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What is Bullying, Harassment and Sexual Harassment?

This section contains the definitions of bullying, harassment and sexual harassment as set out in the following Codes of Practice:

- The Health and Safety Authority's Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work.
- The Labour Relations Commission's (LRC) Code of Practice Detailing Procedures for Addressing Bullying in the Workplace.
- The Equality Authority's Code of Practice on Sexual Harassment and Harassment at Work.

What is Workplace Bullying?

Workplace bullying is **repeated inappropriate behaviour, direct or indirect**, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work.

An isolated incident of behaviour described in this definition may be an affront to dignity at work but as a once off incident is not considered to be bullying.

A key characteristic of bullying is that it usually takes place over a period of time. It is regular and persistent inappropriate behaviour which is specifically targeted at one employee or a group of employees. It may be perpetrated by someone in a position of authority, by employees against a manager or by employees in the same grade as the recipient.

What Bullying is Not

The following do not constitute bullying:

- An isolated incident of inappropriate behaviour may be an affront to dignity at work but, as a once-off incident, is not considered to be bullying, e.g. an occasional bout of anger or a conflict of views.
- Fair and constructive criticism of an employee's performance, conduct or attendance.
- Reasonable and essential discipline arising from the good management of the performance of an employee at work.
- Actions taken which can be justified as regards the safety, health and welfare of the employees.
- Legitimate management responses to crisis situations which require immediate action.
- Complaints relating to instruction issued by a manager, assignment of duties, terms and conditions of employment or other matters which are appropriate for referral under the normal grievance procedure.

Examples of Bullying

The following are some examples of the type of behaviour which may constitute bullying. These examples are illustrated but not exhaustive:

- Constant humiliation, ridicule, belittling efforts – often in front of others

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- Verbal abuse, including shouting, use of obscene language and spreading malicious rumours
- Showing hostility through sustained unfriendly contact or exclusion
- Inappropriate overruling of a person's authority, reducing a job to routine tasks well below the person's skills and capabilities without prior discussion or explanation
- Persistently and inappropriately finding fault with a person's work and using this as an excuse to humiliate the person rather than trying to improve performance
- Constantly picking on a person when things go wrong even when he/she is not responsible

What is Harassment?

Harassment (other than sexual harassment) is any form of unwanted conduct related to any of the discriminatory grounds covered by the Employment Equality Acts 1998 to 2011. These grounds are:

- Gender
- Civil status
- Family status
- Sexual orientation
- Religion
- Age
- Disability
- Race
- Membership of the traveller community

Harassment is defined in the Act as any form of unwanted conduct related to any of these discriminatory grounds which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

The unwanted conduct may include acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.

Harassment is inappropriate behaviour based on the relevant characteristics of the employee such as race, religion, age or any other grounds covered by the Act. Inappropriate behaviour that is not linked to one of the nine discriminatory grounds is not covered by this definition.

Harassment may be targeted at one employee or a group of employees. **Harassment may consist of a single incident or repeated inappropriate behaviour.**

The following are examples of inappropriate behaviour which may constitute harassment. These examples of harassment are illustrated but not exhaustive:

- Verbal harassment, e.g. jokes, derogatory comments, ridicule or song
- Written harassment, e.g. faxes, text messages, e-mails or notices
- Physical harassment, e.g. jostling or shoving
- Intimidatory harassment, e.g. gestures or threatening poses
- Visual displays, e.g. posters, emblems or badges
- Persistent negative body language

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- Ostracising a person.

An act of harassment may occur outside the work premises or normal working hours provided the perpetrator was acting in the course of employment, for example, at a training course, conference or work-related social event.

What is Sexual Harassment?

Sexual Harassment is any form of unwanted verbal, non-verbal or physical conduct of a *sexual nature* which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

The unwanted conduct may include acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other materials.

Sexual harassment may consist of a single incident or repeated inappropriate behaviour. It may be targeted at one employee or a group of employees.

The following are some examples of inappropriate behaviour which may constitute sexual harassment. These examples are illustrative but not exhaustive:

- Physical conduct of a sexual nature, e.g. unwanted physical contact such as unnecessary touching, patting or pinching or brushing against another employee's body
- Verbal conduct of a sexual nature, e.g. unwelcome sexual advances, propositions or pressure for sexual activity, continued suggestions for social activity outside the workplace after it has been made clear that such suggestions are unwelcome, unwanted and offensive flirtations, suggestive remarks, innuendos or lewd comments
- Non-verbal conduct of a sexual nature, e.g. the display of pornographic or sexual suggestive pictures, objects, written material, emails, text messages or faxes
- Unwanted or derogatory comments about dress or appearance
- Leering and suggestive gestures

An act of sexual harassment may occur outside the work premises or normal working hours provided the perpetrator was acting in the course of employment, for example, at a training course, conference or work-related social event.

