

Reference Number: FOIAH2324/326
From: Private Individual
Date: 12 September 2023
Subject: The Trust's relationship and misconduct policies

Q1 Has your trust has issued:
a. relationships policy
b. sexual misconduct policy
c. any related disciplinary policies as they concern infractions of either (a) or (b). If these policies are available, please can you provide a copy of them or link to them.

A1 a. No – Information not held
b. No – Information not held
c. See attached – E5 Disciplinary policy and E24 Respect at Work policy



E5 – DISCIPLINARY POLICY

Version:	9
Name of ratifying committee:	People and Wellbeing Committee
Date ratified:	18/05/2021
Name of originator/author:	Sarah Tempera, HR Business Partner
Name of approval committee:	Employment Policy Review Group (PRG)
Date approved	05/05/2021
Name of Executive Sponsor:	Director of HR & OD
Key search words:	Conduct, behaviour, misconduct, gross misconduct, disciplinary, hearings, appeals, sanctions, warnings, dismissals, employment tribunals, ACAS, E5.
Date issued:	May 2021
Review date:	May 2024



Version Control, Review and Amendment Logs

Version Control Table				
Version	Date	Author	Status	Comment
9	May 2021	Sarah Tempera	Current	
8.1	April 2020	Emma Baker Sharon Owen	Archived	Extension approved due to COVID-19 pressures
8	November 2017	Emma Baker Sharon Owen	Archived	
7	March 2013	S Owen J Quinn D Fath	Archived	
6	Feb 2006	HR Department	Archived	
5	October 2003	HR Department	Archived	
4	April 2001	HR Department	Archived	
Disciplinary Rules				
3	March 1999	HR Department	Archived	
2	April 1998	HR Department	Archived	
Disciplinary Procedures				
1	August 1996	HR Department	Archived	

Record of changes made to Disciplinary Policy – Version 9			
Section Number	Page Number	Change/s made	Reason for change
All	All	Adjusted in line with efficiencies and developed in areas where further clarity and detail was required	Policy was not descriptive enough in certain areas
All	All	Removed any content relating to the investigation stage as that is now covered in the separate Investigations policy.	Just Culture principles – previously the investigation stage was covered under the Disciplinary policy but this has now been removed to reflect that an investigation is not necessarily a disciplinary issue and is instead looking at “what happened”.
All	All	Reviewed and updated existing content and added more information throughout.	To ensure the policy addresses key recommendations from Dido Harding and NHSE/I in relation to Just Culture during disciplinary procedures

Quick reference guide	2	Removed flow chart due to separating out the Investigation and Hearing elements of the process into two distinct policies.	This is now contained in the separate Investigation policy.
1.2 - Introduction		Added in links to Investigations policy and toolkit.	To ensure policies are read in conjunction and to signpost employees and managers to the Trust's disciplinary rules.
1.4 - Introduction		Added that the policy applies where Case Manager has determined there is a case to answer.	To clarify when the Disciplinary policy will apply.
3 - General Principles		General Principles moved from section 4 to section 3.	To improve flow of the policy and outline the underlying principles from the beginning.
3.2 - General Principles		More detail added around informal action.	Just Culture principles – to emphasise the importance of resolving issues informally where appropriate.
3.4 - General Principles		Highlighted that best practice is for disciplinary hearings to take place as soon as possible.	Time efficiencies – to reduce the amount of time taken to resolve issues and to reduce the impact on the employee(s) involved.
3.5 - General Principles		Added the principle of “reasonable belief”.	Distinguish between disciplinary and criminal proceedings.
3.10 - General Principles		Added bullet point re: sensitivity and confidentiality.	Remind those involved of obligations. Just Culture.
4 – Roles and Responsibilities		Roles and Responsibilities made clearer and more descriptive – added further detail.	For all those involved to understand their responsibilities in relation to the disciplinary hearing process. Removed information relating to investigation stage.
4 – Roles and Responsibilities		Changed terminology: <ul style="list-style-type: none"> • from Commissioning Manager to Case Manager, • from Disciplining Manager to Hearing Manager; and, • from Investigating 	Consistency with MHPS, streamline terminology. Hearing Manager more appropriate than Disciplining Manager as more neutral language. Just Culture principles.

		Officer to Case Investigator	
4.1 – The role of the Case Manager		Amended to reflect that the Case Manager would present the management case at any disciplinary hearing, rather than the Case Investigator.	To further distinguish between the investigation process (not a disciplinary in itself) and the disciplinary process. Just Culture principles. More appropriate for the Case Manager to present the case as they determined there was a case for the employee to answer. This follows the model set out in the MerseyCare policy
4.1 – The role of the Case Manager		Added in the responsibility to inform the relevant Governing body of the outcome of the hearing, where appropriate.	To ensure we meet our obligations in relation to patient safety and professional standards.
4.5 – The role of Employees		Added in more detail about the employee responsibilities.	Clarify expectations of employees.
4.6 – The role of the Trade Union Representative / Work Colleague		Added in more detail around the role of TU reps and work colleagues Changed wording from “right to representation” to “right to be accompanied”	To ensure that employees are aware they have the right to be accompanied at a disciplinary hearing and understand who can accompany them and what their role is. As per legal rights outlined in the Employment Relations Act 1999 and in ACAS Code.
4.7 – Witnesses		Added detail re: the role of witnesses. Added in paragraph re: witnesses who have concerns about attending a hearing	Clarify expectations of witnesses. Mirrors what is already in the existing Toolkit. To ensure witnesses know how to raise concerns. Consistency with Investigations policy
4.8 – Executive Lead		Added in line re: role of Exec Lead	Just Culture recommendations.

5 – Requests to Postpone a Hearing		Added in that hearings may proceed in the absence of an employee if they do not attend after the hearing has been rescheduled once. Confirmed that exceptional circumstances will be taken into account.	Best practice states that hearings should take place without unreasonable delay and there is an expectation that one postponement will be accommodated by the employer. Undue delay has the potential to negatively impact on the employee’s wellbeing and also on the Trust/service area.
8 – Appeals		Added more detail re: grounds for appeal.	To ensure grounds of appeal are clear from the outset and to save time in clarifying. Mirrors what is already in the existing Toolkit.
9 – Support for Employees		Updated with more details of support available.	To ensure employees are aware of the support that can be accessed. Consistent with Investigations policy.
10 – Reasonable Adjustments		New section to highlight duty to make reasonable adjustments during disciplinary process.	To ensure all involved in the process are aware of the legal and moral obligation to make reasonable adjustments for disabled employees if required.
12 – Resignation		Added in information re: reference requests	To provide clarity on how to Trust will respond to requests for references if an employee resigns before the hearing takes place. Mirrors the Investigation policy wording.
13 – Pay Progression		New section to highlight implications of formal sanctions for pay progression.	For awareness and understanding.
14 - Training		New section added	To ensure consistency with Investigations policy – same information in both policies.
15 – Monitoring and Review		Added “Review” to title and added further detail	To provide further clarity around the monitoring and review process and ensure consistency with Investigations policy – same information in both policies.

Contents

Section		Page
1	<u>Introduction</u>	7
2	<u>Purpose</u>	8
3	<u>General Principles</u>	8
4	<u>Roles and Responsibilities</u>	9
5	<u>Requests to Postpone a Hearing</u>	13
6	<u>Criminal Offences</u>	13
7	<u>Right to Curtail Procedure</u>	13
8	<u>Appeals Procedure</u>	14
9	<u>Support for Employees</u>	15
10	<u>Reasonable Adjustments</u>	15
11	<u>Trade Union Representatives</u>	16
12	<u>Resignation</u>	16
13	<u>Pay Progression</u>	16
14	<u>Training</u>	16
15	<u>Monitoring</u>	16
16	<u>Further Information</u>	17
17	<u>Equality Analysis</u>	18

1. Introduction

- 1.1 Alder Hey Children’s NHS Foundation Trust (hereinafter called the Trust) is committed to ensuring that all disciplinary matters are dealt with in a fair and consistent manner in line with the ACAS Code of Practice on Disciplinary and Grievance procedures (April 2009).
- 1.2 This policy should be read in conjunction with the Trust’s Investigation policy and Investigations Toolkit, which outlines the process that will be followed prior to any issues of misconduct being referred to a disciplinary hearing. Further guidance on the application of this Disciplinary policy and information on the Trust’s disciplinary rules can be found in the accompanying Disciplinary Procedure Toolkit.
- 1.3 Where possible, issues of misconduct will initially be handled informally between the line manager and the employee. Although informal discussions are not part of the formal procedure, it is a matter of good practice that managers should put in writing the details of any informal discussions and the employee should receive a copy.
- 1.4 The formal stages of the Disciplinary policy will apply where an investigation has been undertaken in accordance with the Investigation policy and the Case Manager has subsequently determined that there is a case for the employee to answer at a disciplinary hearing.
- 1.5 To accompany this Policy is a separate Disciplinary Procedure Toolkit which explains the arrangements for handling disciplinary issues. **This policy should not be used in isolation and should always be used in conjunction with the toolkit.**
- 1.6 In cases of alleged misconduct where dismissal is not an option and where an employee does not wish to contest the allegations, they can opt to have their case dealt with by way of the fast-track process. Please refer to the Disciplinary Procedure Toolkit, Appendix G for details.
- 1.7 **Values and Behaviours** – Alder Hey Children’s NHS Foundation Trust has a framework of behaviours that all employees are expected to uphold. In summary these expected standards of behaviour are aligned to our 5 core values:



My Alder Hey. My Values.

