is committed to jointly agreeing with the trade union ways of tackling work-related stress. The Trust will support the trade union's activities in raising awareness and tackling the issue of harassment and bullying amongst its members.
- 5.5.3 The Trust is committed to the prevention of bullying, harassment or victimisation of Trade Union activists or members because of their Trade Union role.
- 5.6 **Occupational Health/Staff Support Services** – The aim of occupational health is improving and sustaining the health and wellbeing of staff. It is an advisory service and can be accessed by individuals making contact directly or by management referral. The department can be contacted on 0151 471 2451.
- 5.6.1 The staff support service provides staff counselling which is a confidential service that gives staff the chance to talk through things that are on their mind with a counsellor, who will be non-judgemental and impartial.
- 5.6.2 Staff can talk about any problems at work. The Staff Support Service is based at Switch House, Northern Perimeter Road, Bootle, Merseyside, on 0151 330 8103 / 8099.
- 5.7 **Human Resources** – Human Resources may be contacted informally to discuss issues of concern related to dignity and respect at work. Human Resources may also be involved in fact finding investigations and other stages related to the policy.
- 5.9 **Mediation Co-ordinator**
- The Mediation Co-Ordinator will organize the rota to assign mediators across the Trust to cases which have been referred.

## 6 PROCESS / PROCEDURE

### **What is the difference between a grievance and a dignity at work complaint?**

A grievance is an opportunity for an employee to raise any minor matter in relation to their employment that is causing them concern. A dignity at work complaint is a serious issue where a member of staff may feel that they are being subjected to inappropriate and disrespectful or discriminatory behaviour that may affect their health and wellbeing.

#### 6.1 **Mediation Services**

Mediation is a confidential and voluntary process, which brings together people who are experiencing problems with a work related relationship. The problem

will usually relate to behaviour, attitude or communication. Mediation takes place in the presence of an impartial third party. During mediation individuals will be encouraged to relay their experience and air their feelings. It empowers those involved, as the disputants not the mediators, to decide on the terms of any resolution. The mediator does not offer advice on how to solve the problem. People participating in mediation do so without prejudice.

Staff are not entitled to be accompanied by Trade Union representatives during the mediation process.

#### 6.1.1 **Why have mediation?**

The mediators are new to the dispute, disagreement, upset and not involved in the work area. They will make sure that the meetings are conducted in a fair and productive way. The co-mediators can help staff reach a resolution which is acceptable to all those involved.

#### 6.1.2 **Will agreements be reached?**

The aim of the mediation process is for those present to come to a resolution. Individuals coming to mediation must have the will to implement the resolutions they propose and reach agreement about future behaviour.

#### 6.1.3 **What happens after mediation?**

If in the staff's view the mediation has been unsuccessful, they may invoke formal procedures, in this case the mediators would not be involved.

6.2 **Raising a complaint** - In the first instance a complaint under the respect and dignity at work policy should be raised with the relevant line manager or Human Resources if the line manager is the source of the complaint. This may be done verbally or in writing.

6.3 **Investigating the Facts** – Following receipt of a complaint the relevant manager or Human Resources representative will initiate an investigation of the facts. The purpose of the investigation is to determine the relevant facts of the complaint in order to assess whether or not there is a case to make under the terms of the policy.

There are three possibly outcomes from the investigation:

- No case to make e.g. a reasonable case cannot be made under the terms of the policy. However, it may still be the case that workplace issues have been identified which do require a management response and possible mediation.
- A case to make which can be addressed informally. Use of informal procedures will always be the preferred option before resorting to formal procedures which could result in disciplinary investigation and action.
- A case to make which is best addressed formally. Formal procedures are best used for cases which are sufficiently serious to warrant a disciplinary investigation.

If a claim is found to be malicious in nature then the individual may be subject to formal disciplinary action.

**6.4 Informal Procedure** – Informal procedures are always the preferred first option in addressing issues related to dignity and respect at work. The reasons for this are:

- a person may be unaware of the effect their behaviour has on others;
- many incidents concerning respect and dignity at work will be more effectively dealt with in an informal way;
- sometimes people are not aware that their behaviour is unwelcome and an informal discussion can lead to greater understanding and an agreement that the behaviour will cease;
- an informal process will always be less destructive and damaging to relationships and less stressful for all those involved.

Trade Unions support this approach and it is considered as best practice by ACAS.

Where the individual complainant wishes the matter to be dealt with informally, the person will meet with the relevant manager, or another appropriate independent person, e.g. a HR Representative, in order to discuss the outcome of the fact finding investigation and agree an informal course of action.

