

Health and Adult Services

Protecting colleagues from harassment and discrimination from people who access support, family members, carers and providers/other third parties.

Document Type:	General procedures Section 2 (17) – Human Resources
Author:	Shanna Carrell
Approved By:	Sally Lichfield and Louise Wallace
Reviewing Officer:	Shanna Carrell
Approval Date	January 2025
Review Date	<i>(Note: this procedure has had an interim review pending the potential amalgamation with the Respect toolkit during 2025.)</i>

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Introduction

This procedure aims to protect employees from any kind of harassment or abuse when carrying out their duties from people who access services, family members and carers known to Health and Adult Services (Adult Social Care and Public Health), commissioned providers and other third parties. This includes harassment or abuse on the grounds of protected characteristics including, but not exclusive to:

- Age
- Ethnicity or race
- Religion or belief
- Sex
- Gender identity/reassignment¹
- Sexual orientation
- Disability – whether visible or invisible
- Pregnancy and maternity
- Marriage and civil partnership

For the purposes of this procedure, a third party refers to someone with whom a worker interacts as part of their job but who is not employed by the same employer as them².

This procedure aims to complement the Council and Directorate policies on personal safety at work and concentrates specifically on approaches to managing and resolving incidents of discrimination

¹ Note that the protected characteristic as defined by the Equality Act 2020 is gender reassignment, but people may experience harassment and discrimination on grounds of their gender identity and/or gender presentation – this is wider than gender reassignment.

² <https://www.tuc.org.uk/resource/tackling-third-party-abuse-and-harassment>

and harassment towards employees by people accessing services. The [Resolving issues at work policy and procedure](#) should be used for issues between colleagues.

For incidents where there are concerns about the way our employees have behaved or conducted themselves, this will be dealt with under the relevant HR policy, e.g., Disciplinary Policy.

For incidents where an employee has experienced abuse, harassment or discriminatory behaviour from a provider of services or other third party, the general principles in this procedure should be followed. Advice should be sought for the appropriate actions to take from the Adult Social Care Service Development Team in the case of commissioned social care providers and from the relevant Public Health lead commissioner for commissioned Public Health services.

Scope

Managers throughout the county in Health and Adult Services are responsible for implementing the procedure with colleagues and people who access services.

Equality, Diversity and Inclusion

Our policies and procedures support the commissioning and delivery of services that meet the needs of communities and individuals. Ensuring equity of access and outcomes is central to this. In developing and applying our policies and procedures, we will take account of:

- Equality, diversity and inclusion
- Anti-discriminatory practice
- Dignity and respect
- Human Rights

Contact Points

All staff
Team Leaders
Team Managers
Service Managers
Health Improvement Managers
Health Improvement Officers
Heads of Service
Assistant Directors
Public Health Consultants
Director of Public Health
HAS Corporate Director

Legislation and Guidance

Alteration or withdrawal of Community Based Services for Health and Safety reasons HS6 (11)
Health and Safety at Work etc. Act 1974
Mental Health Act 1983
The Management of Health and Safety at Work Regulations
Equality Act 2010
Human Rights Act 1998

PUWER & LOLER Regulations 1992
Care Act 2014
Data Protection Act 2018
Tackling third-party abuse and harassment – A guide for trade union reps
<https://www.tuc.org.uk/resource/tackling-third-party-abuse-and-harassment>

Linked Procedures

NYC Resolving Issues at Work
NYC Equality, Diversity and Inclusion Policy July 2021
NYC Whistleblowing Policy and Guidance
NYC HAS Operational Guidance for Responding to Safeguarding Concerns ASCO 8(1)
NYC Health and Safety – Personal Safety Guidance, Lone Working Guidance, Violence and Aggression Guidance
NYC HAS Serious Incidents Procedure ASCO 2.19
NYC Disciplinary Policy and Procedure

