

TRUST WIDE DOCUMENT

DOCUMENT TITLE:	POLICY AGAINST BULLYING AND HARASSMENT AT WORK
DOCUMENT NUMBER:	ELHT/HR07 Version 4

DOCUMENT PURPOSE:	This policy supports the prevention of bullying and harassment in the workplace and provides practical guidance to staff, managers and staff side on how to deal with cases of harassment and bullying in the workplace.
SUPPORTING REFERENCES	<ul style="list-style-type: none"> • Single Equality Scheme • HR 08 Equal Opportunity Policy • HR 20 Concerns at work policy (Whistle Blowing) • HR6 Sickness Absence Policy • HR9 Disciplinary Procedure • HR18 Grievance Procedure • HR17 Procedure for Dealing with Unsatisfactory Work Performance • HR 43 Redeployment and Redundancy • Equality Act 2010 • Crime and Disorder Act 1998 • Protection from Harassment Act 1997 • Employment Rights Act 1996 • Criminal Justice Public Order act 1995] • Health and Safety at Work etc Act 1974 • ACAS Advice booklet: Bullying and Harassment at work. Guide for managers and employers www.acas.co.uk
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EXECUTIVE DIRECTOR RESPONSIBLE:	Director of HR and Organisational Development

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Blue Book summary	

Contents

Paragraph Number	Content	Page Number
	Summary of the Policy	4
	Flowchart – Bullying & Harassment process	5
1	Introduction	6
2	Purpose	6
3	Scope of policy	7
4	Responsibilities under this policy	7
5	Definitions	7
6	Difference between management and bullying/harassing behaviour	9
7	Bullying or Harassment by a third party	9
8	What can you do if you think you're being bullied or harassed?	10
9	Procedure for dealing with complaints and or cases of bullying and harassment: staff by staff	11
10	False accusations	15
11	Appeals	16
12	Grievance	16
13	Monitoring	16
	Appendix 1 - Legislation	17
	Appendix 2 - Examples of B+H	18
	Appendix 3 - Firm Management	20
	Appendix 4 - Help & Support	21
	Appendix 5 - Say what needs to be said!	24
	Appendix 6 - Complaint form	25
	Appendix 7 - Monitoring form	27
	Appendix 8 - Equal Opportunity Monitoring	28

SUMMARY OF POLICY

Introduction

The Trust recognises its duty to provide a working environment free from hostility, to seek to protect the dignity and respect of employees and to afford a right to effective remedies when harassment or bullying occurs.

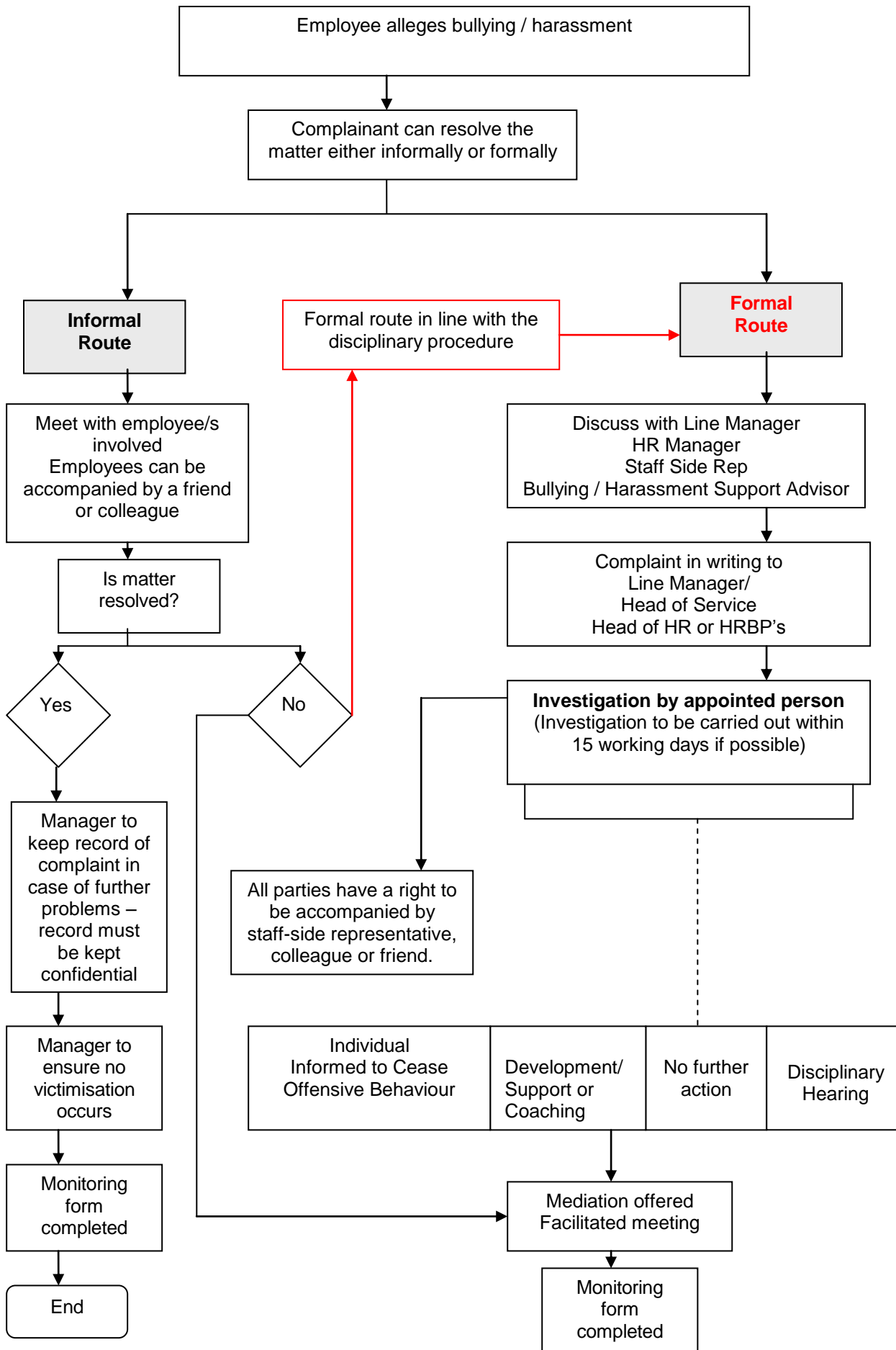
Objective

To ensure that the rights of staff to work in a safe environment, that promotes dignity at work, and encourages staff to take responsibility for each other, are adhered to.