Our values outline the standards of attitude and behaviour we expect of ourselves and others (for example employees, patients, relatives and members of the public) when carrying out our responsibilities as employees – please see Disciplinary Procedure Toolkit for full details of our values and the expected behaviours that underpin them. Failure to adhere to the values and behaviours of the Trust may result in action being taken in line with this policy. Depending on the severity of the alleged issues identified, action could be considered under the informal or formal stages of this policy.

2. Purpose

- 2.1 This document is designed to inform all employees of the Trust's disciplinary rules, policy and procedures (see Disciplinary Procedure Toolkit), and their rights and responsibilities in relation to such matters. This document also provides guidance and a procedure for conducting investigations (see Disciplinary Procedure Toolkit, Appendix B).
- 2.2 When an employee does not meet the required standard of conduct because of issues related to lack of skill, aptitude, health or any other physical or mental quality, the matter will be handled in line with the Trust's Sickness Absence and Management of Attendance Policy - E4 or the Capability and Performance Policy - E30, in the first instance unless the misconduct is so serious, it warrants immediate referral to disciplinary proceedings. For Medical and Dental employees, reference should be made to the Trust's Policy for Handling Concerns about the Conduct, Performance and Health of Medical and Dental Staff - E27.

3. General Principles

- 3.1 No disciplinary action will be taken without a reasonable investigation first taking place (see Investigation Policy and Investigations Toolkit).
- 3.2 Formal disciplinary action will not always be necessary. Informal action should be taken to address cases of minor misconduct, which will usually take the form of a one-to-one confidential discussion between the line manager and the employee. This discussion should enable the manager to provide constructive feedback and the employee to express their views on the issue. It is important for both parties to understand that employees are not entitled to be accompanied at this informal stage and HR would also not be present. Disciplinary action will not be taken as a result of an informal meeting. Please refer to the Disciplinary Procedure Toolkit for more information about informal action.
- 3.3 Before any disciplinary hearing, the employee must be advised in writing of the details of any allegation(s) and given reasonable time to prepare their case.
- 3.4 It is best practice that disciplinary hearings should be held as soon as is reasonably possible. Reasonable attempts will be made to identify a mutually agreeable hearing date, taking into account the availability of the employee's preferred union representative or workplace colleague. However, if date

cannot be agreed within a reasonable timeframe, the Trust reserves the right to make arrangements to proceed. Once a hearing date has been identified, if the employee is unable to attend, one postponement will be accommodated and where possible, the hearing will be rescheduled to take place within 5 days. Exceptional circumstances will always be considered and further postponements may be accommodated dependent on the circumstances of the case. **Where the representative is an employee of the Trust all reasonable efforts will be made to enable them to be made available, in line with the Partnership Agreement.**

- 3.5 Any disciplinary action taken by the Hearing Manager may be based on a reasonable belief, from the evidence they have seen, that misconduct has occurred. This is significantly different to criminal proceedings whereby the onus is to prove an occurrence 'beyond reasonable doubt'.
- 3.6 If a disciplinary sanction is to be applied, the sanction will be dependent upon the circumstances of each individual case and the seriousness of the misconduct. Sanctions need not be applied consecutively (see Disciplinary Procedure Toolkit).
- 3.7 No employees will be dismissed for a first offence except in cases of gross misconduct (refer to Disciplinary Procedure Toolkit).
- 3.8 Employees have the right to be accompanied through all formal stages of the procedure by a representative of a recognised Trade Union or by a workplace colleague.
- 3.9 It is the employee's responsibility to arrange to be accompanied if they wish to do so.
- 3.10 The Trust will deal with all disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees are obliged to treat information provided in connection with the disciplinary process as confidential.
- 3.11 Employees will have the right to appeal against any formal disciplinary sanction (see Section 8 below and Disciplinary Procedure Toolkit).

4. Roles and Responsibilities

4.1 The Role of the Case Manager

Following the conclusion of the investigation, the Case Manager will:

- 4.1.1 Review the investigation report and make a decision on whether there is a case to answer. If so, the Case manager should formally write to the employee with details of the disciplinary hearing. Support from a HR representative will be provided during the course of any formal hearing process.

- 4.1.2 Appoint a Hearing Manager to hear the case if it is decided there is a case to answer. The Hearing Manager should have the appropriate level of authority as per Appendix E of the Disciplinary Procedure Toolkit – ‘levels of authority for the issuing of a disciplinary sanction.’
- 4.1.3 Ensure a report is prepared setting out the case against the employee and the investigation findings. The manager should ensure a full and balanced case is presented for the hearing manager to consider.
- 4.1.4 Oversee the arrangement of the disciplinary hearing where there is a case to answer. Administration support may be appointed to help with the dissemination of management reports, which will be sent in electronic format where possible, unless a paper copy is required.
- 4.1.5 Ensure all parties have received the required paperwork and that the employee has been given the right to representation at the hearing.
- 4.1.6 Continue to feedback formally to the employee regarding progress, provide key updates in relation to the scheduling of the disciplinary hearing and also check on the employee’s health and wellbeing. This should be done every 2 weeks until the hearing takes place.
- 4.1.7 If the employee is suspended / excluded, continue to oversee that the employee’s assigned point of contact maintains regular communication with the employee to provide updates and offer support.
- 4.1.8 In cases of fraudulent activity or patient abuse, inform the relevant parties and notify either the Local Counter Fraud Specialist or Safeguarding Manager of the outcome of the disciplinary hearing.
- 4.1.9 Present the case against the employee to the Hearing Manager at the disciplinary hearing.
- 4.1.10 be responsible for notifying any relevant governing body for example the NMC, GMC etc. should this be deemed appropriate, as well as the Chief Nurse and Chief Medical Officer appropriately. Advice should be sought from the HR team and the Responsible / Accountable Officer, as well as the PPA (if applicable) before this action is taken.
- 4.1.11 Attend any subsequent appeal hearing as required.

4.2 The Role of the Hearing Manager

Once the Case Manager has appointed a Hearing Manager to hear the case, the Hearing Manager should:

- 4.2.1 Conduct a fair and just hearing and give due deliberation as to whether a disciplinary sanction should be applied once the case has been heard.
- 4.2.2 Adjourn the hearing once the case has been heard and where possible, deliver a decision on the day to the individual.

- 4.2.3 Inform the employee at the end of the hearing if they will need more time to make a decision. In this situation, the Hearing Manager should outline what will happen next and give a timeframe by which they propose to confirm the outcome to the employee. The Hearing Manager should also agree with the employee how the outcome will be communicated.
- 4.2.4 Confirm the outcome in writing within five working days of the hearing, or of the outcome being reached, if this is not at the hearing.
- 4.2.5 Ensure the employee is informed of their right of appeal against any sanction issued.
- 4.2.6 Confirm the outcome of the hearing to the Case Manager and the employee's line manager.
- 4.2.7 Attend any subsequent appeal hearing as required.

4.3 The role of the Case Investigator

Following the conclusion of the investigation and the submission of the report to the Case Manager, the Case Investigator may be required to attend the disciplinary hearing and any subsequent appeal hearing as a witness.

4.4 The role of Human Resources

The HR team will provide appropriate advice and support to managers in the application of this policy and the procedure outlined in the Toolkit, including relevant training and coaching. Once a decision has been made to progress to a disciplinary hearing, the relevant HR representative(s) will:

- 4.4.1 Support the Case Manager to ensure all parties have received the required paperwork prior to the disciplinary hearing and that the employee has been given the right to be accompanied.
- 4.4.2 Provide professional employment law and procedural advice and support to the Hearing Manager at the disciplinary hearing, to help ensure that impartiality and an equitable standard of discipline is applied across the Trust.
- 4.4.3 Provide support to the Case Manager at the disciplinary hearing (this will usually be the HR representative who supported the Case Investigator during the investigation).
- 4.4.4 Support the Hearing Manager to ensure that written confirmation of the outcome of the hearing is issued to the employee within the agreed timescales.
- 4.4.5 Ensure appropriate retention of all records pertaining to the case in line with GDPR.