Consultation

Senior HR Advisor – Policy and Schools
Health and Safety Risk Manager (HAS&CYC)
Interim Head of Service Mental Health, DoLS and EDT
Head of Provider Services
Care and Support Leadership Team
HAS Diversity and Inclusion Group
HAS Anti-Racist Practice Group
Public Health Consultants

History of the Procedure

Issued December 2010
Reviewed and minor updates September 2011
Re-issued October 2014 - minor amendments including updating of hyperlinks and removal of references to Library and Community Services
Re-issued February 2021 – reviewed and updated following engagement with colleagues with lived experience; scope expanded to include Public Health
Reviewed and minor updates November 2024

1. Procedure and principles

1.1 What do we mean by harassment?

The Equality Act 2010 defines harassment as:

“Unwanted conduct related to a relevant protected characteristic [age, disability, gender reassignment, race, religion or belief, sex, sexual orientation], which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.”³

Harassment, in general terms and in the context of this policy is unwanted conduct affecting the dignity of individuals in the workplace. Examples of harassment include, but are not limited to:

- Name calling
- Innuendos
- Jokes
- Gestures or mimicry
- Verbal abuse
- Physical abuse
- Refusal to co-operate with particular employees
- Groundless complaints about an employee

But it should be noted that harassment can be more subtle than this, and that repeated incidents can build to create a hostile environment for the employee.

The key is that the actions or comments are viewed as demeaning and unacceptable to the recipient.

1.2 Equality Act 2010

Note that, under the Equality Act 2010, employees can complain of behaviour that they find offensive even if it is not directed at them, and the complainant need not possess the protected characteristic themselves. Employees are also protected from harassment because of perception and association (e.g., if they are perceived to have a protected characteristic, or experience harassment because of their association with someone who has a protected characteristic).

1.3 Who does this procedure apply to?

This procedure applies to:

- All employees at all levels either employed directly by Health and Adult Services, or where people are employed to work within Health and Adult Services facilities such as day centres and residential homes via a third-party provider.

Who might be experiencing harassment from:

- Any person accessing services from Health and Adult Services, including family/friend carers and other family members, or their wider network.
- Members of the public as a result of working for the Council

³ <https://www.legislation.gov.uk/ukpga/2010/15/section/26>

- Providers of services commissioned by the County Council
- Other third parties

Managers are responsible for implementing the procedure with their team members and any people who access support/carers and family members.

Services commissioned by NYC Health and Adult Services are contractually obliged to abide by the Equality Act 2010, which includes protection against harassment and discrimination for their employees and for people who access those services.

1.4 The procedure is based on the following principles:

1. Unlawful discrimination of any kind is not tolerated by NYC Health and Adult Services.
2. Employees are entitled to fair treatment in the workplace.
3. Where employees feel they have been harassed or discriminated against they will be supported by the organisation.

Employees should be reassured when an incident has taken place that they will be supported by their manager and the Directorate and that they are not expected to have to tolerate discrimination or harassment through the course of their work. Managers should be proactive in offering this support and action should be taken quickly.

Colleagues should be made aware of the Employee Assistance Programme: [Confidential help and support](#) or referred to the Health and Wellbeing Service: [Health and wellbeing](#) if they feel that the particular incident may be damaging to their emotional and psychological well-being.

1.5 Responsibilities

An employer has a duty to respond to discrimination and harassment where they are aware that it is taking place and must take reasonable steps to prevent it from happening again.

Where an employee is aware that such behaviour is taking place, they are obliged to report it to their manager, even when it is directed to another person rather than themselves, and the manager must respond in line with this procedure.

Managers are also expected to take appropriate action where a person who accesses services/family member/carer/provider has expressed discriminatory attitudes about a member of staff to other members of staff, for example where a person accessing services refuses to accept services from an ethnic minority person.

Equally, staff and managers should take action where a person who accesses services is displaying such attitudes towards another person accessing support.

1.6 Context of Health and Adult Services and working with people in need of care and support

Managers and team members, particularly in social care and other community settings, need to be sensitive to:

- The often-subtle nature of discrimination and harassment and the problem this creates in distinguishing between what may be a person's 'usual' behaviour or communication styles, and harassment.

