

<b>Policy Number</b>	9.41
<b>Policy Name</b>	<b>Bullying and Harassment of Staff by Service Users/Patients Policy</b>
<b>Policy Type</b>	Divisional
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<b>Recommending Committee</b>	SLD Policy and Procedure Committee
<b>Approving Committee</b>	Mark Hindle
<b>Date Originally Approved</b>	1/03/17
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This document is a valid document, however due to organisation change some references to organisations, organisational structures and roles have now been superseded. The table below provides a list of the terminology used in this document and what it has been replaced with. When reading this document please take account of the terminology changes on this front cover

<b>Terminology used in this Document</b>	<b>New terminology when reading this Document</b>
Calderstones Partnership NHS Foundation Trust	Mersey Care NHS Foundation Trust

**TRUST POLICY/PROCEDURE  
 COMMITTEE**

**PROCEDURE NO:  
 9.41  
 DATE OF ISSUE: 1 March 2017**

**This procedure replaces procedure No. 9.41 dated 1.10.15 which should be removed and destroyed**

**MEMORANDUM**

**SUBJECT: Bullying and Harassment of Staff by Service Users/Patients Procedure (SLDD)**

**DISTRIBUTION: Procedure Manual Holders/Trust Intranet**

1. This memorandum introduces the Bullying and Harassment of Staff by Service Users/Patients Procedure

**References**

Mersey Care NHS Foundation Trust Policies

- HR7 Management of Attendance
- HR2 Grievance Procedure
- HR1 Disciplinary Procedure
- HR14 Dignity and Respect at work - prevention of harassment and bullying at work
- SA06 Management of complaints and concerns
- SD17 Safeguarding adults from abuse
- IT02 IM&T Security

*The Trust aims to design and implement services, policies and clinical/non clinical procedures with measures that meet the diverse needs of our services, population and workforce, ensuring that none are placed at a disadvantage over others.*

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Name of Originator/Author:	C. Kennedy, HR Advisor (Equality and Diversity)
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## SUMMARY OF AMENDMENTS

Change logo and Trust names from Calderstones Partnership NHS Foundation Trust to Mersey Care NHS Foundation Trust

TRUST  
POLICY/PROCEDURE

PROCEDURE NO:

**9.41**

DATE OF ISSUE: 1 March 2017

**SUBJECT: Bullying and Harassment of Staff by Service Users/Patients  
(SLDD)**

**1. PURPOSE**

- 1.1 Mersey Care NHS Foundation Trust (*herein referred to as "the Trust"*) is committed to the development of positive policies and procedures to promote Equality and Diversity in both employment and service delivery.
- 1.2 This procedure supports the prevention of bullying and harassment and provides a clear framework of expectations and practical guidance on how to deal with cases of bullying and harassment of staff by service users in the workplace.
- 1.3 This procedure aims to encourage staff to raise any concerns at the earliest possible stage, helping employees to feel safe and free from bullying, harassment or discrimination whilst at work.

**2. INTRODUCTION**

- 2.1 The Trust acknowledges that to effectively meet the needs of Service Users, a positive, respectful and supportive relationship between service users/patients and employees is essential in the delivery of a good service.
- 2.2 Although incidents of abuse against staff are not uncommon in the delivery of services across the National Health Service, the Trust expects all necessary action to be undertaken to minimise and effectively reduce the risk of abuse against its employees. In order to do this we must work in partnership with service users/patients, employees and Trade Unions and other external agencies (*including the police where necessary*).
- 2.3 This procedure seeks to actively support and promote the safety of Trust employees. Any form of abuse (*emotional, verbal, sexual or physical*) against staff is unacceptable and the Trust expects all staff to be treated with courtesy, dignity and respect at all times.

- 2.4 This procedure provides a framework for dealing with difficult relationships between employees and service users/patients. It provides clear guidance about what employees can do when faced with unacceptable behaviour from service users/patients.
- 2.5 Previous and current restrictions on service users/patients with regards to choice in their everyday lives may have led to them becoming competitive with others. For some service users/patients, the loss of freedom, possible victimisation, coupled with control and limited access to what they had previously, may have increased their competitiveness to survive. Competitiveness can be a positive motivating force for change. In some individuals, however, it can lead to them learning to bully to make sure they come out on top. They can learn this by modelling themselves on other bullies. This is how some victims of bullying can become bullies themselves.
- 2.6 This procedure is to be implemented when a member of staff becomes aware of unacceptable behaviour which results in the relationship between a member of staff and a Service User deteriorating and where it can be shown that there are unacceptable risks posed to the staff member by the Service User in the provision of care. This will be done in a way that maintains our commitment to both the delivery of essential services and the safety of staff.