- 4.4.6 Liaise with the employee's line manager to ensure that appropriate support continues to be offered after the hearing, including where a suspension/exclusion has been lifted and the employee has returned to work. This support must be offered and implemented within a timely manner.

4.5 The role of Employees

All Trust employees should:

- 4.5.1 Ensure they are aware of the Trust's standards of conduct and behaviour and uphold the values and behaviours of the Trust.
- 4.5.2 Act in line with this Policy by being co-operative and reasonable during a disciplinary process.
- 4.5.3 Make every effort to attend a scheduled disciplinary hearing. However, if an employee is unable to attend a disciplinary hearing date arranged because of circumstances beyond their control, they must inform their line manager or HR as soon as possible to request a postponement. A postponement of up to one week will be permitted and any requests to go beyond this will only be permitted in exceptional circumstances.
- 4.5.4 Ensure they submit any documents for consideration by the Hearing Manager in accordance with the required timescales, in advance of any disciplinary hearing.
- 4.5.5 Make the Hearing Manager and HR Representative aware of any witnesses they wish to call at a disciplinary hearing, at least five working days in advance.
- 4.5.6 Make any arrangements to be accompanied at the disciplinary hearing, if they wish to exercise this right.
- 4.5.7 Make reasonable efforts to make themselves available to attend any formal disciplinary hearings as witnesses where they have been asked to do so. Employees who have any concerns about acting as a witness should raise these with HR in a timely manner.

4.6 The role of the Trade Union Representative / Work Colleague

- 4.6.1 Employees have the right to be accompanied at any disciplinary hearing by a fellow worker (employed by the Trust), a Trade Union representative or an official employed by a Trade Union. . The employee's companion will be allowed to address the hearing to put forward the employee's case, sum up the case on their behalf, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the hearing. The companion will not be permitted to answer questions on behalf of the employee, address the hearing if the employee does not wish it or prevent management from presenting their case.

- 4.6.2 Please refer to the Trust’s Handling Concerns about Conduct, Performance, or Health of Medical & Dental Staff Policy for further details of the right to be accompanied for these employees.
- 4.6.3 It would not be reasonable for someone to accompany the employee, whose presence would cause a conflict of interest at the hearing.

4.7 Witnesses

- 4.7.1 Employees who have been identified as a witness are reasonably requested to co-operate with the Case Manager / Hearing Manager and attend any hearings as required. Reasonable time off will be afforded to the witness, following discussion with their Line Manager. Witnesses will be given the option of being accompanied at the hearing by a work colleague or a Trade Union representative, neither of whom should have any prior involvement in the case.
- 4.7.2 If a witness has any concerns about attending a disciplinary hearing, they should discuss these concerns with HR. Individual circumstances will be taken into account, particularly where there are concerns about the personal safety of the witness.

4.8 Executive Lead

The Executive Lead has responsibility for overseeing the application of this policy and ensure that appropriate processes and actions are in place to ensure that employees are treated in a fair and consistent manner.

5. Requests to Postpone a Hearing

If an employee is unable to attend a hearing even after it has been re-arranged to an alternative date, then a hearing may be held in their absence. Exceptional circumstances will always be taken into full consideration. Employees must be aware that disciplinary action, up to and including dismissal can be taken in their absence if they choose not to or are unable to attend hearings. Employees may request that their Union representative or nominated work colleague attend the hearing on their behalf and/or make written submissions.

6. Criminal Offences

The Trust reserves the right to consider the employment implications of any legal proceedings in relation to an offence outside work, having regard to the relevance of the offence to the duties and tasks the employee is required to perform.

7. Right to Curtail Procedure

In exceptional circumstances, there may be cases in which it will be fair and reasonable to decide to curtail the procedure in full. Examples of circumstances in which the procedure may be curtailed are:

- When an employee is remanded in custody or in prison.

- When an employee refuses or fails to attend a disciplinary hearing without good reason.
- When an employee is unable to attend for health reasons over a prolonged period.

8. Appeals Process

- 8.1 An employee has the right of appeal against any formal disciplinary action. This right must be stated in any letter of warning or dismissal.
- 8.2 Any intention to appeal must be lodged in writing by the employee no later than 10 working days from the date of the disciplinary letter and should be addressed to the Director of Human Resources and Organisational Development.
- 8.3 The written appeal should contain the specific grounds on which the appeal is based. It is not sufficient merely to disagree with the decision made and appeals may be refused if the grounds for appeal are not clearly outlined. Please refer to the Disciplinary Procedure Toolkit which outlines the grounds for appeal that will typically be accepted.
- 8.4 If the initial correspondence to lodge the appeal does not outline the grounds, or the grounds given are not clear or sufficient, the employee will be asked to provide this clarity, prior to any appeal hearing arrangements being finalised. This detail should be provided as soon as possible to prevent any unnecessary delays. Further information regarding the appeal can be provided within the agreed deadlines prior to the appeal hearing, but clear grounds must be identified from the outset.
- 8.5 The purpose of the appeal is not to re-hear the case, but to consider whether the outcome of the hearing was fair and appropriate in light of the employee's grounds for appeal, and whether the procedure has been followed appropriately. Also see Disciplinary Procedure Toolkit.
- 8.6 Any sanction or penalty imposed at the disciplinary hearing can be reviewed and the outcome can be amended at the appeal hearing. However, a more severe sanction cannot be imposed.
- 8.7 In the event of the withdrawal of a disciplinary action on appeal, all references to the original action will be removed from the record.
- 8.8 Nothing in this document will prejudice the employee's right to refer a claim to an Employment Tribunal.
- 8.9 The Disciplinary Procedure Toolkit contains information relating to the levels of authority for the issuing of a disciplinary sanction and levels of authority for appeal hearings.

9. Support for Employees

9.1 The Trust provides a confidential counselling service to all who require it during the course of an investigation. The service is provided by trained practitioners and coordinated through the Alder Centre and the Occupational Health Department.

9.2 Employees and managers are encouraged when required, to refer to the Supporting Staff Policy for the various other sources of support which include some examples of support such as:-

- Staff Side/Union Support
- HR Support
- Occupational Health
- Staff Advice and Liaison Service (SALS)
- Alder Centre Counselling Service
- Management of Stress at Work Policy
- Mental Health First Aiders
- Freedom To Speak Up Guardians

9.3 It is important throughout the procedure for the Case Manager to keep talking with both the employee, their representative (where applicable), the line manager and any other staff affected. Clear, regular and confidential communication can help make sure employees are kept informed of what is happening, have the opportunity to ask questions and can avoid stress and other mental health issues.

9.4 Case Managers are responsible for maintaining communications and will make every effort to ensure employees receive clear, timely, comprehensive and sensitive information about the allegations and regular progress updates on any investigation until the matter is concluded.

10 . Reasonable Adjustments

10.1 The Trust recognises its legal and moral duty to make reasonable adjustments for disabled employees to ensure they are able to fully participate in any disciplinary process and are not disadvantaged as a result of their disability.

10.2 Where an employee who is facing disciplinary action, or who has been asked to act as a witness, feels that any such adjustments may be necessary to allow them to participate fully, they (or their union representative) should initially discuss the issue with the Case Manager and HR advice will be sought.

10.3 The “managing adjustments guidance” for management is available from the Trust’s Equality & Diversity Manager or a representative from the Human Resource Department can be contacted for advice.

11. Trade Union Representatives

No disciplinary action will be taken against an accredited representative until the circumstances of the case have been discussed with a full-time officer, or a senior Branch Officer, of the organisation concerned.

12. Resignation

- 12.1 If an employee chooses to resign from their post before a disciplinary hearing takes place, the Trust reserves the right to proceed with the hearing. The employee will be advised of this and given every chance to attend the hearing. The hearing can proceed in their absence and an outcome determined, if they choose not to attend. The Trust will inform the individual of the outcome in writing.
- 12.2 Where the individual resigns prior to the conclusion of any formal process the Trust will respond to any reference requests appropriately.

13. Pay Progression (Agenda for Change Employees)

In accordance with Agenda for Change Terms and Conditions, where employees are issued with a formal disciplinary sanction they will not be eligible to progress to the next pay step point on their pay step date, if this falls whilst the sanction is live. Please refer to the Pay Progression policy for more information.

14. Training

- 14.1 Managers are responsible for ensuring that awareness of this policy is raised through their local induction processes and where appropriate, identified as a training need. This should be aimed at all new starters and refresher training should be offered as appropriate as agreed with the Line Manager. Training should then be documented and kept on employees personnel file within the service.
- 14.2 This policy is also available to all employees via their line manager and through the Trust intranet.