How does Sexual Harassment and Harassment differ from Friendly Workplace Banter?

It is the unwanted nature of the conduct which distinguishes sexual harassment and harassment from friendly behaviour which is mutual and welcome. It is up to each employee to decide what behaviour is unwelcome, irrespective of the attitude of others, and from whom such behaviour is unwelcome. The fact that the employee has previously tolerated the behaviour does not stop him/her from objecting to it now.

Is Motive Relevant?

The intention of the person engaging in the unwelcome behaviour is irrelevant – the effect of the behaviour on the employee concerned is what is important.

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Bullying / Harassment by Non- Employees

This Policy protects employees from bullying, sexual harassment or harassment perpetrated by a patient/client, supplier, visitor or any other person with whom employees may come into contact during the course of their work. Bullying / harassment by non-employees may result in the termination / non-renewal of business contracts, the suspension / non-renewal of services, exclusion from the premises or the imposition of other appropriate sanctions.

If an employee feels that s/he has been subject to inappropriate behaviour by a non-employee, s/he should bring the matter to the attention of his/her manager so that the matter can be investigated and appropriate action taken.

Role and Responsibilities under the Policy

This section sets out the responsibilities of:

- The employer
- Employees
- Manager and supervisors
- Union officials

The Employer's Responsibilities

St Patricks University Hospital will ensure that adequate resources are made available to promote respect and dignity in the workplace and to deal effectively with complaints of bullying and harassment. This policy and procedure will be communicated throughout the organisation and all the employees will be made aware of their responsibilities to create a working environment which is free from bullying and harassment. The Policy will form part of the induction process for all employees and appropriate training will be provided to supervisors and managers to enable them to communicate the Policy to employees and deal with complaints.

Support Contact Persons will be appointed to provide confidential information and support to employees who feel that they are being subjected to bullying or harassment. Appropriate training and ongoing support will be provided to enable Support Contact Persons to carry out their role effectively.

Progress on the implementation and effectiveness of the Policy will be regularly monitored and reviewed at local level.

Employees' Responsibilities

All employees have responsibilities to help maintain a working environment in which the dignity of all individuals is respected. All employees must comply with this policy and ensure that their behaviour does not cause offence to fellow workers or any person with whom they come into contact during the course of their work.

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Employees should discourage bullying and harassment by objecting to inappropriate behaviour. Employees should inform a manager or supervisor if they are concerned that a colleague is being bullied or harassed.

Managers' and Supervisors' Responsibilities

Managers and supervisors have a particular responsibility to implement this policy and to make every effort to ensure that bullying and harassment does not occur, particularly in work areas for which they are responsible. Managers and supervisors have an obligation to deal promptly and effectively with any incidents of bullying or harassment of which they are aware or ought to be aware.

Managers and supervisors should:

- Explain the Dignity at Work Policy to all employees and ensure that they understand their roles and responsibilities and how the complaints procedure operates
- Explain the Policy and complaints procedure to new employees as part of their induction
- Monitor the behaviour of new employees during their probationary period to ensure compliance with the Dignity at Work Policy.
- Promote awareness of the Policy amongst employees on an ongoing basis
- Communicate the Policy to non-employees (e.g. ensure posters and leaflets are prominently displayed and copies of the Policy are readily available)
- Set a good example by treating all employees and any other person with whom they come into contact in the workplace with courtesy and respect
- Be vigilant for signs of bullying and harassment and intervene before a problem escalates
- Respond sensitively to any employee who makes a complaint of bullying or harassment
- Respond promptly and discreetly to requests from employees to intervene and seek to resolve the matter informally where appropriate
- Facilitate Support Contact Persons (see Appendix 1) to carry out their role
- Ensure that an employee is not victimised for making a complaint of bullying or harassment in good faith
- Monitor and follow up the situation after a complaint is made so that the behaviour complained of does not recur
- Keep a record of all complaints and how these were resolved

Union Officials' Responsibilities

Union officials play an important role in providing information, advice and support to employees who feel that they are being bullied or harassed or against whom complaints have been made. The Policy requires union officials to co-operate with efforts by supervisors/managers to resolve complaints at local level.