### **3. SCOPE OF THE PROCEDURE**

- 3.1 This procedure applies to all staff employed by the Trust. The Trust does however recognise that the nature of the organisation involves working with people who may display unacceptable behaviours on a regular basis and therefore a “zero tolerance” approach may not always be practicable because of our duty to safeguard and promote the welfare of these individuals. For example, some service users/patients may come with direct or indirect exposure of grief, impaired mental capacity or health, mental disorder or conditions such as Tourettes Syndrome that may impact upon their thoughts and behaviour and responses to interventions from staff.
- 3.2 The Trust recognises its duty of care to vulnerable service users/patients and that it must provide emergency intervention as a minimum (*with or without additional support- including the police where necessary*). This will be subject to a risk assessment and positive behavioural support plan with the view to establishing, within reasonable timescales, the optimum service that can be delivered. As appropriate, the Trust may need to identify an alternative environment in which to care for the Service User in order to deal with the longer term need of delivering a service.

### **4. PROCEDURE FOR MANAGING DIFFICULT RELATIONSHIPS BETWEEN EMPLOYEES AND SERVICE USERS/PATIENTS**

- 4.1 This procedure refers to any concern from an employee about a Service User, regarding any form of unacceptable behaviour, which he/she considers to be bullying or harassment.
- 4.2 Although it is recognised that a “zero tolerance” approach may not always be practicable, the Trust will endeavour to ensure that concerns raised by staff are fully supported and the service users/patients positive behavioural support plans should be reviewed. Robust systems should be in place to ensure that Service Users are spoken to about their alleged abuse and that this is captured within their care notes.
- 4.3 Employees must, as a minimum, where possible withdraw from the situation and report the incident immediately to their line manager/delegated representative and a Ulysses report should also be completed where appropriate. Where this is not possible staff must try to remain calm and look to extract themselves from the situation as soon as possible in line with relevant guidance/training protocols/procedures.
- 4.4 To minimise the negative impacts of unacceptable behaviour to staff morale and confidence, it is important that the line manager or delegated representative deals promptly with the concern received from the staff member. In the absence of the line manager the most appropriate senior manager should progress the complaint.
- 4.5 Some issues may be dealt with internally and informally. In minor cases it may be sufficient for the recipient of the harassment to raise the problem with the perpetrator, pointing out the unacceptable behaviour. But if an employee finds this difficult, embarrassing or feels it may escalate the situation, support from a colleague or manager should be offered.
- 4.6 If an informal approach does not resolve the situation or is deemed unsuitable then formal action should be triggered. Formal action can also be taken simply if the individual would prefer to take this course.
- 4.7 If formal action is to be taken a written statement should be submitted to the relevant Ward Manager detailing the situation and the nature of the complaint.
- 4.8 A written account of the concern and a completed risk assessment and positive behavioural support plan will seek to deal with the immediate and longer term needs of service delivery. The responsibility for the completion of the above tasks rests with the line manager/delegated representative. This will include consideration to the following;
  - Minimum and optimum service levels.
  - Review arrangements.

- Techniques and responses to minimise the behaviours and encourage more appropriate behaviours.
- Establishing why the Service User became distressed and look for solutions.
- People and *resources (e.g. other agencies, family, friends, use of other facilities)* to support the management plan.
- Support/training required by the employee.
- Sharing information with others, such as the police, where it is clear that there is an unacceptable risk to staff and others in the delivery of care.

4.9 Once a manager is in receipt of a concern from an employee it is important that prompt action is taken to prevent the situation from recurring. In the first instance the manager or delegated person must attempt to make contact with the Service User to obtain their version of events and perceive and investigate (*with support from the relevant Human Resources Advisor/Manager*) whether the Service Users actions constitute Bullying and/or Harassment. If so, it is important for the Ward Manager to explain to the Service User that their behaviour is unacceptable and confirm the actions to be undertaken by the Service User, employee and management to facilitate the continued provision of care.

4.10 In the majority of cases where the Service User is advised that their behaviour is unacceptable it is hoped that this will improve the working relationship between the Service User and employee.