15. Monitoring

- 15.1 This policy will be periodically reviewed by the HR Department and the People and Wellbeing Committee (PAWC). It will incorporate monthly HR dashboard reporting contained within Board and Corporate reporting processes and includes equality monitoring processes.
- 15.2 The effectiveness of this policy will be monitored by reviewing investigations completed to ensure the correct procedures have been followed. Any learning points and trends will be identified by the HR Team who will make recommendations to either the Director of HR & OD or Deputy HR Director about changes which need to be made.

- 15.3 This document may be reviewed at any time at the request of either at staff side or management, but will automatically be reviewed every three years or as required following any amendments to national guidance.

16. Further Information

References

- ACAS Disciplinary and Grievance Code Of Practice (April 2009)
- The Employment Act 2008
- The Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2008
- Gov.uk <https://www.gov.uk/taking-disciplinary-action/overview>
- The Chartered Institute of Personnel and Development (CIPD) website
- NHS Improvement 'A Just Culture Guide'
- Agenda for Change Terms and Conditions Annex 23 – Pay Progression England

Associated Documentation

- Handling Concerns about the Conduct, Performance & Health of Medical and Dental Staff Policy - E27
- Capability and Performance Policy - E30
- Supporting Sickness and Attendance Policy - E4
- Supporting Staff Policy – E31
- Employment Investigations Policy – E41
- Employment Investigations Toolkit
- Disciplinary Procedure Toolkit
- Pay Progression Policy – E40

17 Equality Analysis

The Public Sector Equality Duty (section 149 of the Equality Act 2010) requires public authorities to have due regard for the for need to achieve the following objectives in carrying out their functions:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Please refer to Equality Analysis Step Wise Guide for Policies when completing this form.

Policy Name	Disciplinary Policy	
Policy Overview	This policy informs all staff of the Trust's disciplinary rules, policy and procedures, and their rights and responsibilities in relation to such matters, demonstrating Alder Hey's commitment to creating an environment of fair and consistent treatment for all staff.	
Relevant Changes (if any)	N/A	
Equality Relevance Select LOW, MEDIUM or HIGH	HIGH	
If the policy is LOW relevance, you MUST state the reasons here.	Click here to enter text.	
Form completed on:	Date: 05/05/2021	
Form completed by:	Name: Sarah Tempara	Job Title: Senior HR Business Partner

If LOW relevance, proceed to Approval and Ratification Section. No further information required

If MEDIUM or HIGH Equality Relevance, complete all sections

Equality Indicators Identify the equality indicators which will or could potentially be impacted by the policy and include details of how they may be impacted. (use Equality Relevance to assess the impact on each protected characteristic)	Protected Characteristic	Mitigation
	Age <input type="checkbox"/> How: Click here to enter text.	There is no perceived differential or detrimental impact. The policy enables managers to address issues of misconduct in a fair and consistent manner within a framework which meets the ACAS Code of Practice and best practice guidance.
	Disability <input type="checkbox"/> How: Click here to enter text.	There is no perceived differential or detrimental impact. The policy enables managers to address issues of misconduct in a fair and consistent manner within a framework which meets the ACAS Code of Practice and best practice guidance.
	Gender reassignment <input type="checkbox"/> How: Click here to enter text.	There is no perceived differential or detrimental impact. The policy enables managers to address issues of misconduct in a fair and consistent manner within a framework which meets the ACAS Code of Practice and best practice guidance.
	Marriage & Civil Partnership <input type="checkbox"/> How: Click here to enter text.	There is no perceived differential or detrimental impact. The policy enables managers to address issues of misconduct in a fair and consistent manner within a framework which meets the ACAS Code of Practice and best practice guidance.

	Pregnancy or Maternity <input type="checkbox"/> How: Click here to enter text.	There is no perceived differential or detrimental impact. The policy enables managers to address issues of misconduct in a fair and consistent manner within a framework which meets the ACAS Code of Practice and best practice guidance. For staff currently on maternity leave or whom are pregnant, the revised policy will not specifically impact as issues relating to the above are covered by the Trust's Maternity, Paternity, Adoption and Shared Parental Leave Policy and Flexible Working Policy.
	Race <input type="checkbox"/> How: Click here to enter text.	There is no perceived differential or detrimental impact. The policy enables managers to address issues of misconduct in a fair and consistent manner within a framework which meets the ACAS Code of Practice and best practice guidance.
	Religion or Belief <input type="checkbox"/> How: Click here to enter text.	The Trust currently provides facilities for differing religious beliefs and the introduction of the amended Disciplinary policy will not impact this. The policy enables managers to address issues of misconduct in a fair and consistent manner within a framework which meets the ACAS Code of Practice and best practice guidance
	Sex <input type="checkbox"/> How: Click here to enter text.	Although there are more female than male staff within this organisation, there is no perceived differential or detrimental impact. The policy enables managers to address issues of misconduct in a fair and consistent manner within a framework which meets the ACAS Code of Practice and best practice guidance.
	Sexual Orientation <input type="checkbox"/> How: Click here to enter text.	There is no perceived differential or detrimental impact. The policy enables managers to address issues of misconduct in a fair and consistent manner within a framework which meets the ACAS Code of Practice and best practice guidance.
	Human Rights (FREDA principles) <input type="checkbox"/> How: Click here to enter text.	There is no perceived differential or detrimental impact. The policy enables managers to address issues of misconduct in a fair and consistent manner within a framework which meets the ACAS Code of Practice and best practice guidance
Equality Information & Gaps What equality information is available for protected groups affected by the policy? If none available, include steps to be taken to fill gaps.		Primarily all staff are affected, including managers, senior managers, staff side representatives and consequently to service users, patients and the wider community. Evidence considered: NHS Employers, ACAS, other NHS Trusts, HR Networks across the Northwest in relation to best practise guides, staff side representatives gave staff experiences, special interest groups (direct experience of application of previous policy by managers), CIPD research

	<p>forums. Equality monitoring takes place as part of the Trust's overall equality monitoring processes.</p> <p>The policy enables managers to address issues of misconduct in a fair and consistent manner within a framework which meets the ACAS Code of Practice and best practice guidance</p>
<p>Stakeholder Engagement What stakeholders are engaged to help understand the potential effects on protected groups? See Gunning Principles for public consultation requirements. How has consultation influenced the policy?</p>	<p>Trade Union Officials and Managers were consulted with during the writing and ratification of this Policy. Feedback from these groups was acted upon and the Policy was amended to reflect any comments made. This Policy was written in conjunction with legal requirements and in line with the NHS Terms and Conditions of Employment.</p> <p>PRG's membership constitutes members of our Trade Union and Network Groups</p>
<p>Interdependency How will this affect other policies, projects, schemes from an equality perspective?</p>	<p>Other policies which may be impacted by the policy are:</p> <ul style="list-style-type: none"> • Handling Concerns about the Conduct, Performance & Health of Medical and Dental Staff Policy - E27 • Investigations Policy – E41 • Capability and Performance Policy - E30 • Supporting Sickness and Attendance Policy - E4 • Supporting Staff Policy & Toolkit – E31 • Respect at Work Policy – E24 • Grievance Policy – E7 • Anti Fraud, Bribery & Corruption Policy – M64 • Raising Concerns (Whistleblowing Policy) – E29 • Reasonable Adjustments Guidelines
<p>Public Sector Equality Duty Include a summary of how each of the PSED requirements have been considered in order to demonstrate compliance with the Act.</p>	<p>a) Eliminate discrimination, harassment, victimisation etc Click here to enter text.</p>
	<p>b) Advance equality of opportunity Click here to enter text.</p>
	<p>c) Foster good relations Click here to enter text.</p>
	<p>Has the Public Sector Equality Duty been met? Yes <input type="checkbox"/> No <input type="checkbox"/></p>
	<p>Due consideration has been given to the potential for discrimination, inequality or differential impact, as part of the review process for policy work. This will be further monitored to identify any trends and suitable action will take place to minimise or manage these issues. Equality monitoring takes place as part of the Trusts equality monitoring processes.</p> <p>This process of review and its subsequent implementation has been managed to ensure that there are equitable processes in place. An inclusive approach taken to consultation mechanisms which have enabled wider groups to understand change and its impact and to ensure no disadvantage between groups.</p> <p>No discernible impact has been identified however mechanisms for scrutiny and monitoring for further development are in place.</p>

Monitoring Include details of how the equality impact will be monitored.	This policy will be reviewed again in three years time as per standard procedure unless legislative requirements deem a sooner review.	
Review of Equality Analysis (if indicated)	Rationale for review: Click here to enter text.	
	Changes made: Click here to enter text.	Reason for change: Click here to enter text.