- The relative powerlessness of a person accessing services due to their social situation. However, this should not prevent colleagues from exercising their responsibility to tackle discrimination or harassment experienced by themselves or other team members.
- The mental capacity of the person accessing services to understand his/her own judgements and behaviour.
- The extent to which a person with behaviour which challenges, where this includes discriminatory behaviours, understands or can control their behaviour.
- The impact of certain conditions on the ability of the person accessing services to control their behaviour, for example in the case of Tourette syndrome.

1.7 Prevention of incidents

Where potentially discriminatory attitudes and language are displayed by a person accessing services (etc.), team members and managers can help to prevent issues escalating into potential harassment by early intervention.

Such intervention may include explaining expectations of acceptable behaviour towards staff and others, talking with the person about accepting difference, and creative ways of celebrating diversity in service settings - for example by the choice of pictures in communal areas, activities and food.

This approach will also help to reduce the possibility of problematic behaviour being displayed towards other people who access services, who also have a right to enjoy services free from discrimination and harassment.

2. Procedure for managing incidents by people who access services and family members/carers towards staff.

2.1 Reporting an incident.

Any employee who feels they are being harassed or feels at risk of harassment by a person who accesses services, family member, carer, provider or other third party should report this to their line manager. Should they feel unable to raise this with their line manager, they should speak to another manager or their Trade Union representative.

2.2 Witnessing an incident.

All employees have a duty to challenge harassment and discrimination and report it to line managers immediately, even where it is not directed at themselves. This is in acknowledgement of the undermining nature of harassment which may contribute to reluctance to report an incident by the person experiencing the harassment. Failure to do so could result in disciplinary action being taken.

2.3 Initial assessment and action

Managers will have a duty to respond to allegations of harassment and discrimination seriously, systematically, sensitively and quickly.

In the case of a serious incident (for example one that involves violence, aggression, or threatening behaviour), managers should refer to the [NYC personal safety guidance](#) - see paragraph 2.8 below.

The manager will meet with the employee who has raised the concern as soon as possible to:

- Establish what the concern is.
- Establish what support the employee is seeking and the emotional impact from the employee's perspective.
- Establish what steps, if any, have already been taken to resolve the concern
- Where the employee reporting the harassment is not the subject of the harassment, meet with the subject of harassment to obtain their perspective.
- Consider meeting with the complained-about to hear their point of view.
- Consider observing the complained-against as they interact with the particular employee and/or others.
- Consider appropriate actions.
- Agree a common approach across all team members to addressing the concern with, or working with, the individual/family member/carer/provider or other third party.

When the above steps have been completed the manager should then discuss their findings and suggestions for resolving the concern with the employee(s) concerned.

Where possible and appropriate managers should attempt to resolve conflict. Additional measures when resolving conflict with a person accessing support family member/carer would include:

- Establish if other colleagues have had similar concerns.
- Establish if all colleagues have the same way of approaching the situation.
- Establish if one approach is more successful in managing the situation than another.
- Evaluate different approaches with the colleague.

The manager should ensure that the agreed resolution is put in place and the situation is monitored.

2.4 Formal action and investigation

When initial action has failed to resolve the situation or is inappropriate the manager should respond quickly, usually within 10 days, and involve their own line manager as soon as possible. Actions that managers should take include:

- Giving due weight to the views of the complainant when considering appropriate investigatory measures.
- Interviewing other team members and other potential witnesses.
- Interviewing the complained-against to advise him/her of the complaint and to obtain his/her views about the allegations. Where the complained-about person is believed to not have full capacity to understand their own actions or needs support to speak up on behalf of themselves, consider whether they will need advocacy support.
- Involving the police when an allegation is received and where information comes to light that may lead to criminal proceedings. This may link to hate crime reporting procedures.
- Suspending internal investigations where a separate police investigation is taking place, to avoid impeding any police investigations.
- Ensuring that both the incident and the outcome of the investigation are recorded, and that the appropriate senior manager is informed.