4.11 The interaction between staff and service users is of vital importance to help them tolerate frustrating events and these can be influenced by the quality of the examples they are set by their role models i.e. staff. It is a combination of support and vigilance from staff, coupled with treatment and education for service users who bully that will hopefully affect a change in behaviour.

4.12 This can be achieved through maintaining routine observation and interaction with service users in their usual environment, and making a record of any changes in their physical, psychological and social presentation. It is important to ensure that Service Users are empowered to gain an insight into the effects of their behaviour both on their victims and on their progress on their care pathway. Also any response to bullying behaviours needs to look beyond the bullying relationship and explore the social and physical environment which influences this behaviour, with a view to limiting the opportunities for future bullying. When such changes are noted it is imperative that these are reported in a timely manner to the Person in Charge of the ward/home.

- 4.13 The actions to be taken will be dependent upon many factors such as the type and frequency of the behaviour exhibited by the Service User, the capacity and support available at the time to the staff member to resolve a conflict situation and the vulnerability of the Service User concerned.
- 4.14 The Ward Manager or nominated Deputy, as soon as reasonably practicable will contact the Multi Disciplinary Team to arrange a Work Group Meeting/Planning Meeting for the respective patients/service users involved. The purpose of the Work Group Meeting/Planning Meeting would be to detail a treatment and care plan/Support Plan response for all parties involved.
- 4.15 The intention of this procedure is not to provide a prescriptive approach, but instead some guidelines to assist/inform managers when deciding the most appropriate course of action to resolve the incident, whilst always ensuring the safety of the staff member.
- 4.16 In most cases services can be resumed, through the completion of a risk assessment being undertaken and with support from their line manager the staff member can be supported in the use of a range of strategies to deal with the behaviour presented by the service user. Arrangements must be introduced to monitor the situation with the employee and service user as deemed appropriate by management.
- 4.17 The success of dealing with an incident of abuse will be dependent upon the support given to the staff member. The staff member should be given the opportunity to discuss whether they feel confident and able to resolve the conflict situation and together with their manager give consideration to the resources required to manage the situation. Staff members should be offered and encouraged to attend a debriefing meeting following the incident.
- 4.18 A referral to Occupational Health may also be required. Research has shown that staff who experience bullying or harassment are more likely to be depressed and anxious and sickness absence levels are higher amongst such staff. The Occupational Health service may feel counselling or another service is appropriate for the staff member and the opportunity for them to talk in confidence about any intimidating behaviour they have experienced or observed should be given. Alternatively staff may self-refer to occupational Health for support via the 24 hour staff helpline.
- 4.19 An opportunity to discuss the issue with management should also be provided so that the options available to resolve the problem and the actions to take can be decided. Early intervention is critical to stop problems from escalating.
- 4.20 In any circumstance any complaint of Bullying and Harassment of Staff by Service Users must be reported as soon as practicably possible to the Senior Human Resources Advisor (Equality and Diversity) for further advice and guidance around supporting the staff involved.

- 4.21 Any sickness absence resulting from bullying and harassment of staff will be dealt with in line with procedure HR7 Management of attendance.
- 4.22 Any staff member who is found to be making untrue, malicious or vexatious allegations against service users will be dealt with in line with procedure HR1 Disciplinary Procedure.
- 4.23 Any bullying and harassment of staff by colleagues or line managers will be dealt with in line with procedure HR14 Dignity and Respect at work: prevention of harassment and bullying at work.
- 4.24 Any concerns regarding fair treatment or any grievances staff have in relation to this policy will be dealt with in line with procedure HR2 Grievance procedure.
- 4.25 Any bullying and harassment issues between service users will be dealt with in line with procedure SD17 Safeguarding adults from abuse and SA06 Management of complaints and concerns.
- 4.26 Any bullying and harassment of staff which is identified to be made by other Trust employees via social media will be dealt with in line with the Trusts' procedure IT02 IM&T Security procedure.

## **5. LEGAL ACTION**

- 5.1 A member of staff, or the Trust on their behalf, who has been subject to harassment or violence by a service user has the right to report the incident to the police with a view to criminal prosecution or civil proceedings. In order to demonstrate a zero tolerance approach to bullying and harassment in the workplace, the Trust expects that serious incidents should be reported to the police and recognises the pivotal role that Occupational Health has in supporting staff.
- 5.2 The Trust will co-operate fully in line with our duties under relevant legislation where a member of staff (*during the course of or otherwise in connection with their employment*) is physically assaulted or otherwise suffers harm because of the unlawful conduct of another person.