Union officials provide representation to employees if the complaint is referred for formal investigation and are required to co-operate fully with attempts to conduct the investigation fairly and without undue delay

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Procedure for Dealing with Allegations of Bullying, Sexual Harassment and Harassment

Making a Complaint

Any employee who feels that s/he is being subjected to behaviour which undermines his/her dignity should let his/her objections be known, otherwise the person engaging in the unwelcome behaviour may be unaware of the effects of his/her actions. The employee may either approach the alleged perpetrator directly and make the person aware that the behaviour in question is unwelcome or request a manager to approach the person on his/her behalf. Sometimes the alleged perpetrator is genuinely unaware that his/her behaviour is unwelcome and causing distress. An informal discussion is often sufficient to alert the person concerned to the effects of his/her behaviour and can lead to greater understanding and an agreement that the behaviour will stop.

Before deciding what course of action, if any, to take, the employee may wish to discuss the matter on a confidential basis with a Support Contact Person, manager, union representative, Occupational Health Service or Employee Assistance Programme.

Support Contact Person

An employee who feels that s/he is being bullied or harassed may wish to avail of the support of a Support Contact Person whose function is to listen, be supportive and outline the options open to the employee. Details of Support Contact Persons are displayed on staff notice boards or can be obtained from the Human Resources Department. The Support Contact Person will explain the definitions of bullying/ harassment and various elements of the procedure to assist the employee to make an informed choice about what action, if any, s/he may wish to take. The Support Contact Person cannot act as an advocate or representative for the employee and may not approach the alleged perpetrator on his/her behalf.

Alternatively, the employee may seek information and advice regarding the policy and the procedure on a confidential basis at any time from any of the following:

- A supervisor or manager in the workplace
- Human Resources Department
- Union representative
- Occupational Health Service
- Employee Assistance Programme

If, having consulted with the Support Contact Person or other appropriate person, the employee decides to pursue the matter, s/he may approach the alleged perpetrator directly or request the intervention of an appropriate manager.

Approach the Alleged Perpetrator Directly

In this case the employee may find it helpful to rehearse what s/he intends to say to the person concerned so that s/he feels more confident about initiating the discussion and articulating the precise nature of the offending behaviour and its effects.

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Local Intervention of an Appropriate Manager

Where the employee is not confident about approaching the alleged perpetrator or where a direct approach has not resolved the matter, s/he should request the intervention of an appropriate manager.

The manager may attempt to resolve the matter in an informal low-key and non-confrontational manner by making the alleged perpetrator aware of the effects of his/her behaviour (see Appendix 2). Where this does not bring about a satisfactory outcome, the matter may be referred to a manager at a more senior level who will make every effort to resolve the matter between the parties. This may include the use of mediation.

Mediation

Mediation is the preferred method under the Dignity at Work Policy for resolving complaints of bullying and harassment. The objective of mediation is to resolve the matter speedily and confidentially without recourse to a formal investigation and with a minimum of conflict and stress for the individuals involved. Mediation requires the voluntary participation and co-operation of both parties in order to work effectively.

Both parties will be requested to consider the use of mediation and every effort will be made to secure their agreement. An appropriate person who is experienced or well versed in mediation will meet with each of the parties separately to explain the mediation process and its benefits. This person may be from management, the unions or agreed list of mediators.

An assigned mediator will meet with both parties, usually separately to begin with, to discuss the alleged offending behaviour. The mediator will then bring both parties together to reach a common understanding and agreement on acceptable future behaviour. A mediated agreement seeks to reach an accommodation between the parties and thereby restore harmonious working relations. A mediated solution will not result in the issues being dealt with under the disciplinary policy. Minimal paperwork and/or records will be generated by this process.

If the mediation process does not produce a satisfactory outcome, the complainant may seek to have the matter resolved through formal investigation. Any new information that emerges during the course of the mediation process remains strictly confidential and cannot be disclosed as part of the formal investigation.

If the matter remains unresolved at this stage, a formal investigation will be carried out.

Note: Mediation may be attempted at any/all points in the procedure to try to resolve the matter. Mediation may be attempted again during the formal investigation or following the outcome of the investigation.

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Preliminary Screening

The purpose of the preliminary screening is to decide if the alleged behaviour, which is the subject of the complaint, falls within the definition of bullying, harassment or sexual harassment as outlined in pages 4 to 8 of this Policy. The rationale for this provision is that some complaints of bullying, harassment or sexual harassment referred under the Policy do not fall within the definition of bullying, harassment or sexual harassment. In order to carry out the preliminary screening, the complainant must set out details of the alleged behaviour in writing including approximate dates and witnesses (if any) and the context in which the alleged behaviour occurred. The preliminary screening will be carried out¹ by a member of the HR Department who will decide whether or not it is appropriate to progress the complaint under the Dignity at Work Policy. This assessment will be based exclusively on the written details of the complaint as set out by the complainant.