Golden Rules

- When an employee believes that they have been bullied or harassed, there are a number of options available to them.
- Accessing a Bullying and Harassment Support Advisor; these people are trained individuals who have a good knowledge of the Bullying and Harassment policy. They are representatives from all areas of the Trust. The role of the B+H Advisors is to listen to complaints and provide information about the policy and options available within it, but not to offer specific advice or solutions.
- Whether or not the services of a Bullying and Harassment Support Advisor are accessed, there are three ways forward: the use of the informal stage of the procedure; the formal stages of the procedure; or take no further action.
- The informal stage is taken wherever possible, to maintain working relationships. This stage could involve approaching the alleged bully in person; approaching them in writing; holding a facilitated discussion or via mediation (see the full procedure for details). The employee should keep records of any informal action taken.
- The formal stage would commence when an informal attempt to resolve the situation has been unsuccessful, or if the employee has chosen to go straight to this stage.
- Any formal complaint should be made in writing to the individuals line manager, Human Resources or other appropriate manager, detailing the basis upon which the bullying and harassment has taken place. The complaint should be acknowledged within 3 working days.
- The senior manager / clinical lead will, without delay appoint an Investigating Officer
- The Investigating Officer will investigate the complaint.
- On concluding the investigation the Investigating Officer will produce a factual report ideally within **2 weeks** of the last interview for presentation to the complainant's line Manager.

Flowchart - Bullying & Harassment Process



1. INTRODUCTION

- 1.1 East Lancashire Hospitals NHS Trust is committed to equality of opportunity and acknowledges that all staff are entitled to work in an environment free from discrimination, intimidation, bullying or harassment. It is Trust policy that all staff have the right to work in a safe environment; that promotes dignity at work; and that encourages individuals to treat each other with respect. Harassment or bullying in connection with or arising out of employment with the Trust will not be permitted or condoned.
- 1.2 Good working relationships are essential to job satisfaction and effective team work. The Trust and its partner Trade Unions are committed to helping staff at all levels to manage their working lives effectively.
- 1.3 Bullying and Harassment in the workplace may affect an employee's ability to do his/her job and cause inefficiency, illness, absence and resignation with direct impact on the Trust's reputation and its services.
- 1.4 The Trust operates in a complex and fast moving environment in which multiple pressure points exist. The desired outcomes of the policy are, firstly that cases of bullying and harassment are dealt with quickly and effectively and secondly for most cases to be resolved without recourse to formal procedures.
- 1.5 The Trust expects all of its employees to act with fairness and equity when dealing with their colleagues, and with people who use our services.
- 1.6 Each and every issue, concern or complaint raised under this policy will be taken seriously, fully and fairly investigated and action taken where warranted.

2. PURPOSE

- 2.1 The purpose of this policy is to:
 - Inform employees that any form of bullying or harassment, discrimination, victimisation or intimidation will not be tolerated and that unacceptable behaviour will be recognised quickly and action will be taken against perpetrators;
 - Provide definitions of bullying and harassment;
 - Provide practical guidance to staff, managers and staff side on how to deal with complaints and or cases of bullying and harassment in the workplace.
- 2.2 The Trust will develop an environment where individuals have the confidence to raise any issues, concerns, or complaints at the same time recognising how our own behaviours may be perceived by those around us.
- 2.3 The Trust has a duty to protect its employees from harassment by other employees, volunteers, people who use our services, their carers, family, contractors or anyone on our sites. The Equality Act 2010 extends the Trusts and managers responsibilities when it comes to harassment specifically third party harassment. This policy has been updated in line with these changes and the Trust's Professional Codes of Conduct.

Managers are expected to adequately deal with incidents. If the unwanted conduct comes from a third party then the appropriate manager has the responsibility to act in accordance with **section 7** of this policy. Furthermore managers should seek advice from the Human Resources Directorate at an early opportunity.

- 2.4 The Trust is committed to ensuring that service users, their families, and carers are accorded the same protection from harassment and are able to report such occurrences to service managers or by using the Trust complaints procedure or by contacting the Patient Advice Liaison Service (PALS).
- 2.5 Employees who breach this policy may expect disciplinary action including dismissal for serious offences through the disciplinary procedure. People who use our services and carers who are found to have breached this policy may have their treatment withdrawn or the incident reported to the police.

3. SCOPE OF POLICY

- 3.1 This policy applies to all Trust staff including doctors, bank staff and volunteers. Other staff e.g. contractors, locums and agency staff employed to carry out duties within the Trust premises on behalf of the Trust will be covered by the protocols specified in contractual arrangements with third party organisations.

4. RESPONSIBILITIES UNDER THIS POLICY (DUTIES)

Individual or Group	Responsibility
4.1 Chief Executive	Overall responsibility for ensuring policy implementation. For serious cases which involve patients, carers, relatives or advocates write and advise that treatment will be withdrawn if there is a further occurrence.
4.2 Executives and Non Executives	Ensure zero tolerance approach is adopted in the Organisational Culture
4.3 Managers and Supervisors	Modelling standards of behaviour always acting with fairness and equity. Ensure consistent application & adherence of staff. Investigate where appropriate & take action. Ensure that there will be no victimisation against an employee making a complaint under this policy or against employees who assist or support a colleague making a complaint.
4.4 Union Reps/ JNCC	Provide support and representation for union members & maintain confidentiality. Monitor reports annually.
4.5 Senior Manager / Clinical Lead	To commission an investigation and appoint an investigating manager
4.6 Bullying & harassment support officers	Independent support & maintain confidentiality
4.7 Human Resources & Organisational Development	To provide advice, guidance and training to managers and staff on the application of this policy; ensure consistent application; Monitoring incidence/cases of B+H.
4.8 All staff	Comply with policy, personal duty of care & to report any incidents. Record and report accurate facts of events, keeping a record where necessary. Treat each other with dignity and respect.
4.9 The Investigating Officer	Undertake the investigation thoroughly and as soon as possible. Notify both parties of any delays. Discuss case with appropriate manager/HR.