If **MEDIUM** or **HIGH** relevance, the EA should be reviewed annually. Complete Approval and Ratification Section.

Approval & Ratification of Equality Analysis		
Policy Author:	Name: Sarah Tempera	Job title: Senior HR Business Partner
Approval Committee:	Employment Policy Review Group	Date approved: 05/05/2021
Ratification Committee:	People and Wellbeing Committee	Date ratified: 18/05/2021
Person to Review Equality Analysis:	Name: Sarh Tempera	Review Date: 18/05/2024
Comments:	Click here to enter text.	

E24 – RESPECT AT WORK POLICY (Incorporating Bullying and Harassment)

Version:	8.1
Name of ratifying committee:	People and Wellbeing Committee
Date ratified:	14/09/2020
Name of originator/author:	Sarah Marshall, Human Resources Manager
Name of approval committee:	Employment Policy Review Group
Date approved:	24/06/2020
Executive Sponsor:	Director of Human Resources
Key search words:	Bullying, harassment, respect, support, behaviours E24
Date issued:	August 2023 (Extension)
Review date:	March 2024



Version Control, Review and Amendment Logs

Version Control Table				
Version	Date	Author	Status	Comment
8.1	August 2023	Sarah Marshall	Current	Extension
8	September 2020	Sarah Marshall	Archived	Title updated
Bullying and Harassment Policy – E24				
7.2	April 2020	Sarah Marshall	Archived	Extension approved due to COVID-19 pressures
7.1	December 2019	Sarah Marshall	Archived	Extended for 6 months
7	January 2019	Sarah Marshall	Archived	
6.1	September 2018	Sarah Marshall	Archived	Extended pending review
6	October 2015	Neil Davies	Archived	Revised title and content within new template
Respect at Work Policy – E24				
5	February 2012	Jackie Waring	Archived	Revised to update responsibilities and to reflect Equality Act 2010
4	February 2011	Rachel Patterson	Archived	Minor revisions to reflect CBU Structure
3	September 2009	Dave Eaton	Archived	Renamed to Respect at Work
Bullying and Harassment Policy – E24				
2	October 2006	Dave Eaton	Archived	
1	April 2005	Jackie Waring	Archived	

Record of changes made to Bullying and Harassment Policy – Version 8.1			
Section Number	Page Number	Change/s made	Reason for change
All	All	Dates updated	Extension

Record of changes made to Bullying and Harassment Policy – Version 8			
Section Number	Page Number	Change/s made	Reason for change
All	All	Title changed from Bullying and Harassment to Respect at Work (incorporating Bullying and Harassment)	More positive

All	All	<p>Completely re-written:</p> <ul style="list-style-type: none"> • Much more emphasis on the informal stages and advocating that staff aim to try and resolve issues themselves. • Signposting staff to the many sources of support and guidance available. • Additional information/clarity on mediation and facilitated conversations, including when they are appropriate to be used and when they may not be. • Encourage staff to speak out and challenge negative behaviours, incivility, etc, if they receive it or observe it. • The Policy now only references what a formal investigation entails, and signposts the reader to the Trust Investigation Policy. • Additional tools/resources added to the toolkit. Empowering staff to resolve issues themselves, when appropriate. Civility Saves Lives explains and stats given. 	Out of date
-----	-----	---	-------------

Contents

Section	Page
1. Introduction	5
2. Purpose	5
3. Definitions	6
4. Duties	8
5. Effects of Bullying and Harassment	10
6. General Principles	10
7. Process for Raising / Reporting Concerns	11
8. Review Process	14
9. Support	14
10. Monitoring	15
11. Further Information	15
Appendices	
Appendix A - Guidance (Definitions, Examples, Legal Framework & Useful Contacts)	16
Appendix B - Pathway	19
Appendix C - Processes	20
Appendix D - Glossary of Terms	23

1. Introduction

- 1.1 The Trust is committed to ensuring that all complaints in relation to bullying and/or harassment will be taken seriously and investigated swiftly, thoroughly and confidentially with due respect for the dignity and rights of all those involved. Victimisation as a result of making a complaint will not be tolerated and disciplinary action will be taken if necessary.
- 1.2 The Trust is also aware that malicious allegations can cause lasting damage to an individual's reputation and career prospects. Therefore any allegation that is found to be malicious may ultimately be subject to action under the Trust's [Disciplinary Procedure](#) and in extreme cases result in dismissal.
- 1.3 The Trust recognises its duty to ensure that all employees are aware of this policy and their responsibilities related to it.
- 1.4 This policy outlines mechanisms designed to ensure that any allegations of bullying, harassment, or disrespectful behaviour(s) are dealt with promptly, seriously and sympathetically both towards the complainant and the person against whom the complaint is made.

2. Purpose

2.1 Policy Statement of Commitment

Bullying and harassment of any kind is not acceptable and will not be tolerated. The Trust is committed to ensuring a working environment free from all forms of bullying and harassment.

To this aim, the following principles outline measures in place which will help facilitate informal and formal resolution of concerns raised. Encouraging staff to raise concerns early on, as part of everyday practice will help with some of the difficulties they may experience, and to foster an open and transparent approach to dealing with some of the issues raised.

By focusing on improving workplace culture and dealing effectively with disrespectful behaviour whenever it arises, it is expected that instances of bullying and harassment will become much more isolated.

This commitment is also part of the Trusts values and behaviours, which is a fundamental part of the Trusts revised performance development review (PDR) process, the Trusts Raise it, Change it Campaign and the duty of candour contained within job roles.

2.2 To achieve this aim the Trust will:

Promote awareness of the Trust's position on this issue and reinforce the culture that bullying and harassment will not be tolerated from any member of staff, help foster a positive and dignified workplace culture and created an environment which is free of bullying and harassment.

- Ensure effective communication to all staff of this policy and individual responsibilities through Trust induction and other appropriate means of staff communication.
- Provide appropriate training for managers and supervisory staff to ensure they are equipped to deal with bullying and harassment issues.
- Provide a framework where members of staff who feel they are subject to bullying or harassment behaviours can seek appropriate support.

3. Definitions and Examples (also see [Appendix A](#))

3.1 Harassment

- The Equality Act 2010 uses a single definition of harassment to cover protected characteristics: unwanted conduct related to a 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.
- Harassment is identified by the effect that it has on the recipient, not by the intention or non-intention on the part of the alleged perpetrator.
- Employees are able to raise concerns regarding behaviour they find offensive even if it is not directed at them.
- Appropriate, constructive and fair criticism of an employee's performance or behaviour at work is not harassment.

Protected characteristics under harassment law are:

- age
- disability
- gender reassignment
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

Harassment can include:

- a serious one-off incident
- repeated behaviour
- spoken or written words, imagery, graffiti, gestures, mimicry, jokes, pranks, physical behaviour that affects the person.

The law on harassment also applies to:

- a person being harassed because they are thought to have a certain protected characteristic when they do not.
- a person being harassed because they're linked to someone with a certain protected characteristic.
- a person who witnesses harassment because of a protected characteristic and is upset by it.

3.2 Bullying / Disrespectful Behaviour(s)

Bullying / disrespectful behaviours are largely identified by the effect it has had on the individual who feels they have been subject to this kind of treatment, not necessarily by what has actually been done; it can be on an individual's perception. It can be defined as persistent, offensive, abusive, intimidating, malicious or insulting behaviour, or abuse or misuse of power which occurs repeatedly and regularly over a period of time which makes the recipient feel undermined, upset, threatened, humiliated and vulnerable. It can be described as a pattern of unwanted behaviour(s), which can undermine their self-confidence and possibly cause them to suffer distress.

3.3 Examples of Bullying and Harassment

Harassment and bullying can take many forms, ranging from extremes such as violence to less obvious forms such as ignoring someone. Examples of inappropriate / disrespectful behaviour could include:

- Verbal or physical threats or intimidation or unwanted physical contact
- Humiliating someone in front of others
- Unjustified and persistent criticism or negative comments, belittling someone's opinion
- Offensive or abusive personal remarks or insulting someone by word or behaviour
- Jokes, offensive language, gossip, slander, spreading malicious rumours, sectarian songs, letters, posters, graffiti, obscene gestures, flags, emblems
- Setting unattainable targets
- Constantly changing work targets in order to cause someone to fail or undervaluing work done
- Reducing someone's effectiveness by withholding information
- Ostracism, exclusion or victimisation
- Claiming credit for someone else's work
- Monitoring work unnecessarily and intrusively or imposing unfair sanctions
- Undermining someone's authority/responsibility or removing areas of responsibility without justification
- Isolation or non-co-operation and exclusion from social activities

- Offensive e-mail (flame mail)
- Coercion for sexual favours and pressure to participate in political/religious groups
- Intrusion by pestering spying and stalking

This list is not intended to be exclusive or exhaustive.