## **6. TRAINING**

- 6.1 Training is crucial in helping to reduce the risk of abusive situations. The Trust supports training programmes which advise on managing aggression, de-escalation and physical intervention and on improving overall personal safety in order to encourage a climate of prevention and continual assessment of risk.
- 6.2 Should any Trust employee feel that they would benefit from, or require, training around what constitutes bullying and harassment then this can be arranged through contacting the Senior Human Resources Advisor (Equality and Diversity).

## **7. MONITORING AND REVIEW:**

- 7.1 This policy will be reviewed on a three yearly basis or when changes to legislation or associated Trust policies and procedures render it invalid.
- 7.2 Dates will be provided to the Board via the Human Resources Committee regarding the application of this procedure and its effectiveness in preventing, or reducing, bullying and harassment of staff from service users.

## **8. EQUALITY AND DIVERSITY**

Mersey Care NHS Foundation Trust is committed to ensuring that, as far as it is reasonably practicable, the way we provide services and the way we treat our staff, reflects their individual needs and does not discriminate, directly or indirectly, against individuals or groups on the basis of their protected characteristics.

The Trust does not believe that this policy/procedure represents a significant advantage/disadvantage to any individual or group of individuals on the basis of their protected characteristics and confirms that the arrangements set out within the policy/procedure are acceptable/objectively justifiable by reference to the requirements of the Trust or the needs of the service.

The Trust will regularly review this document however should you feel that the policy/procedure requires amendment prior to the review date outlined (*on the cover page*), or represents a potential source of advantage/detriment to you or another individual or group based upon protected characteristics, please make representations to the Human Resources Advisor (Equality and Diversity) to enable the Trust to consider whether an amendment may be required.

Should a member of staff or any other person require access to this policy/procedure in another language or format please contact the Human Resources Advisor (Equality and Diversity).

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## DEFINITIONS OF COMMONLY USED TERMS WITHIN THIS PROCEDURE

### BULLYING

The ACAS definition of bullying states that bullying may be characterised as; “Offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient.”

### HARASSMENT

“Unwanted conduct related to a relevant protected characteristic, 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”.

The Equality Act uses a single definition of harassment to cover protected characteristics. Employees will now be able to complain of behaviour that they find offensive even if it is not directed at them. In addition, the complainant need not possess the relevant characteristic themselves and can be because of perception or association.

Harassment applies to all protected characteristics except for pregnancy, maternity where any unfavourable treatment may be considered discrimination and marriage and civil partnership.

*For behaviour to count as harassment in Equality Law it has to be one of three types;*

- **Type 1:** Unwanted behaviour related to the Protected Characteristics listed below which has the purpose or effect of violating a person’s dignity or creating for that person an intimidating, hostile, degrading, humiliating or offensive environment.
- **Type 2:** Sexual Harassment. This takes place when a person does something of a sexual nature (*which might be verbal, non-verbal or physical*) which has the purpose or effect of violating a person’s dignity or creating for that person an intimidating, hostile, degrading, humiliating or offensive environment.
- **Type 3:** The third type of harassment is where a worker is treated badly because they either submit to or reject sexual harassment or harassment related to sex or gender reassignment. This kind of harassment also applies where the person who treats the worker badly is someone different from the person carrying out the original harassment.

## PROTECTED CHARACTERISTICS UNDER THE EQUALITY ACT 2010

- **Age:** Where this is referred to, it refers to a person belonging to a particular age (*e.g. 32 year olds*) or range of ages (*e.g. 18 - 30 year olds*).
- **Disability:** A person has a disability if s/he has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.
- **Gender reassignment:** The process of transitioning from one gender to another.
- **Marriage and civil partnership:** Marriage is defined as a 'union between a man and a woman'. Same-sex couples can have their relationships legally recognised as 'civil partnerships'. Civil partners must be treated the same as married couples on a wide range of legal matters.
- **Pregnancy and maternity:** Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this includes treating a woman unfavourably because she is breastfeeding.
- **Race:** Refers to the protected characteristic of Race. It refers to a group of people defined by their race, colour, and nationality (*including citizenship*) ethnic or national origins.
- **Religion and belief:** Religion has the meaning usually given to it but belief includes religious and philosophical beliefs including lack of belief (*e.g. Atheism*). Generally, a belief should affect your life choices or the way you live for it to be included in the definition.
- **Sex:** A man or a woman.
- **Sexual orientation:** Whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.