The employee will be notified in writing of the outcome of the preliminary screening within 7 working days.

If the complaint is deemed not to come within the scope of the Dignity at Work Policy, the employee will be so informed and advised on the appropriate procedure for dealing with the matter (e.g. grievance procedure).

If the complaint is deemed to come within the scope of the Dignity at Work Policy, the matter may be referred for mediation. If the matter cannot be resolved through mediation, a formal investigation will be carried out.

Formal Investigation

The alleged perpetrator will be advised that the complaint is the subject of a formal investigation. S/he will be given a copy of the written complaint and invited to respond to the allegations in writing with **2 weeks**. A copy of the response will be forwarded to the complainant.

Both parties will be offered the opportunity to avail of in-house counselling and support services.

¹ it is not intended that an investigation will be carried out in order to make this decision

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Principles Governing the Investigation Process

- The investigation will be conducted thoroughly and objectively and with due respect for the rights of both the complainant and the alleged perpetrator.
- Both parties will be required to co-operate fully with the investigation.
- Confidentiality will be maintained throughout the investigation to the greatest extent consistent with the requirements of a fair investigation. It is not possible however to guarantee the anonymity of the complainant or any person who participates in the investigation.
- While circumstances may be difficult, both the complainant and the alleged perpetrator may be expected to continue with their normal duties and maintain a professional working relationship during the course of the investigation. Management will however have due regard at all times for its obligations to safeguard the health, safety and welfare of the employees and patients/clients.
- A written record will be kept of all meetings and treated in the strictest confidence
- The investigator may interview anyone who they feel can assist with the investigation. Employees are expected to co-operate fully with the investigation and will be fully supported throughout the process.
- Employees who participate in the investigation process will be required to respect the privacy of the parties involved by refraining from discussing the matter with other work colleagues or persons outside the organisation.
- It will be considered a disciplinary offence to intimidate or exert pressure on any person who may be required to attend as a witness.

Conducting the Investigation

1. The Investigation will be conducted by person(s) who are acceptable to parties and are not connected to the complaint in any way.
2. The investigator(s) will be issued with written terms of reference based on *the written complaint and any other matters relevant to the complaint*. The terms of reference shall specify that:

-The investigation will be conducted in accordance with the Dignity at Work Policy

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- The investigator(s) will determine:
 - (i) Whether the complaint falls within definition of bullying, harassment or sexual harassment as defined in the Dignity at Work Policy.
 - (ii) Whether the complaint is upheld as the offending action amounted to inappropriate behaviour, bullying, harassment or sexual harassment.
 - Where appropriate the investigator(s) may make recommendations (excluding disciplinary sanction).
3. The investigator(s) may set time limits for completion of various stages of the procedure to ensure that the overall timescale is adhered to.
 4. Both parties will be given copies of all relevant documentation prior to and during the investigation process, i.e.
 - Written complaint
 - Written response from the alleged perpetrator
 - Witness statements (which should be signed)
 - Minutes of meetings.
 5. Both the complainant and the alleged perpetrator may provide details of witnesses or any other person whom feel could assist in the investigation.
 6. The investigator(s) will conduct separate interviews with the complainant and the alleged perpetrator with a view to establishing the facts surrounding the allegations. Both the complainant and the alleged perpetrator may be accompanied by a staff representative or work colleague if so desired.
 7. The investigator(s) will interview any witness to the alleged incidents of bullying/harassment and other relevant persons. An agreed minute of each meeting will be issued to both parties. Confidentiality will be maintained as far as practicable.
 8. Persons may be required to attend further meetings to respond to new evidence or provide clarification on any of the issues raised.
 9. The investigator(s) may, depending on the circumstances of the case, convene joint hearing subject to the agreement of both parties.
 10. The investigator(s) will present preliminary conclusions based on the evidence gathered in the course of the investigation and invite any person adversely affected by these conclusions to provide additional information or challenge any aspect of the evidence.
 11. On completion of the investigation, the investigator(s) will submit a written report to senior management who will ensure that the terms of reference have been complied with.
 12. Both the complainant and the person(s) against whom the complaint is made will be given a copy of the investigation report and will be advised *in writing* that they may submit any comments on the report within **two weeks**.

Outcome of investigation

- If the complaint is upheld, appropriate action will be taken e.g. progression through the disciplinary procedure, counseling and/or mediation. Management will monitor the workplace to ensure that there is no recurrence.