4. Duties and Responsibilities

Overall responsibility for ensuring this policy is implemented rests with the Trusts Board of Directors, with specific accountability with the Director of Human Resources and Organisational Development.

In addition, all patients, members of the public and individuals visiting the Trust from other organisations have a right to be treated with courtesy, dignity, fairness and respect at all times. However, they also have a responsibility for their own behaviour. The Trust will take action in the event of any inappropriate behaviour, which is observed or reported regardless of whether or not the complainant and/or alleged perpetrator is a Trust employee.

4.1 It is the role and responsibility of the **Trust Board** to, establish and maintain an environment free from disrespectful / inappropriate behaviours by:

- Lead by example, ensuring that each of its members is fully aware of his/her role under the policy
- Ensure managers are equipped to tackle incidents of bullying and harassment by providing resources for training and ongoing advice and support.
- Demonstrate the Trust Board's commitment by addressing any organisational factors which may lead to bullying and harassment.

4.2 It is the role and responsibility of **Management** to, establish and maintain an environment and culture free from disrespectful / inappropriate behaviours by:

- Taking prompt action to stop harassment and bullying, by pointing out that the behaviour is unacceptable, managers may be able to effectively to put a stop to the problem without the need for further formal action.
- Ensuring that all employees in their area of work are made aware of this policy, and that they have a right not to be harassed or bullied at work. All employees will be made aware that this behaviour is unacceptable and where appropriate, may be referred to the [Disciplinary Policy](#).
- 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.
- Ensuring that offensive or potentially offensive material is not displayed in the workplace.

- Ensuring all complaints of harassment and bullying are treated seriously and sympathetically and with confidence by management.
- To create a respectful working environment where individual team member differences are recognised in a positive way.
- Ensuring that staff members understand that victimisation of any employee making or helping someone to make a complaint is unacceptable and where appropriate may be referred to the [Disciplinary Policy](#).

4.3 All staff – all employees have a responsibility to:

- Be pro-active in promoting an atmosphere free from bullying or harassment across the Trust, and to challenge or report instances of bullying or harassment whenever it is witnessed.
- Where possible take control of their own situation by asking the offender to stop and/or making it clear that their behaviour is unacceptable or unwanted.
- Support other individuals who experience bullying or harassment
- Seek help when unsure of how to deal with a situation and when support or advice is required
- Treat fellow staff members, patients, members of the public and individuals from other organisations who are visiting the Trust with courtesy, dignity, fairness and respect at all times.
- Display the Trust Values and Behaviours at all times. See section 1.3, in [Appendix A](#).

4.4 It is the role and responsibility of the **Human Resources Department / Equality and Diversity Manager** to:

- Assist and support the implementation of the Respect at Work Policy across the Trust
- Ensure collation and reporting employee relations activity data related to incidents of bullying and harassment or disrespectful behaviour
- Provide guidance, advice and support to managers and staff
- Encourage referral to the range of other support available in the Trust
- Where applicable, to contribute to the provision of training for managers and staff

4.5 Accredited Trade Union Representatives will:

- Work alongside managers, staff and HR in a supportive way to implement the policy and to ensure incidents of bullying and harassment are handled sensitively and fairly.

4.6 It is the role of the **People and Wellbeing Committee** to:

- Perform a pivotal role in ensuring that this policy is implemented.
- Oversee monitoring of the efficiency of the policy and other measures to reduce bullying and harassment in the workplace.
- Receive an annual report and monitor any action plans.

5. Effects of Bullying and Harassment / Disrespectful Behaviours

It is important to know the effects of bullying and harassment since the conduct itself may well go unnoticed for some time. Incidents may occur when no witnesses are present and recipients of such behaviour may not wish to inform anyone of the situation. Bullying and harassment may be very subtle and may not always be easily identifiable.

Allowing bullying and harassment to go unchecked or detected can result in:

- Employees being unable to work effectively if they feel under threat.
- Antagonism between people who should be working as a team feeling forced to take sides on the issue.
- Increasing absenteeism due to stress leading to the need for work to be covered by others, this in turn leads to stress on colleagues.
- Lack of confidence in the organisation.
- Reduced motivation and poor morale.
- High staff turnover.
- Litigation claims brought against the Trust for discrimination and personal injury.

6. General Principles

6.1 Raising / Reporting Concerns

As soon as disrespectful behaviour is recognised or witnessed, members of staff should feel able to make it clear that they are uncomfortable with such behaviour and to ask the person to stop. Staff should feel empowered to challenge the individual concerned in the knowledge that this challenge is justifiable and acceptable. Support is accessible; please see useful contacts ([Appendix A](#), section 5). Equally it is understood that an individual may find it difficult to challenge the action of others and will need additional support.

Staff are encouraged to keep a written record of events of any incidents, including what happened, when it occurred, together with the names of any witnesses.

Staff can also raise concerns through the Trust **Freedom to Speak Up Champions / Guardian (FTSU)**, line manager, HR Department, trade unions / staffside. Refer to the [Respect at Work Toolkit](#) for further details.

6.2 Witnessing Inappropriate and/or Disrespectful Behaviour

If a member of staff witnesses a fellow employee being bullied or harassed they are strongly advised to help. Offering support to someone who is being bullied or harassed could encourage them to report it. If the case was particularly serious the staff member will need to report what they witnessed to responsible person such as their line manager, a Human Resources department or the Equality and Diversity Manager.

It is recognised widely that a difference can be seen between a firm but fair management / leadership practices to that of a manager with a management style that is perceived as bullying by staff. The table below sets out a framework to make clear the distinctions between the management styles and provides a guide as to whether a member of staff's concerns may relate to bullying. These behaviours apply to staff at all levels, throughout the Trust.

Firm but fair Behaviours from Management	Bullying / disrespectful or harassing / inappropriate behaviors
Consistent and fair	Aggressive, inconsistent and unfair
Asks for people's views and listens to the team	Tells people what is happening, does not listen
Determined to achieve the best results but reasonable and flexible	Unreasonable and inflexible
Knows their own mind and is clear about their ideas, but willing to consult with colleagues and staff before drawing up proposals	Believes that they are always right, has fixed opinions, believes they know best and not prepared to value other people's opinions
Insists on high standards of service and behaviours 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, and threatens official warning without listening to any explanation

7. Process for Raising / Reporting Concerns

7.1 Informal Approaches – please see [Appendix B](#) for Pathway.

An informal approach is generally considered the best approach and should be given very serious consideration in the first instance. A person may be unaware of the effect their behaviour has on others, many incidents of bullying or harassment will be more effectively dealt with in an informal way. Moreover, an informal process will always be less destructive and damaging to relationships and less stressful for all those involved.

Trade unions also support this approach and it is seen as an example of best practice by The Advisory, Conciliation and Arbitration Service (ACAS).

A member of staff who feels they are subject to disrespectful or inappropriate behaviours should, where possible and appropriate, make the alleged bully or harasser aware that their behaviour is unacceptable and must stop. This may be verbally or in writing.

7.1.1 Talk to them about it - Speaking to a person directly is best when:

- The working relationship is still reasonably positive;
- The unwanted behaviour is recent;
- There is mutual willingness to discuss the issues and work for a win-win outcome.

7.1.2 Talk to someone else about it - Speaking to someone else, this could be:

- A colleague;
- Any manager;
- Trade Union Representative;
- Alder Centre
- This is best when you want some further advice or to clarify your feelings before discussing the situation with the individual involved.

Support and advice may also be sought from their Trade Union representative, a HR Representative, or from Occupational Health. Staff are also encouraged to seek advice and guidance from Freedom to Speak up (FTSU) Guardians / Champions, to discuss their concerns. Relevant external organisations are also available for advice and support ([see Appendix A](#), section 5) with the aim of identifying and resolving the issues without recourse to the formal procedure.

7.2 Facilitated Conversations

It is the role of the line manager or a more senior manager to facilitate resolution to apparent concerns between staff as they affect working relations and/or performance. This may be at a point before or at the informal stage and is designed to:

- Address workplace concerns raised by the manager or another member of staff with the relevant member(s) of staff
- Understand the situation from the perspective of those involved
- Exploring the impact of the concerns on the individuals involved and the service
- Explore and develop realistic solutions

The facilitating manager will meet individually with each of the members of staff involved before bringing them together and will then lead the joint meeting, if acceptable to both parties; giving time for each member of staff to explain their concerns and discuss ways of resolving the problem.

The role of the manager as facilitator is to promote both a shared resolution to the concerns of the staff, and in so doing ensure that the staff understand the standards of behaviour and performance expected of them. The manager should set out their expectations in writing, with a documented action plan following the meeting.

Please contact your HR representative for advice and guidance.