## **WHAT DOES HARASSMENT AND BULLYING INCLUDE**

Harassment and bullying may be against one or more people and can involve an inappropriate use of power. It may involve single or repeated incidents ranging from extreme forms of intimidating behaviour, such as physical violence, to more subtle forms such as ignoring someone. It can often occur without witnesses. Examples may include;

- Unwanted physical contact
- Unwelcome remarks about a persons protected characteristic(s)
- Jokes at a personal expense, offensive language, gossip, slander and letters
- Posters, graffiti, obscene gestures, flags, bunting and emblems
- Isolation or non-cooperation and exclusion from social activities
- Coercion for sexual favours
- Pressure to participate in political/religious groups
- Personal intrusion from pestering, spying or stalking
- Persistent unwarranted criticism
- Personal insults

The above list is not exhaustive and are simply examples of what may constitute bullying and harassment. It must be noted however that due to our service users diagnoses and associated impact on their thoughts and behaviour, there may be some exclusions to the list above.

Any individual who feels that they are being bullied or harassed should seek guidance from their Ward Manager, Union representative or the Human Resources Department in the first instance.

## **WHY DO EMPLOYERS NEED TO TAKE ACTION ON BULLYING AND HARASSMENT?**

Bullying and Harassment are not only unacceptable on moral grounds but may, if unchecked or badly handled, create serious problems for an organisation including:

- Poor morale and poor employee relations
- Loss of respect for managers and supervisors
- Poor performance
- Lost productivity
- Absence
- Resignations
- Damage to company reputation
- Tribunal and other court cases and payment of unlimited compensation.
- In addition it may create an environment that is unsafe and even frightening to other employees and service users and therefore has a wide negative social impact.

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### **THE LEGAL POSITION**

- Individuals are protected from harassment both while applying for a job, while in employment and in some circumstances after the working relationship has come to an end. There is also protection from harassment on the basis of membership/non membership of a trade union in addition to that covered by the protected characteristics stated above.
- It is in every employer's interests to promote a safe, healthy and fair environment in which people can work.
- Employers have a "duty of care" for all their employees. If the mutual trust and confidence between employer and employee is broken- for example, through bullying and harassment at work- then an employee can resign and claim constructive dismissal on the grounds of breach of contract- usually this is as a result of the breach of the implied term that an employer will provide reasonable support to employees to ensure that they can carry out their job without harassment and disruption by fellow workers. Employers are usually responsible in law for the acts of their workers.
- Breach of contract may also include the failure to protect an employee's health and safety at work. Under the Health and Safety at Work Act 1974 employers are responsible for the health, safety and welfare at work of all employees. Although the duty to ensure the health and safety of workers in every aspect related to work lies with the employer, the employee also has a responsibility to take care, as far as possible, of their own health and safety and that of other persons affected by their actions at work, in accordance with training and instructions given by their employer.
- All employees are expected to play their part in making the organisations policy a reality and be prepared to challenge inappropriate behaviour and take action if they observe or have evidence that someone is being harassed. Individuals can be personally liable to pay compensation and can be prosecuted under criminal law as well as civil law.
- Employers responsibilities may extend to any environment where work related activities take place. These can include social gatherings organised by the employer such as work parties or outings. An employer could be liable for events which take place on these occasions unless they can show they took reasonable steps to prevent harassment.
- Employers should be especially aware of "cyber bullying". Detrimental texts sent via mobiles or images of work colleagues posted on external websites following work events could amount to bullying. As this would be seen to have its origins in the workplace, the employer could be liable.

- Employers and individuals can be ordered to pay unlimited compensation where discrimination based harassment has occurred, including the payment of compensation for injury to feelings.
- Other legislation which may apply if an employee is bullied or harassed at work is;
- Employment Rights Act 1996 (*for example constructive, unfair dismissal*)
- Trade Union and Labour Relations (Consolidation) Act 1992
- Public Interest Disclosure Act 1998 (*protection for whistleblowers*)
- Criminal Justice and Public Order Act 1994
- Public Order Act 1986
- Protection from Harassment Act 1997
- Human Rights Act 1998

## VERSION CONTROL SHEET

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