5. DEFINITIONS

5.1 Definition of dignity

Dignity is concerned with how people feel, think and behave in relation to the worth or value of themselves and others. To treat someone with dignity is to treat them as being of worth, in a way that is respectful of them as valued individuals.

5.2 **Bullying, Harassment and Unacceptable Behaviour**

Bullying and harassment tend to be used interchangeably. Whereas bullying can be a pattern of unacceptable behaviour over a period of time, harassment can be a single event, for example name calling or offensive jokes. Whatever the form of bullying or harassment, it will be unwanted behaviour which is unwelcome, unpleasant and unacceptable.

5.3 **Bullying**

Bullying can be difficult to recognise but it can, in certain circumstances, be related to abuse of organisational or professional power. It is improper and inappropriate behaviour which may cause stress; affects work performance and undermines the health and safety of people at work. It is worth noting that there is no legal definition of bullying, however the Trust has adopted the following definition (ACAS):

“Offensive, intimidating, malicious or insulting pattern of behaviours; an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient”.

It is not the “intention” of the perpetrator but the impact of the behaviour that is important. In that context the recipient’s view of bullying and harassment behaviour can be summarised as 'any incident that is perceived to be bullying or harassment by the victim or any other person'.

5.4 **Harassment**

Harassment can take many forms and in general terms is unwanted conduct affecting the dignity of people either on an individual or group basis. It can range from extreme forms such as violence - or bullying, to more subtle and less obvious actions like alienation and non-communication.

Harassment is defined by the impact on the recipient, not the intention. In some cases it can be unintentional but this does not alter its effect on the recipient. It may involve action, behaviour, comment or physical contact which is found objectionable or which causes offence. It can result in the recipient feeling threatened, humiliated, undermined, de-motivated or patronised, and it can create an intimidating, unwelcoming, stressful and upsetting environment. It can also seriously undermine self-confidence, cause distress and can lead to reduced recovery from, or worsening of, a mental health condition.

The legal definition of harassment, as applied to age, disability, sex or gender identity, sexual orientation, religion or belief, and race is:

'Unwanted conduct related to a relevant protected characteristic that has the purpose or effect of violating people’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment’. (See appendix 1 – Legislation on page 17)

This definition covers age, disability, gender and gender identity, race, religion or belief and sexual orientation, all of which are covered under Equality Legislation. It also extends to political, trade unions or other opinion or belief, national or social origin, association with a minority, domestic circumstances, property, birth, or other status if it is unreciprocated or unwanted and affects the dignity of men, women and transgender people.

The Equality Act 2010 allows employees to complain of behaviour that they find offensive even if it is not directed at them, and the complainant need not possess the relevant protected characteristic themselves. Under the Equality Act 2010 employees

are now protected from harassment because of a perception or association with a particular protected characteristic.

In all cases it will be for the recipient and or witnesses to determine whether they would consider that the behaviour is unacceptable.

Refer to appendix 2 on page 18 for examples of harassment and unacceptable behaviours

6. DIFFERENCE BETWEEN MANAGEMENT AND BULLYING/HARASSING BEHAVIOUR

- 6.1 It is important to differentiate between firm, fair management and bullying and harassing behaviour. It is in the interests of the Trust that managers should be able to carry out their duties without ill-intentioned, malicious or vexatious complaints i.e. serving only to cause annoyance. Because of differences in perception, it is not always easy to differentiate between firm, fair management and bullying and harassment behaviour. Some useful comparisons have been detailed in *Appendix 3 on page 20* to highlight the possible differences.

7. BULLYING OR HARASSMENT BY A THIRD PARTY

- 7.1 The Equality Act 2010 covers harassment coming from a third party such as customer, relative, visitor, advocate, client or contractor, harasses an employee on the grounds of their age, disability, gender reassignment, race, religion or belief, sex and sexual orientation.

Such liability will only arise if:

- Harassment has occurred on at least two occasions;
- The employer is aware that it has taken place; and
- The employer has not taken reasonably practicable steps to prevent it happening again.

- 7.2 It is a priority of the Trust to ensure that no staff is put in a situation of potential risk and the following procedures are put in place to protect staff whilst carrying out their duties.

- 7.3 It is the responsibility of the manager/supervisor not to wait for your worker to make two complaints about harassment. Deal with every incident of harassment from a third party when it takes place. Steps you could take include;

- putting up signs/notices in your area of responsibility warning third parties (contractors, clients and customers) of the unacceptability of harassment of staff;
- to encourage employees to report incidents of harassment; and
- speaking to the person who has harassed your worker to tell them their behaviour was not acceptable. In some cases, it may be appropriate to stop the person visiting the premises to make sure your staff are protected.

- 7.4 As individuals who are not employees of the Trust are not subject to discipline under the Trust's internal processes, all complaints of third party harassment should in the first instance be directed towards your line manager/supervisor who will then advise and support accordingly. In all cases an Incident Report Form (IR1) should be completed.