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- Where a complaint is not upheld, no action will be made against the complainant provided that the complaint was made in good faith.
- In the interest of all employees any malicious or vexatious complaints will be treated very seriously and may lead to disciplinary action against the complainant.
- Victimisation or retaliation against a complainant, witness or any other party will constitute a serious disciplinary offence.

Non-Employees

Where complaints against non-employees are the subject of a formal investigation the alleged perpetrator will be expected to co-operate fully with the process and will be afforded fair procedures and an opportunity to respond fully to the complaint.

If the complaint is upheld, appropriate sanctions will apply which may include:

- Exclusion of the individual from the premises.
- Suspension or termination of service or other contact.

Statutory Redress

This policy is designed to support employees in the resolution of complaints of bullying/harassment. However, it does not prevent from exercising their statutory entitlement under the Industrial Relations Acts, 1946 to 2004 or the Employment Equality Act 1998 to 2011. Complaints under the Employment Equality Act must be brought within **6 months** of the last act of discrimination.

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Appendix 1 -Role of the Support Contact Person

The role of the Support Contact Person is to provide information and emotional support in a confidential, non-judgmental and off-the-record discussion(s) to any employee who feels that s/he is being subjected to bullying or harassment or against whom a complaint of bullying or harassment has been made.

The Contact Person only offers emotional support and advice on issues relating to workplace bullying or harassment. The role does not extend to any other forms of workplace grievances or personal problems.

The Contact Person may not act as an advocate or representative on behalf of the person s/he is supporting nor can s/he direct the person as to the best course of action to take.

The aim of the Contact Person is to help the employee to clarify what s/he is experiencing and to empower the employee to decide what course of action, if any, s/he may wish to take.

A Contact Person may not approach the alleged perpetrator/ complainant on behalf of the person s/he is supporting.

The Contact Person may offer support to an employee who feels that s/he is being subjected to bullying/harassment or against whom the complaint of bullying/harassment has been made but not both. If a Contact Person is approached by both parties s/he should support the first person who requests support and refer the second person to another Contact Person.

The Contact Person will treat these discussions as completely confidential and will not be requested to disclose information to a third party. However, where the Contact Person believes that there is a potential risk to an employee, s/he may contact the HR Department so that appropriate professional assistance can be sought.

Prior to taking up the role of Contact Person, the person's line manager will be made aware of what the role entails to ensure that s/he is fully supportive and facilitates time off for meetings.

Meetings between the Contact Person and the employee seeking support should normally take place during normal working hours when the Contact Person is rostered for duty. The Contact Person should notify his/her line manager in advance to ensure cover during his/her absence.

Meetings should take place in a suitable room where privacy can be assured. Where it is not practicable to meet on the work premises, an alternative suitable venue may be used. Under no circumstances should meetings be held where alcohol is served.

The Contact Person will not retain any notes or records of these discussions.

Meetings should generally last no longer than 45 minutes to an hour and no more than 3 to 4 meetings with any one individual should ever be needed. More than this number could mean that the Contact Person is being drawn into a counseling relationship.

No home or personal mobile phone numbers should be exchanged with the person seeking support.

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Appendix 2 -Role of the Supervisor and Manager

Supervisor and managers have a key role to play in the resolution of complaints of bullying and harassment. If an employee raises a complaint of bullying/harassment, the supervisor/manager must treat the complaint seriously and with sensitivity. The manager should establish the precise nature of the offending behaviour and the context in which it occurred. In some cases the employee may wish to discuss the complaint on a strictly confidential basis without any immediate intervention on the part of the manager. In these circumstances the manager should be vigilant and intervene if s/he observes any inappropriate behaviour.

If the employee requests the manager to approach the alleged perpetrator on his/her behalf, the manager should undertake to speak with the person concerned as soon as possible. Where appropriate the manager should attempt to resolve the matter in an informal low-key and non-confrontational manner by making the alleged perpetrator aware of the effects of his/her behaviour and the possible consequences. The manager should avoid labeling the person as a bully/harasser but should impress upon the person concerned that his/her behaviour is causing distress to the employee and outline the possible repercussions of engaging in this behaviour. The manager may facilitate a meeting between the parties to reach an accommodation.

Where this does not bring about a satisfactory outcome, the manager may request the intervention of a manager at more senior level who will make every effort to resolve the matter between the parties.

The manager should keep records of all complaints, the action taken to resolve these complaints and the outcomes. In order to ensure confidentiality, these records should be retained in a separate file from the employee's main personnel file.

The manager should continue to monitor the situation to ensure that there is no recurrence of the behaviour or victimisation of the complainant e.g. hostile treatment from colleagues.