7.3 Mediation

Mediators are new to the dispute, disagreement, upset and are not involved in the work area. Mediation is a voluntary and confidential process that brings together people who are experiencing problems with a work related relationship.

They will make sure that the meetings are conducted in a fair and productive way. 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. Staff are not entitled to be accompanied by anyone supporting them during mediation (including Trade union Representation or other Managers) Mediation should be simply the two staff members concerned and the mediator to give it its greatest chance of success.

If in the employee feels the mediation has been unsuccessful, they may invoke a formal procedure if they feel it is appropriate, in this case the mediators will not be involved. Please contact HR and/or staffside for advice and guidance.

The Trust has a number of formally trained mediators for staff to access. Further information regarding mediation can be found in the accompanying [Respect at Work Toolkit](#). Mediators will not be ordinarily be required beyond this point however mediators may be asked to provide information regarding the mediation process, but not specific details / content of the mediation meeting(s). Please contact the HR department who can provide a list of current trained mediators within the Trust. If no mediators are believed to be acceptable to either party the Trust will endeavour to identify mediators from an external source e.g. another Trust.

7.3 Grievance or Bullying and Harassment Complaint?

A grievance is an opportunity for an employee to raise a matter in work in relation to their employment that is causing them concern. A 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. Please refer to the Trust [Grievance Policy](#), which is available on the Intranet.

7.4 Formal Approaches

Where informal approaches have failed or are considered inappropriate, staff are advised to bring a formal complaint. Consideration should be given to pursuing the matter formally if an informal approach has not resolved the matter; if there has been a previous incident(s) of bullying or harassment involving the same individual(s), or the alleged perpetrator's manager considers the alleged act is serious enough to warrant formal proceedings.

If it is believed that the complaint is of an extremely serious nature and therefore may be classed as gross misconduct, a formal investigation may be required, as informal approach may not be appropriate. Please see [Appendix C](#).

The complainant may pursue the matter formally by making a verbal or written statement in any of the following ways;

- To their own line manager.
- To the alleged accused's line manager, especially if the alleged accused is the complainant's own line manager.
- To the HR Representative for the Division / Department.

The complaint should state:

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

This may be done in liaison with a Trade Union representative or work colleague. Please see [Appendix B](#) (flow chart for this process). A formal complaint should be acknowledged within 5 working days of receipt.

The formal investigation process will be dealt with using the Trust Investigation Policy. Please refer to this Policy which can be found on the Trust intranet.

8. Review Process

The member of staff should receive the outcome letter within 7 working days, of the hearing. If they are not satisfied with the outcome of a Bullying and Harassment complaint / investigation, either party has the right to appeal the above processes. See [Appendix C](#) for further details.

9. Support

- Occupational Health (Team Prevent)
- Counselling (Alder Centre)
- HR Department
- Mediation Services
- Facilitated conversations
- Mental Health First Aiders
- Equality and Diversity Manager
- Staff Advice Liaison Services (SALS)
- Staffside

10. Monitoring

This policy will be periodically reviewed by the HR Department and the People and Wellbeing Committee.. It will incorporate monthly HR dashboard reporting contained within Board and Corporate reporting processes. Formal review of overall Policy and Procedure will be initiated by the Human Resources Business Partner - Policy Lead.

11. Further Information

Equality Analysis ([hyperlink](#))

References

- [ACAS](#)
- [Equality Act 2010](#)

Associated Documentation

- [Disciplinary Policy](#)
- [Grievance Policy](#)
- [Supporting Staff Policy](#)
- [Violence and Aggression at Work and Zero Tolerance Policy](#)
- [Managing Stress at Work Policy](#)
- NHS Employers guidance on bullying and harassment
<http://www.nhsemployers.org/Aboutus/Publications/Documents/Bullying%20and%20harassment.pdf>;
- Alder Hey “Raise it Change it” campaign; Trust [intranet](#)
- The Francis Review 2015 - <http://www.nhsemployers.org/your-workforce/retain-and-improve/raising-concerns-at-work-whistleblowing/sir-robert-francis-review-of-whistleblowing-processes#3>;

Appendix A - Guidance

1. Definitions and Examples

1.1 Harassment

In general terms, harassment can be described as any unwanted conduct related to a 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. Harassment is identified by the effect that it has on the recipient, not by the intention or non-intention on the part of the alleged perpetrator.

People can be subject to inappropriate behaviour on a wide variety of grounds or relating to a protected characteristic (pc) <https://www.acas.org.uk/if-youre-treated-unfairly-at-work/being-harassed>

Appropriate, constructive and fair criticism of an employee's performance or behaviour at work is not harassment.

1.2 Sexual Harassment

Sexual harassment happens where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, or of creating an intimidating, hostile, degrading, humiliating, or offensive environment. Harassment on grounds of gender reassignment is also prohibited by the Equality Act 2010.

1.3 Values and Behaviours – Trust Behavioural Framework

Alder Hey Children's NHS Foundation Trust has a framework of behaviours that all staff are expected to uphold. See the Trust intranet for the Trust Behavioural Framework. In summary these expected standards of behaviour are aligned to our 5 core values:

- **RESPECT** – We show that we value every individual for who they are and their contribution.
- **EXCELLENCE** – We pride ourselves on the quality of our care, going the extra mile to make Alder Hey a safe and special place for children and their families.
- **INNOVATION** – we are committed to continually improving for the benefit of our patients.
- **TOGETHER** – We work across the Alder Hey community in teams that are built on friendship, dedication, care and reassurance.
- **OPENNESS** – We are open and honest and engage everyone we meet with a smile.

Our values outline the standards of attitude and behaviour we expect of ourselves and others (for example staff, patients, relatives and members of the public) when carrying out our responsibilities as employees.

1.4 Stalking

Stalking is a particularly extreme form of harassment, which is both a civil wrong and a criminal offence. It can be defined as ‘a series of acts which are intended to, or in fact do, cause harassment to another person’.

If a member of staff feels that stalking is taking place, related to another member of staff of the Trust, they should raise the matter formally in line with the notification routes within this policy.

As stalking is a criminal offence, the member of staff should also involve the police if they feel this is necessary.

1.5 Victimisation

Treating a complainant less favourably because they are suspected/have made a complaint of harassment under this policy.

1.6 Complainant

The individual who has raised an allegation of harassment or bullying against another member of Trust staff, patient, relative or other member of the public.

1.7 Person which the complaint is made against

The individual whom the complaint has been made against.

2 Legal Framework

2.1 Certain types of bullying and harassment are regarded as unfair discrimination and the victim can seek legal redress.

2.2 Harassment on the grounds of sex, race, disability, sexual orientation, age and religion and belief are all covered in law. Employers are liable for the activities of their employees where they know, or should know, about their conduct and take no action to prevent inappropriate behaviour. Harassment on the grounds of age is currently unlawful within European Community legislation.