- 7.5 All contractors and partner organisations are advised that the provisions of this Policy apply to them in advance of an award of the contract for services under which they are operating. Partner organisations are made aware that whilst on ELHT premises or dealing with staff employed by the Trust, they will be expected to behave in an acceptable manner.
- 7.6 If the alleged harasser is a contractor or from an agency, then the manager will contact the appropriate senior person within the company/organisation concerned to advise them that this type of behaviour is unacceptable and that if it is repeated then the individual concerned may be refused entry to organisation premises or to undertake any contractual work.
- 7.7 Should the matter not be resolved informally the relevant senior manager must write to an appropriate senior person within the company/organisation concerned to advise them that the alleged perpetrator may be refused entry to Trust's premises or from continued contact with staff of the Trust and if appropriate, request them to undertake an investigation.
- 7.8 It will be the responsibility of the manager involved to discuss the case with the appropriate service/department head who may liaise with the Chief Executive (or appropriate Executive Director). They should outline the action taken to date and what should be done in the future if any further incidents occur.
- 7.9 If the alleged harasser is a patient or visitor, then the manager will consult with the patient or visitor and advise them that their behaviour is unacceptable and that if it is repeated then the individual concerned may be refused treatment or not requiring the employee to deal with that visitor.

8 WHAT CAN YOU DO IF YOU THINK YOU'RE BEING BULLIED OR HARASSED?

8.1 Share your experience

Talk to someone you trust to get a sympathetic ear, fresh perspective and support. It is important not to let yourself feel isolated by trying to deal with it on your own.

8.2 It's not your fault

If you find yourself being bullied or harassed, remember you are not to blame for the bully's behaviour. However, it is important you take steps to remedy the situation so you can lead your normal life.

8.3 Confront the bully

It may be that they do not realise the effect their behaviour is having. If so and you feel able; have a quiet word to the bully at the earliest opportunity to show you are not too scared to confront them and that their behaviour will not be accepted. However, if you believe the bully is fully aware of what they are doing and the bullying has been sustained over time, confrontation could make things worse. In this case, seek advice and support (*see section 8.5*).

8.4 Keep a record

You should keep notes of incidents, dates of incidents, emails, letters, reports, any witnesses or informal action taken. These notes should be written as soon after the incident as possible, perhaps in the form of a diary. These may be useful later on.

8.5 Seek advice and support

The purpose of getting advice and support is to empower you to identify steps to stop the harassment/bullying. Contact someone who can help you. It could be

- your line manager,
- another senior manager,
- human resources team,
- occupational health team,
- employee assistance programme - free counselling sessions provided by First Assist (refer to appendix 4)
- mediation service (refer to appendix 4)
- trade union representative or staff side
- bullying and harassment advisor (refer to appendix 4)

9. PROCEDURE FOR DEALING WITH COMPLAINTS AND OR CASES OF BULLYING AND HARASSMENT: STAFF BY STAFF

Staff can pursue their complaints through the following process:

- **Stage 1: Informal Resolution via-**
 - An initial 'Off the Record' discussion between individuals where appropriate;
 - A facilitated meeting;
 - Mediation
- **Stage 2:** Formal Resolution Process – an investigation.

Most issues of concern may be resolved at an early stage by using the informal procedure (stage 1) and there are a number of ways that the complainants can go about this. However, there may be situations where the formal procedure (stage 1) is triggered without prior use of the informal process e.g. where the complaint is considered to be complex or the incident is severe or where it is the complainant's choice to proceed in that way. This is entirely acceptable in the interests of ensuring the complaint is properly investigated and appropriate action taken.

Note: the complainant has the discretion to choose whichever option they wish to, they can either tackle it in an informal way (stage 1) or by making a formal complaint (stage 2).

Support and guidance is available from a Trade Union representative (if a member of a trade union) or from a member of the Human Resources team.

At all formal stages of the procedure the employee has the right to be accompanied by a Trade Union Representative or a workplace colleague. An employee may also want to seek emotional support from a work colleague on a confidential basis. Support is also available from the Employee Assistance Programme (EAP) delivered by First Assist for confidential counselling sessions.

9.1 Stage 1: Informal Resolution - An initial 'Off the Record' discussion

Sometimes people are not aware that their behaviour is unwelcome and an initial "off the record" discussion may lead to greater understanding and an agreement that the behaviour will cease. (For help in how to frame your message, see *Appendix 5 on page 24 Say what needs to be said!*)

The initial discussion process is useful as it ensures that issues can be resolved early before relationships between staff become strained. It is essentially a private discussion between individuals the main aim of which is to resolve the issues as quickly as possible.

An employee may want to make their line manager aware that they have experienced unwelcome behaviour and that they are dealing with it on an informal basis.

If this discussion does not satisfactorily resolve the issue, then an employee can pursue their complaint through stage 1 and 2 of the Bullying and Harassment Resolution process.

The employee is advised to keep records of all conversations, letters sent, witnesses, dates, times and the locations and nature of incidents.

Note: Complainants have the choice to follow an informal or formal procedure.

9.2 Informal Resolution – Facilitated meeting

The purpose of this stage of the process is to facilitate a meeting between the complainant and the alleged bully/harasser to constructively resolve issues. The complainant and the alleged bully or harasser, decide on the terms of any resolution, not the facilitator. It is confidential and it encourages feelings to be aired and empowers those involved to reach a solution.

The scope of this stage in the process is;

- i. To make the alleged bully or harasser aware that their behaviour is being perceived (it is a belief not a finding at this stage) as bullying or harassment and to understand the impact it is having on the complainant
- ii. To ensure that the person understands the Trust's policy on such matters, and
- iii. To allow the respondent an opportunity to change their behaviour where appropriate.

Any such facilitator should be an employee of the Trust e.g., a trained mediator, the complainant's line manager or if this is not appropriate, an equivalent reporting line or the next line of management within the Department, Service or Trust. Alternatively you may contact your Human Resources Advisor.

It is important that all parties go through this stage in the process (where practical and appropriate) before deciding whether they move on to the formal stage of the process. It is advised that an informal dispute resolution method such as mediation is tried before resorting to formal procedures.

9.2.1 Procedure

The person who the allegation has been reported to will arrange a meeting (or convenient approach) with the person you wish to address your concerns with. This person will also organise the facilitator.

The facilitator will direct the discussions and choose who gets to talk first and when it is time for the other person to talk and respond.