2.5 Action following the investigation.

A report should be prepared by the manager summarising the investigation with recommended actions. This report should then be discussed with a senior manager e.g., Head of Service, Public

Health Consultant or Assistant Director and their agreement sought for the proposed action. Subject to that agreement, the line manager of the employee(s) concerned should:

- Explain to the complained-against that their behaviour is unacceptable.
- Explain the Council's procedure on protecting employees from harassment.
- Aim to obtain an assurance that the behaviour will cease.
- Warn the complained-against about sanctions which will be applied if the behaviour persists and confirm this in writing.
- Agree work to be undertaken with the complained-against to create an awareness of the seriousness of harassment.
- Where immediate sanctions are required, these should be agreed with the Head of Service or Public Health Consultant and confirmed in writing to the complained-against, or other course of action required depending on the individual circumstances related to the case. In Mental Health services for example, this would need to be on a case-by-case basis, but if the person had capacity to understand their actions were inappropriate and not caused by their mental health condition, a letter would be appropriate.

2.6 Sanctions

The range of sanctions which may be applied after obtaining the approval of the Head of Service or Public Health Consultant are as follows. Heads of Service may wish to consult with the relevant Assistant Director, or Public Health Consultants with the Director of Public Health, before agreeing to any of the following:

- Writing to the person accessing services outlining causes for concern and potential sanctions.
- Withdrawal of whole or part of the services for a limited time period.
- Transfer of the person accessing services to a different worker or work setting (where appropriate).
- Restricted access to specific buildings.
- Withdrawal of the service permanently.

2.7 Withdrawal of services

Withdrawal of services, particularly when supporting adults in need of care and support where the Council has a duty of care under the Care Act 2014, should always be a last resort. Guidance should always be sought from Heads of Service and HASLT if this may be a possibility, and the decision-making process should be carefully recorded.

2.8 Risk Assessment

A risk assessment must be carried out with regard to the complained-against individual's risk to other people where serious incidents have taken place, in line with the [NYC personal safety guidance](#). This includes the procedures for assessing risk and reporting incidents.

All incidents of violence and aggression should be reported via the B-Safe incident reporting system; see above link or contact healthandsafety@northyorks.gov.uk for more information.

When other colleagues are dealing with this individual, they must be made aware of any risk assessments that have been completed or informed of potential concerns.

Actions identified from the risk assessment in order to protect those involved should be addressed before contact with the aggressor is made again.

If other colleagues may also be put at risk because of this incident, this should be recorded on any shared information systems. These risk markers should be used very carefully and should contain the reasons for identifying individuals as being potentially violent or aggressive. They are likely to record information relating to any threatening actions, incidents or behaviour they have or are alleged to have committed. For Adult Social Care, the risk marker would be on the Liquid logic Adult's System and must be reviewed at every review or reassessment.

A review of the case may need to be arranged. In Adult Social Care, all those concerned should be invited to attend including carers of people accessing services where appropriate. The final report should be submitted to the Head of Service and Assistant Director for monitoring purposes.

2.9 Follow up action with the employee concerned.

It should not normally be the case that the employee should need to change their work pattern to cope with or avoid harassment. Attention should be focused on resolving the concerns with the complained-against. However, should the employee wish to move to a different setting or stop working with the individual or group, this should be facilitated wherever possible. This may also be considered, initially on a temporary basis, whilst actions are ongoing to resolve the concern. If the employee does move, other actions to address the concerns should continue, to both resolve the current incident and reduce the risk of it re-occurring.

Where the complainant feels that their manager has not acted appropriately to protect him/her, they should be referred to the "Resolving Issues at Work" procedure on the intranet.

3. Reviewing and monitoring of this procedure.

Managers should ensure that actions and outcomes are subject to follow-up and review, including consulting with the complainant about the effectiveness of the action taken.

Heads of Service will be responsible for monitoring the application of this procedure in their service area and for identification of potential trends across a service or area.