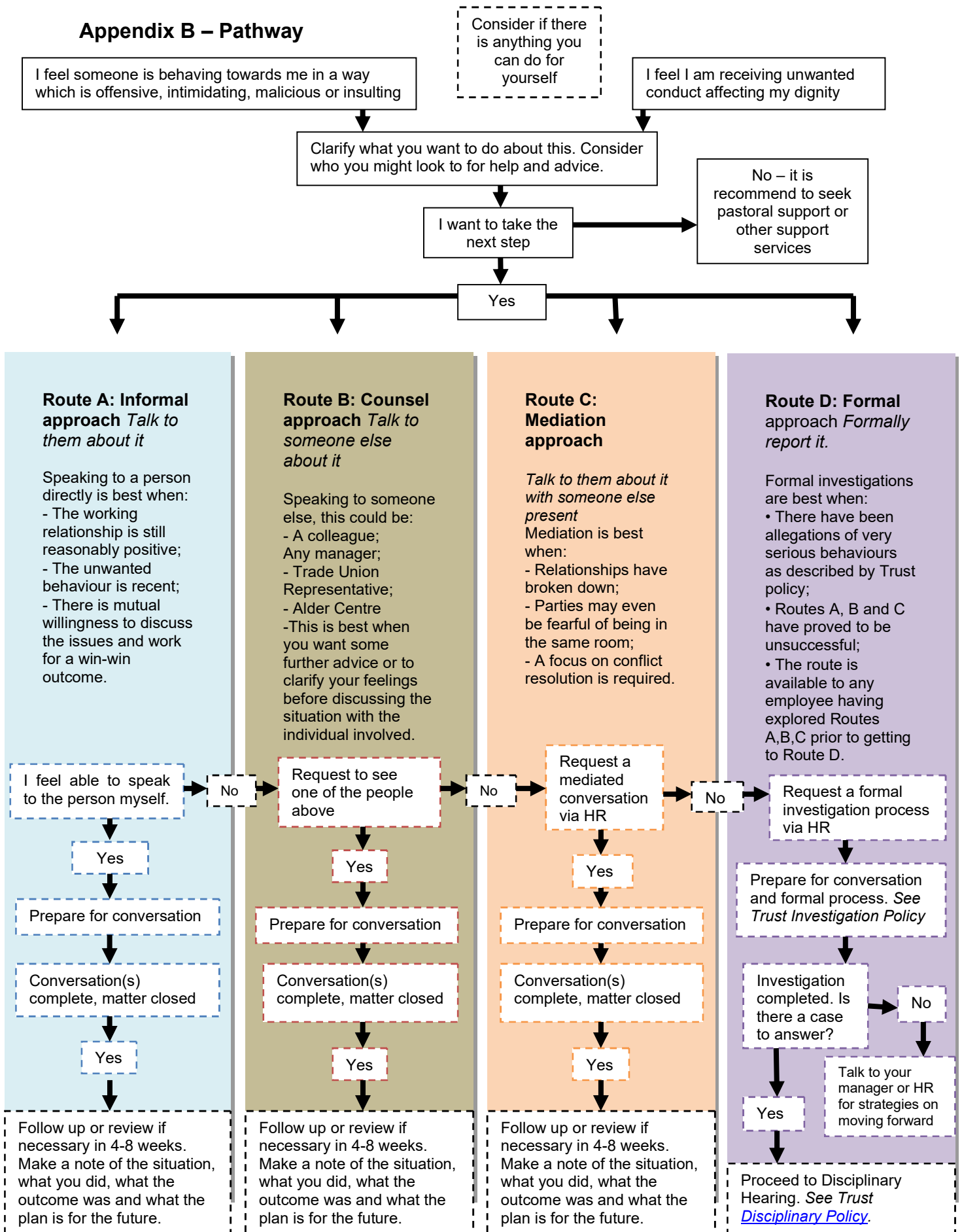
2.3 It should also be noted that employees can now complain of behaviour they find offensive even if it is not directed at them in line with the Equality Act 2010³

3 Useful Contacts

<p>Trade Union/Staff Side representatives A list of Trade Union/Staff Side representatives can be found on the Trust Intranet</p>	<p>Human Resources Dept Main HR telephone number 0151 293 3500 Email address askhr@alderhey.nhs.uk</p>
<p>Equality and Human Rights Commission Helpline Tel: 0808 800 0082 Text phone: 0808 800 0084 Website: www.equalityadvisoryservice.com</p>	<p>Department for Business Enterprise and Regulatory Reform (BERR formally DTI): Tel: 020 7215 5000 www.direct.gov.uk</p>

Age Positive www.agepositive.gov.uk	Stonewall Tel. 08000 502 020 www.stonewall.org.uk
ACAS Tel. 0300 123 1100 www.acas.org.uk	Others useful external contacts <ul style="list-style-type: none">• Citizens Advice Bureau• Samaritans• National Helplines

Appendix B – Pathway



Appendix C

1. Processes

- 1.1 The nature of the investigative process and remit of the investigator will typically result in one of three concluding statements: -

Where sufficient evidence is identified:

- *‘Consistent with the Trust’s criteria for bullying and harassment and the investigative process and procedure, the complainant’s case has been upheld on the basis of the evidence produced.’* If the manager considers a breach of discipline has occurred, a disciplinary hearing will be convened. Please refer to the Trust [Disciplinary Policy](#).

Where sufficient evidence is NOT identified:

- *‘Consistent with the Trust’s criteria for bullying and harassment and the investigative process and procedure, there was insufficient evidence to uphold the complainant’s case.’ – no further action will be considered against the alleged perpetrator*

Other:

- *‘Consistent with the Trust’s criteria for bullying and harassment and the investigative process and procedure, there was insufficient evidence to uphold the complainant’s case. However certain factors emerged as part of the investigation that may warrant remedial action by the Commissioning manager in order to avoid future misunderstanding or conflict and are outlined in the following recommendations....’*

The Commissioning Manager will provide recommendations in line with information that has come to light during the investigation. These recommendations should be monitored and reviewed by the relevant line manager with the support of the Human Resources Representative.

- 1.2 Whether disciplinary action is taken or not, consideration should also be given to restoring the working relationship between the parties involved - see section 3 below.

2 Working Relationships

- 2.1 When a formal complaint is upheld, it may be appropriate to consider counselling for the alleged as they may be unaware of, or insensitive to, the impact of their actions. Counselling, with the consent of the individual concerned may help to raise awareness of the issues and prevent further incidents.
- 2.2 In addition, where an incident of bullying or harassment has occurred, the impact on the working relationship between the complainant and the perpetrator should be considered. Where necessary, support should be provided to both parties to facilitate a satisfactory reconciliation. The objective of this is to restore a professional working relationship at the earliest possible opportunity in which each party respects the dignity of the other.

- 2.3 Where the working relationship between the parties involved is considered to be damaged, all reasonable steps to re-build the working relationship must be evaluated and taken. Measures may include setting standards of behaviour, team building, facilitation and counselling. This should be supported by appropriately trained people.
- 2.4 Once a decision has been made regarding any appropriate formal action and appropriate steps to re-build the relationship, it is possible that the working relationship between the parties may still be damaged. In very rare, exceptional cases the Trust may consider it necessary to transfer one of the parties to alternative work within the Trust. However, it must be acknowledged that such action may not be practical, desirable or feasible and any adverse message this may communicate to the Trust regarding the management of bullying or harassment must be considered. Before considering transferring either party, the relevant manager must seek advice from the Human Resources Representative and all reasonable alternatives evaluated, and where practicable, carried out.

3 Voluntary Transfer

- 3.1 Where a voluntary transfer is requested by the perpetrator or the complainant, a Human Resources Representative must always be consulted and the request fully considered.
- 3.2 The following factors should be considered before proceeding with a voluntary transfer:
- The likelihood of a post on the same grade being available.
 - The individual having the skills and experience to undertake other posts
 - The ability of the individual to develop any additional skills within an appropriate time scale.
- 3.3 Where it is considered that a post may be suitable, the employee will be given support from Human Resources and their manager in making an application. Whilst the Trust will be under no obligation to create a post, the employee will be provided with information on vacancies and supported in their applications for a pre-determined period which would normally be up to a maximum of three months.
- 3.5 It may be that no alternative post is found or that a transfer is not considered feasible from the outset. In either case it will be necessary to consider what measures are appropriate to enable the employee who requested a transfer to continue in their existing post. The appropriate measures may include team building, facilitation and counselling.

4 Review Procedure

Either party will have the right of review as follows:-

4.1 The complainant

A complainant has the right of appeal/review against any formal decision taken as a result of the investigation. This right must be stated in the outcome letter responding to the complaint within the Respect at Work Policy.

The complainant may request a review if it is felt that the process of investigation and/or decision to not uphold any element of the claim is considered by the claimant to be unsatisfactory. Right of appeal will not apply in relation to the severity of the outcome (if upheld) or management sanction applied subsequently either as part of informal / formal Disciplinary action. For example:-

- If the procedure was not followed correctly;
- If new information has materialized;
- If extenuating circumstances were not taken into account;

Any appeal must be lodged in writing by the employee no later than 10 working days from the date of the outcome letter and should be addressed to the next level manager of the commissioning manager. The written appeal must contain the specific grounds on which the appeal is based. Depending upon the circumstances or the grounds (for example if the outcome is a dismissal) the appeal should be referred to the Director of HR.

4.2 Person complaint is being made about

Staff who may be subject to Disciplinary Action following the outcome of the Bullying & Harassment investigation will have rights of appeal as defined within the [Disciplinary Policy](#). The decision of an Appeal is final and binding. This stage constitutes the end of the process and there is no further opportunity to review. Please see the Trust Disciplinary Policy and Trust Investigation Policy.

Nothing in this document will prejudice the employee's right to refer a claim to an Employment Tribunal.

Appendix D – Glossary of Terms

Term	Description
Cyber Bullying	The use of electronic communication e.g. email, Facebook, internet or text messaging, Twitter etc to bully a person typically by sending messages of intimidating or threatening nature.
Direct Discrimination	Occurs when someone is treated less favourably than another person because of a protected characteristic.
Discrimination by association	This is direct discrimination against another because they associate with another person who possesses a protected characteristic.
Discrimination by perspective	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. It applies even if the person does not actually possess that characteristic.
Indirect Discrimination	Occurs when an organisation has a rule, Policy or practice that applies to everyone but particularly disadvantages people who share a protected characteristic.
Discrimination arising from a disability	Disabled person is treated unfavourable 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 objective justified as being a proportionate means of achieving a legitimate aim.