Each person will have the opportunity to present their side without interruption by the other person; however, the facilitator may ask questions or re-direct the conversation

When discussing the allegations it is important to remember to:

- Keep to facts, see Appendix 5, it may help you frame your approach;

- Talk to the person firmly but calmly and explain how you feel about the behaviour;
 - Agree and keep a record of what has been agreed. It is important where possible to write down what has been agreed so that both parties are aware of each other's expectations and responsibilities.
- The facilitator summarises the conversation or action points
 - The participants of the facilitated meeting will agree how they will resolve the issues and discuss what will happen, if it happens again
 - Notes will be taken during the meeting, which will not be a transcript of the meeting, but will detail the agreed action points
 - All those involved in the meeting will agree to meet on a further occasion in order to check on progress
 - The facilitator can close the meeting, if discussions deteriorate beyond being constructive.

In a situation where your manager is the alleged harasser or bully, you should report the matter to your manager's line manager. The recipient of the complaint and/or the line manager should ensure that the complainant has access to appropriate support for example:

- Talking to their trade union representative (if they have one) or
- Talking to their clinical/ professional supervisor
- Providing access to the First Assist Programme for confidential counselling sessions
- Being aware of the Trust policy and procedure
- Being aware of what will happen, i.e. the process and approximate timescales should be explained.

If the above process fails, proceed to the formal stage of the resolution process, stage 2.

9.3 Stage 2 – Formal Resolution Process, an Investigation

9.3.1 The Employee

If the process in Stage 1 does not reach a satisfactory conclusion or if serious harassment or bullying occurs, employees are advised to escalate their complaint through to Stage 2 and should seek assistance in doing so.

The complaint may be made orally but must be confirmed in writing as soon as possible using the Complaint Form (**Appendix 6 on page 25**).

The form should be sent in confidence to your immediate manager. Where the alleged bully or harasser is the complainant's line manager, then the matter should be reported to the next level manager. If you need assistance in making the complaint, a close work colleague, bullying & harassment support advisor and or the trade union representative may assist in this task.

Alternatively such complaints can be sent directly to the Head of Human Resources via the dedicated email address: bullyingandharassment@elht.nhs.uk or in a sealed confidential envelope marked '**Head of Human Resources**', East Lancashire Hospitals NHS Trust, Human Resources Department, Park View Offices, Royal Blackburn Hospital, Haslingden Road, Blackburn, BB2 3HH.

Access to appropriate guidance from a Trade Union representative, will be available, if you are a member of the union. Emotional support is available from the Employee Assistance Programme for confidential counselling sessions and will be made available to all parties involved

9.3.2 The Manager

On receipt of the complaint the manager will do the following:

- Inform the Human Resources Department of the complaint. Human Resources will provide advice and support for meetings where appropriate.
- Meet with the complainant and discuss support available. Arrangements to meet will be agreed within 5 working days.
- Following this, the manager will arrange to meet with the alleged bully or harasser to inform them of the allegation and explain the process.
- Decide on the severity of the case whether suspension or temporary redeployment of the alleged bully or harasser as a neutral act is warranted. (*Refer to Disciplinary Procedure HR09*). It will be made clear at all times that suspension under this procedure is not a disciplinary act and does not imply that there has been any misconduct, or that there is any suggestion of guilt.
- The Manager/s must be able to justify a decision to suspend and this should only happen as a very last resort. Prior consideration must always be given to transfer rather than suspension. Suspension would always be on full pay and be authorised by an appropriate manager. For more information on suspension refer to *section 1 of the Trust's disciplinary procedure HR9*.
- If temporary redeployment is considered whilst the investigation is being conducted, it is advisable that the complainant should be given first choice as to whether they wish to be transferred, subject to practical limitations and without any financial detriment to the individual.
- The alleged bully or harasser must be advised verbally of the nature of the complaint that has been made against them. They must also receive written details of the complaint and be provided with access to their trade union representative, their clinical or professional supervisor provided with access to the Employee Assistance Programme as soon as possible. The role of the Investigating Officer [IO] should be explained as part of this process.
- The senior manager / clinical lead will, without delay appoint an Investigating Officer. The Investigating Officer will be a manager outside the service/unit where the individual/s works. They will be trained in the skills of objective investigations, interviewing and report writing.

9.3.3 The Investigating Officer (IO)

The Investigating Officer will investigate the complaint.

The terms of reference for the investigation, nature of the allegation, including dates and times should be contained within the letter sent to the alleged harasser/s.

The alleged bully/harasser is also told that a formal investigation will be conducted, during which time they will have the opportunity to give their account of events

The investigation should commence within 10 working days of receiving the complaint. If it is not possible to meet the timescales, all parties must agree a new timescale and be kept fully informed.

The objective will be to complete the investigation under the Formal Procedure (excluding weekends and public holidays) in 15 working days, i.e. a maximum of three working weeks. In certain circumstances, however, it may be necessary to extend the time limit with the agreement of both parties. In most circumstances the complex nature of cases often results in an extension of the time limit.

The Investigating Manager should carry out a full investigation, collecting evidence and interviewing the complainant, the alleged harasser/bully and any witnesses. All parties should be advised that failure to maintain confidentiality may prejudice the outcome of the investigation. Any breach of confidentiality will be taken seriously and may be investigated via the Disciplinary Procedure.

On concluding the investigation the Investigating Officer will produce a factual report ideally within 2 weeks of the last interview for presentation to the complainant's line Manager. Any delay in timescale needs to be raised with the Head of Human Resources and agreement sought for the new deadline.