Informal action will only be taken with the full agreement of the complainant and the alleged perpetrator. This may include a process of conflict resolution/mediation with trained and neutral mediators. (see appendix 1 for mediation request)

Any informal process undertaken does not preclude the complainant from pursuing the formal process should they believe the informal process has not resulted in satisfactory resolution.

A management record will be kept if this matter has been resolved informally. The report, including the process and outcome of the procedure will be shared with both parties to the complaint. Reports from third parties e.g. contributions to the fact finding investigation will not be shared in order to preserve their confidentiality.

**6.5 Formal Procedure** – Formal procedures can be instigated following the investigation of the facts when the outcome from the investigation finds that the nature and particulars of the complaint are sufficiently serious to warrant formal investigation including the use of the disciplinary procedures. Formal procedures may also be invoked when:

- Informal attempts have not been successful, or;
- The employee refuses to use informal procedures and wishes the matter to be dealt with formally, i.e. wishes to make a formal written complaint; or
- Management considers the behaviour to be of a sufficiently serious nature that it warrants a disciplinary investigation.

Formal complaints must be made in writing to the immediate line manager or to Human Resources where it is the immediate line manager that is the subject of the complaint. The complaint should state;

1. The name(s) of the person being complained about;

2. The nature of the complaint e.g. treatment resulting in loss of dignity or respect, harassment, bullying etc.;
3. The dates, times and places where the incident(s) took place;
4. The name(s) of any person(s) who witnessed any of the incident(s);
5. Details of any action taken by the complainant or others to stop the behaviour being complained about.

It will be the responsibility of the line manager along with an independent representative from human resources, with no previous knowledge of the complaint, to keep all parties informed of progress and to acknowledge the instigation of formal procedures in a reasonable time.

The use of formal procedures will include a disciplinary fact finding investigation. The manager receiving the complaint, in consultation with the Human Resources Business Partner will appoint an impartial investigating officer to carry out an investigation of the alleged breach of the policy. The Human Resources Business Partner will advise the investigating officer on how to proceed with the case and will ensure that procedures are adhered to, the case is handled sensitively and without undue delay, and that the outcome of the case is monitored. The Human Resources Business Partner will play a key role in advising both the complainant and the person being complained about on the operation of the procedures.

Any employee who is invited to attend a meeting with the investigating officer may be accompanied by a trade union representative or colleague and may inform the investigating officer of any witnesses that should be seen as part of the investigation.

- 6.5.1 **The Investigation** – As formal disciplinary action is a possible outcome from this investigation it will be conducted in accordance with the provisions of the disciplinary procedure. The individuals concerned and their representatives will be advised in writing of the envisaged timescale prior to the commencement of the investigation. Any significant changes to the timescale will be advised in writing with the reasons for these changes.

The investigating officer will:

- give the complainant the opportunity to expand on their complaint;
- enquire into the circumstances and background surrounding the complaint;
- give the person(s) being complained about an opportunity to hear the complaint, and specific allegations, and to offer an explanation by responding to questions and/or submitting a written statement;
- take a fair and impartial view of the information that emerges;
- listen to any witnesses and take statements from them;

On completion of the investigation all the evidence will be submitted to the relevant manager and/or human resources representative in the form of a written report.

6.5.2 **Action after the Investigation** – The relevant manager on receipt of the investigation report will form a view as to whether there is a case to answer under the Trust’s disciplinary procedure. The conclusion may be that:

- there is no case to answer
- some level of inappropriate behaviour has occurred but it is insufficient to initiate the formal disciplinary procedures and an alternative resolution must be found;
- the offence is of a serious enough nature to warrant a disciplinary hearing under the Trust’s disciplinary procedure;

The relevant manager and HR representative will meet with the complainant and person(s) being complained about and their representatives within a reasonable period of time. The purpose of the meeting will be to communicate the outcome of the investigation and whether or not formal proceedings will take place.

6.5.3 **No Formal Action** – If following an investigation it is decided that no formal action will take taken both parties will be notified of the outcome through face to face meetings and in writing. As it is necessary to have due regard for the confidentiality of both parties it will not be possible to provide detailed information about the outcome e.g. inclusion of evidence from third parties.

6.5.4 **Formal Action** – If following an investigation a complaint is held to be valid and there is a case to answer, a disciplinary hearing will be held in line with the Trust’s under the disciplinary procedure, which in serious cases may include dismissal. Both parties will be notified of the outcome in writing with due regard for their confidentiality.

## 6.6 **After a decision has been made**

6.6.1 **Post procedure conciliation** – Whether the complaint is resolved through mediation or through the formal process the manager must ensure that any action decided upon is properly and fully followed through. This includes managing any subsequent fall out or ongoing resentments resulting from the complaint and/or investigation and outcome. Potential damage to relationships and feelings can be deeply felt and may take time to be resolved.

The overriding aim of post procedure conciliation is to ensure a safe working environment in which dignity and respect are preserved. Therefore, any planned actions resulting from the procedure should include arrangements about how the complainant and person(s) being complained about are going to work together.

It may be necessary to consider relocation, redeployment, team building and other transitional arrangements. Therefore, following the completion of the procedure the appropriate Manager and Human Resources Business Partner need to meet with relevant members of staff and discuss issues in relation to any of the following as soon as practically possible:

- Return to work/relocation
- Support structures

- Team building/conciliation
- External support
- Training issues
- Whether there is a need for future review

#### 6.6.2 Preventing victimisation

On completion of a case, whatever the outcome management is responsible for maintain dignity and respect at work including ensuring that victimisation does not take place. Victimisation occurs where a person is treated less favourably than another person because s/he has referred to or has asserted their rights under the relevant statutory provision, e.g. the Equality Act 2010 or raised a complaint under Trust procedures.

This would cover those bringing cases under the legislation/procedures or acting as witnesses in any investigations or complaint, or being involved in trade union activities.

### 7. Support Contact Details

#### Equality and Human Rights Team

- Informal Support re bullying and harassment
- Contacts and information re staff support networks

[Meryl.cuzak@merseycare.nhs.uk](mailto:Meryl.cuzak@merseycare.nhs.uk)

#### Human Resources Department

- Clarification of policy process
- Management advice

Contact number: 0151 473 2943

#### Staff Support Service

- Mediation arrangements and information
- Contact number 0151 330 8099

- Counselling

Contact number: 0151 330 8103 / 8099

#### Occupational Health

- Health advisory service

Contact number: 0151 471 2451

## 8. CONSULTATION

The following staff / groups were consulted with in the development of this policy document:

- Corporate Review Group
- HR Policy Group which includes representation from Human Resources, trade unions and management
- Equality and Human Rights Lead

## **9 MONITORING**

The HR Department and the Mediation Co-ordinator will maintain data to enable the monitoring of people affected by bullying and harassment within the work place. This will be considered annually within the HR department.

## 10 SUPPORTING DOCUMENTS

### List of Supporting Documents

Ref No	Name
SA06	Policy and Procedure for the Management of Complaints and Concerns
SA13	Being Open Policy
SA07	Health and Safety and Wellbeing Policy
SA02	Risk Management Policy and Strategy
SD18	Policy for the Recognition, prevention and therapeutic management of Aggression and Violence
SA32	Procedure for the Systematic Approach to the Analysis and Learning from Incidents, Complaints and Claims
HR09	Zero Tolerance Policy and Procedure
HR02	Grievance procedures and Impact Assessment
HR01	Disciplinary Procedure
HR06	Concerns at work about patient care/business misconduct (whistleblowing) and impact assessment
HR18	Knowledge & skills framework (KSF) Gateway progression
HR13	Stress prevention and management in the workplace and impact assessment
HR10	Equality
HR02	Grievance Procedure

## 11 GLOSSARY OF TERMS

### Glossary of Terms

Term	Description
<b>Cyber Bullying</b>	The use of electronic communication e.g. email, face book, internet or text messaging, Twitter etc. to bully a person, typically by sending messages of an intimidating or threatening nature.
<b>Direct Discrimination</b>	Occurs when someone is treated less favourably than another person because of a protected characteristic.
<b>Discrimination by association</b>	This is direct discrimination against another because they associate with another person who possesses a protected characteristic.
<b>Discrimination by perception</b>	This is direct discrimination against an individual because others think they possess a protected characteristic. It applies even if the person does not actually possess that characteristic.
<b>Indirect Discrimination</b>	Occurs when an organisation has a rule, policy or practice that applies to everyone but particularly disadvantages people who share a protected characteristic.  Indirect discrimination can be justified if it is a “proportionate means of achieving a legitimate aim”
<b>Discrimination arising from a disability</b>	Disabled person is treated unfavourably not because they have a disability (which would be direct discrimination) but because of something that is connected with their disability; and that treatment cannot be objectively justified as being a proportionate means of achieving a legitimate aim.