9.3.4 The Outcome

Once the report has been submitted and Human Resources consulted, the complainant's line manager (or in a situation where complainant's line manager is the alleged harasser or bully) the Investigating Officer will do the following:

- Inform the complainant of the outcome and the way forward
- Decide if formal action is to be taken i.e. invoke the Trust's Disciplinary Procedure.
- Decide if the complaint is not upheld and whether 'the case is inconclusive'. It must be stressed that where 'the case is inconclusive' it is important that this decision is explained in all instances. The focus should be in repairing 'fractured' relationships, for example, a decision could be taken that the perpetrator should attend bullying and harassment training or the complainant be offered assertive or conflict resolution training. The decision will be on a case by case basis.
- If the complaint is not upheld, decide if the case might have been malicious and consideration will be given to whether there should be action taken.
- The manager as part of this process will ensure that the complainant as well as the alleged bully or harasser is offered appropriate support as required.

10. FALSE ACCUSATION

East Lancashire Hospitals NHS Trust recognises that false malicious accusations could have serious effects on innocent individuals. If it is evident, based on reasonable belief, that a complaint has not been made in good faith i.e. false allegation, anyone who is found to have made an unfounded, deliberately malicious complaint or allegation against another person will be subject to disciplinary action.

11. APPEALS

If the complainant or alleged perpetrator considers that the process of investigation has been unfairly or poorly carried out, he/she has the right to appeal. To do so he/she should write to the Director of Human Resources within 10 days of being notified of the outcome.

The Director of HR will arrange a meeting as soon as practicable and normally within ten working days involving the aggrieved party, and a panel consisting of a Director, a senior manager *and a representative nominated by the Trade Unions*. A HR advisor will be present if the Director of HR is not a member of the Panel.

The Chairman of the panel shall notify the aggrieved party of their decision in writing as soon as practicable, normally within five working days. There is no further right of appeal.

Any appeals against disciplinary sanctions issued where the Trust's Disciplinary Procedure is invoked should be dealt with in accordance with the Disciplinary procedure.

12. TRAINING

Training on the process for dealing with concerns raised in line with the Policy will be available to all staff. This training will be delivered on a regular basis by the Equality and Diversity unit.

13. MONITORING

An audit will be undertaken at least once each calendar year and presented as a minimum to Quality & Safety Board outlining adherence to the process for raising concerns about bullying and harassment, and where concerns have been raised that the process for dealing with these has been followed. This audit will cover these cases for the preceding calendar year where investigation is completed up to the production of an investigation report. Quality & Safety Board will receive assurance at least annually that this is being monitored and that any actions arising from the monitoring have been formulated into an action plan and are being addressed. Minutes from the Quality & Safety Board will be used as the source of monitoring evidence and progress against actions will be pursued through an overarching action plan managed through the HR Department.

Refer to appendix 7 for monitoring form and appendix 8 for the equal opportunity monitoring form on pages 27 and 28.

APPENDIX 1

LEGISLATION

Harassment on the basis of age, disability, gender reassignment, race, religion or belief, sex and sexual orientation is covered by the Equality Act 2010. Individuals are protected from harassment both while applying for a job, during it, and in some circumstances after the working relationship ends (for example in terms of the provision of a verbal or written reference). There is also protection for people against harassment on the basis of their membership or non-membership of a trade union.

The legal position with respect to bullying is more complex as there is no separate piece of legislation which deals with work place bullying in isolation. Bullying might be part of discriminatory behaviour, or related to a myriad of different legal principles, for example:

- breach of contract - usually breach of the implied term that an employer will provide reasonable support to employees to ensure that they can carry out their job without harassment and disruption by fellow workers
- the common law right to take care of safety of workers
- Employment Rights Act 1996 - incorporates an employee's right to claim 'unfair constructive dismissal', when an employee resigns in the face of the employer's breach of contract, which may include failure to protect their health and safety at work.
- personal injury protection involving the duty to take care of workers arising out of the law of Tort
- Health and Safety at work etc Act 1974: Employers have a duty to ensure the health, safety and welfare at work of all employees
- Trade Union and Labour Relations (Consolidation) Act 1992 - dealing with special types of intimidation etc
- protection for whistleblowers under the Public Interest Disclosure Act 1998
- Criminal Justice and Public Order Act 1994 makes intentional harassment of any form a criminal offence and provides a right to claim damages for the victim.
- Protection from Harassment Act 1997 makes employers vicariously liable for harassment acts of employees. In the case, (*Majrowski (M) v Guy's and St Thomas' NHS Trust*) the claimant alleged his departmental manager had bullied, intimidated and harassed him in the course of her employment. *Green v DB Group Services Limited* widened the scope for harassment claims which now may be brought by employees under the 1997 Act or by way of personal injury claims.
- Human Rights Act 1998 gives further legal effect in the UK to the fundamental rights and freedoms contained in the European Convention on Human Rights. These rights not only impact matters of life and death, they also affect the rights you have in your everyday life: what you can say and do, your beliefs, your right to a fair trial and other similar basic entitlements.
- Vicarious liability, for example, if a social event can be classed as an extension of employment, the employer might be held vicariously liable for the acts or omissions (harassments, discrimination or acts of negligence) committed by employees at the event).

APPENXDIX 2:

EXAMPLES OF HARASSMENT AND UNACCEPTABLE BEHAVIOURS

Verbal Harassment

Statements, remarks, jokes, innuendos that may cause offence to anyone who hears, reads or witnesses them, the comments do not need to be made to the individual for them to be considered as derogatory, or which ridicule or insult a person. It can be the use of threatening or obscene language or attempts to stir up hatred or discontent including graffiti or hate mail.

Physical Harassment

Assault or physical attacks, actions which intimidate or which ridicule, discomfort or embarrass individuals, including making threats or insulting hand gestures against an individual or group; spitting; and or damage to property.

Unacceptable behaviour

Unacceptable behaviour in the context of bullying and harassment can be defined as behaviour that is abusive, threatening, lewd, intimidating, discriminatory or otherwise inappropriate. It may take one or more of the following forms:

- Spreading malicious rumours, or insulting someone, particularly on age, disability, gender, race, sexual orientation or religion/ belief grounds
- Copying memos/ emails that are critical about someone to others who do not need to know
- Ridiculing or demeaning someone - picking on them or setting them up to fail
- Offensive language including innuendo, mockery and obscenity
- Subjecting an individual to constant humiliation or ridicule, belittling their efforts in front of others and sometimes, privately. For example, directly to an individual or to a third party
- Monitoring everything an individual does and being excessively critical about minor things
- Setting objectives with impossible deadlines
- Exclusion or victimisation
- Overbearing supervision or other misuse of power or position
- Deliberately undermining a competent worker by overloading and constant criticism
- Preventing individuals progressing by intentionally blocking promotion or training opportunities
- Unfair treatment on the basis of Trade Union membership
- Unwelcome sexual advances touching, standing too close, the display of offensive materials, asking for sexual favours, making decisions on the basis of sexual advances being accepted or rejected
- Making threats or comments about job security without foundation

Offensive materials

Displaying or distributing materials which degrade or offend, for example, offensive magazines or the writing or painting of insults or using graffiti, badges or other insignia whose purpose is to create hatred or discontent. In some cases it can be the use of short messaging service (sms or texts), 'blogging', 'twittering' or social network sites such as facebook and Twitter.

Psychological or emotional abuse

Psychological abuse is any action which adversely impacts on an individual's emotional wellbeing, causing distress and affecting their quality of life and ability to function to fulfil their full potential.

'Flirting'

What one member of staff considers flirting, another may consider harassment. If a member of staff experiences unwelcome flirting or behaviour or conversation that is unwelcome, then this could be considered as harassment.

APPENDIX 3

FIRM, FAIR MANAGEMENT VERSES BULLYING OR HARASSMENT

It is necessary for managers to be able to manage their staff. This will involve:

- Issuing reasonable instructions and expecting them to be carried out;
- Setting and publicising expected standards of performance supported by the appraisal system;
- Disciplining staff for misconduct, where appropriate following a fair and reasonable investigation; making appropriate use and acting within any other Trust policy with regard to conduct or performance
- Implementing fair and reasonable action in respect of the management of sickness in line with the Trust's policy
- Applying Trust policies, procedures and practices.

Some useful comparisons are shown below:

Firm/Fair Manager	Bullying or Harassing Manager
Consistent and fair	Aggressive, inconsistent and unfair
Determined to achieve the best results, but reasonable and flexible	Unreasonable and inflexible
Knows their own mind and is clear about their own ideas, but willing to consult with colleagues and staff before drawing up proposals	Believes they are always right, has fixed opinions, believes they know best and is not prepared to value other people's opinions
Insists upon high standards of service in quality and of behaviour of the team.	Insists on high standards in 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 warnings without listening to any explanations.
Adheres to policy and procedure and applies them fairly to all staff.	Ignores set down policy and procedures.
Asks for people's views, listens and assimilates feedback	Tells people what will be happening, does not listen

APPENDIX 4

HELP AND SUPPORT FOR THE VICTIM, ALLEGED BULLY/ HARASSER AND ANY WITNESSES

The Trust is committed to achieving informal resolution of complaints relating to harassment wherever possible. In line with this approach, a series of options have been put into place to enable staff to be supported.

(i) Bullying and Harassment support advisors

Harassment and bullying at work goes largely undetected because individuals are too embarrassed or afraid to speak out. Staff may not wish to tell their manager, yet would like to talk to someone who will understand the problem, and whom they feel they can trust.

Bullying and Harassment advisors are an independent and confidential resource. They are drawn from a wide range of jobs across the Trust and have been provided with specialist training; As part of their role Bullying & Harassment Advisors:-

- Provide a confidential empathetic assistance to staff with complaints of bullying and harassment;
- Explain how the procedures for making a complaint operate both informally and formally and to give information options on the course(s) of action open to them and they help establish and provide support for both alleged harassers and complainants through the process;
- They assist or to act on behalf of the complainant with the complainant's express consent of harassment in bringing the matter to the attention of the alleged harasser's Line Manager.

A Bullying & Harassment Advisors may also be asked to provide support and advice to an alleged bully or harasser but this would not be appropriate in a situation where the Bullying & Harassment Advisors was already providing support to the individual alleging that bullying or harassment has taken place. In these cases the Bullying & Harassment Advisors will refer the employee back to the list of alternative contacts without breaching the confidentiality of either party.

Note: The Bullying & Harassment Advisors has **no formal** role within the disciplinary procedure and is not expected or trained to fulfil a professional counselling role.

It is not the role of the Bullying & Harassment Advisors to make the decision for the individual but rather to listen to complaints and provide them with the information about the policy and the options available within it. The individual themselves will come to a decision about the way forward. An individual may access a Bullying & Harassment Advisors from a different area of the Trust if they would find this easier to do.

A Bullying & Harassment Advisors may accompany an individual to meet with a line Manager or HR Business Partner to discuss their options further or to raise an official complaint.

BULLYING & HARASSMENT SUPPORT ADVISORS

NAME	DESIGNATION	PHONE
Lois Fitzpatrick	East Lancs Procurement	01254 733171
Kevin Watson	Quality & Safety Manager	01254 734638
Kathy Winters	OPD Administration/Reception Facilitator	01254 733204
Dianne Ryan	Midwife	Ext 14213
Joanne Davidson	Medical Secretaries	01265 733119
Nazir Makda	Equality & Diversity Manager	01254 732396
Sheila Ridge	Cancer Services	01282 804771
Karen Narramore	Unison - Branch Secretary	Tel 01254 736923 (ext 81923) / Mobile 07970 816539
Sonya Nosheen	Dermatology	01282 803006
Stephanie Glover	PALS	01254 734200
Clare Thornley	Employment Services	01254 735931
Jackie Stanworth	System Support Team	
Haleh Peel	Orthopaedic Department	01282 801319
Helen Hinchliffe	Medical Secretaries	01282 804641
Hazel Hargreaves	Learning & Development	01254 733027
Dee Young	Anesthetic	01282 804409
Katherine Dawe	Vascular	01282 804642
Kerry Ann Ashworth	Critical Care	07510733803
Sue Birtwistle	Theatres	01254 734462

(ii) Mediation

Mediation is a confidential and voluntary process which brings together staff who are experiencing problems in a work related relationship. Mediation is offered as a service by staff volunteers who are accredited, trained mediators. You can access a list of the trained mediators' names and contact details via Human Resources.

Mediation is a structured process using an impartial mediator to facilitate communication between two or more parties to help them understand one another and to begin to think creatively about a mutually acceptable resolution to their differences. It is an alternative method of improving workplace relationships by encouraging both parties to actively seek a solution to their differences and agree effective ways of working together for the future.

The emphasis on mediation is of restoring relationships and harmony between people. The process aids communication between the parties; provides an understanding of the breakdown in that relationship and creates mutually beneficial solutions to develop a better working relationship.

Mediation has the advantage of being a voluntary process, where staff feel their dispute may be remedied by discussion thereby avoiding the negative and time-consuming aspects of formal processes. It is likely to be effective when:

- there is conflict or dispute over a workplace situation
- both parties are willing to work together to resolve their differences
- there is potential for an improvement in working relationship
- no serious breach of workplace policies or procedures have occurred

In exceptional circumstances, the Trust may deem it appropriate to offer external mediation.

(iii) First Assist

First Assist offers a free 24-hour advice service designed to help all employees to deal with personal or work related problems that may affect their wellbeing and effectiveness in the workplace. It includes:

- 24 hour Telephone service 0800 716 017
- Free information on all types of mental and physical illness
- Telephone legal / financial information
- Free face to face counselling sessions
- Online advice & e-mail support
- Critical incident support
- Telephone Health & Wellbeing support
- On-line health portal <http://www.first-assist.com>.

APPENDIX 5:

SAY WHAT NEEDS TO BE SAID!

Use the “**I language**” method to assert your influence, e.g.

When you.....

(An objective description of the person’s behaviour)

The impact/ effect are...I feel.....

(How the person’s behaviour affects you)

The consequences will be.....

(A description of what you might do if there is no change in behaviour. This can only be used when you feel that your message may not be taken seriously)

Summary of incident:

Please continue on a separate sheet if necessary

Date(s) and time(s) of incidents	
Key parties involved:	
Witnesses:	

What action has already been taken? Please detail informal and formal action already taken

Have informal attempts been made to try to solve the problem? If so, please give details. If not, would you be willing to resolve the problem informally before following the formal procedure?

What is a desired solution?

--

SECTION 3 – Representative details

Do you have a work colleague/trade union representative you wish to accompany you through this procedure?

Name(s)	
Job title(s)	
Department or directorate	

SECTION 4 – Declaration

Full name (please print)	
Signature	
Date	

Appendix 7 - MONITORING FORM

Private and Confidential

This form will be used to monitor the application of the Bullying and Harassment Policy – Employees and should be completed by the complainant.

The form should be sent to Human Resources and it will be used for **monitoring purposes ONLY**.

SECTION 1 – Details of complainant/ perpetrator (delete as applicable)

Name	
Job title	
Department or directorate	
Nature of Complaint	

SECTION 2 – Details of alleged perpetrator(s)/ target of bullying or harassment (delete as applicable)

Name(s)	
Job title(s)	
Department or directorate	

Do you consider the harassment or bullying to relate to one or more of the following?

Age	Race	Disability	Gender
Gender identity (Trans)	Sexual Orientation		Religion/belief

SECTION 3 – Support received by the complainant/ perpetrator

Who have you received support from?

Line Manager	HR	Trade Union	Colleagues	Bullying & Harassment Advisor
Employee Assistance programme	Occupational health/counselling service			

Please detail below the support you have received:

--

SECTION 4 – Outcome of complainant (To be completed by HR)

What was the outcome of your complaint?

Informal action	Formal action
Other:	

If formal action was taken, what was the outcome?

Allegation upheld	Allegation not upheld
Other:	

SECTION 5 – Declaration by complainant/ perpetrator (delete as applicable)

Full name (please print)	
Signature	Date

Please also complete the following confidential monitoring information, which will only be used to monitor the Bullying and Harassment policy. Return this form in a confidential envelope to the HR Co-ordinator, Human Resources.

Appendix 8 - Equal Opportunities Monitoring

EQUALITY MONITORING INFORMATION (to be completed by complainant or perpetrator)

The information you provide is **voluntary** and **confidential**. If you complete this section you will be agreeing that East Lancashire Hospitals NHS Trust may hold this information; it will only be used for monitoring purposes.

Please tick as appropriate: Female Male

Do you consider yourself to have a disability? Yes No

If yes, please provide details of your disability and specify any adjustments we could make to accommodate your requirements.

Age: under 18 18-24 25-29 30-34 35-39 40-44 45-49 50-54
55-59 60-64 over 64

Ethnicity (chose by highlighting one of the options below):

<p>White</p> <p>English <input type="checkbox"/></p> <p>Other British <input type="checkbox"/></p> <p>Irish <input type="checkbox"/></p> <p>Any other White background (please state)</p>	<p>Asian or Asian British</p> <p>Indian <input type="checkbox"/></p> <p>Pakistani <input type="checkbox"/></p> <p>Bangladeshi <input type="checkbox"/></p> <p>Any other Asian background (please state)</p>	<p>Mixed</p> <p>White and Black Caribbean <input type="checkbox"/></p> <p>White and Black African <input type="checkbox"/></p> <p>White and Asian <input type="checkbox"/></p> <p>Any other Mixed background (please state)</p>
<p>Black or Black British</p> <p>Caribbean <input type="checkbox"/></p> <p>African <input type="checkbox"/></p> <p>Any other Black background (please state)</p>	<p>Chinese <input type="checkbox"/></p>	<p>Other ethnic group (please state)</p>

Which religion or belief do you follow? Buddhism Christianity Hinduism Judaism Islam None
Sikhism Other religion/belief please state..... (I) Prefer not to say

Please circle or tick the description of your sexuality. Bi-Sexual Gay Man Heterosexual Lesbian
Prefer not to say