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"Giving a voice to Suffolk care providers"



Guidance on third party harassment and abuse

Code of Practice

1. Introductory note

This Guidance has been developed in partnership between the Suffolk Association of Independent Care Providers and Suffolk County Council, for adoption by care providers and other suppliers to Suffolk County Council and the County Council. It should sit alongside the organisation's Grievance Policy, since staff can take out grievances against their employer if they feel they have failed to take reasonable steps to ensure their workplace is a safe environment for them, free from harassment and abuse.

2. Statement of intent and information about relevant legislation

Care providers have a duty of care to our employees. In this context it is expected and required that adult customers and clients who have mental capacity, to treat care staff with respect and courtesy at all times.

We will not tolerate violence, abuse, discrimination, harassment or threats towards our staff, for any reason. We will take swift and robust action to support and protect staff wherever this occurs, and to prevent any occurrence, as much as possible.

Whilst we understand that customers may be operating in emotional circumstances and may have criticisms of a service or the organisation as a whole, we will not tolerate personal attacks against our staff, whether made in person, on the phone, through social media or other technology.

We will treat particularly seriously any abuse or discrimination related to any of the 9 characteristics protected under the Equality Act: race, religion or belief, disability, sex, sexual orientation, trans or non-binary status, age, pregnancy or maternity, and marriage or civil partnerships.

Whilst this guidance emphasises customers and/or their families as the main potential perpetrators, third party behaviour also covers contractors, suppliers, colleagues from partner organisations, and anyone who is not our employee, who is interacting with our staff during the course of their work for us, or as a consequence of their work for us.

We recognise that there may be sensitivities in addressing and challenging situations where the perpetrator is a family member of the person being cared for. In these situations it may be appropriate to develop a planned approach. We recognise too that overseas care staff may feel particularly isolated and expect that this Guidance will



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assist in providing appropriate support for them in addressing any abuse or discrimination from customers and/or their families, staff colleagues or other 3rd party contractors.

There are legal protections for staff which we as an employer may have direct or vicarious liability for, including the Protection from Harassment Act 1997; the Health and Safety at Work Act 1974; and various implied contractual terms, including the duty to provide a suitable working environment.

NB: We expect all of our staff should challenge inappropriate behaviours where they are aware of them or witness them. We need staff to be active allies and supporters of each other, and stand up for each other and what is right, rather than leaving people to address behaviours which they have faced on their own. This applies to colleagues as well as managers. If taking action on behalf of someone else after an event (rather than in the moment), that person should always be spoken to first, to ascertain what their preferences are.

3. A definition of harassment

What types of behaviour constitute harassment?

Harassment is unwanted conduct that has the purpose or effect of violating a person's dignity, or creating an intimidating, hostile, degrading, or offensive work environment. Harassment also includes sexual harassment: unwanted and inappropriate behaviours of a sexual nature, and any coercion or negative treatment associated with those behaviours.

A 'reasonable person' test applies, which means that an objective person would reasonably consider the conduct in question to be severe or pervasive enough to create an intimidating, hostile, degrading, or offensive work environment. This means that, whilst offensive comments cannot be justified by a defence of being "banter" or "only a joke", there is also protection against spurious or over-sensitive complaints.

Harassment can take many forms including:

- Negative behaviours linked to a characteristic protected under the Equality Act.
- Physical contact, including unwelcome and inappropriate touching, unwanted



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and inappropriate behaviours of a sexual nature, serious physical or sexual assault and any coercion or negative treatment associated with those behaviours.

- Verbal and written harassment through inappropriate jokes, offensive language, indecent or suggestive remarks.
- Graffiti or obscene gestures.
- Posting or sending offensive material by email, post, text or through social media, and/or displaying it in the workplace.
- Isolation or non-co-operation.
- Intrusion by pestering, spying, following (criminal harassment).
- Outing someone – to disclose someone's sexual or gender identity or disability status without their permission.
- Misgendering or 'deadnaming' a trans or non-binary person: i.e. repeatedly and/or deliberately not using the correct gender pronouns, and/or the correct name. Questions about a previous name, without a need-to-know, can be highly offensive to trans people.
- 'Microaggressions' – often people can say or do things which are offensive to others, but perhaps not overtly so, or without any intent or realisation of the impact of their actions or words. However, the cumulative effect of being on the receiving end can be exhausting and upsetting for people from minority groups. Microaggressions, by nature, may not be severe, or repeated from one individual, so may not warrant formal action. However, they should still be challenged and addressed, as something negatively impacting others.

Harassment is linked to equalities:

In employment law, harassment is always linked to a protected characteristic. The Equality Act 2010 lists 9 protected characteristics, which are: age, disability, gender, gender reassignment (including trans or non-binary status), marriage & civil partnerships, pregnancy & maternity, race, religion or belief, and sexual orientation.

Who can make a complaint about harassment?

A person does not need to possess a characteristic in order to put in a complaint: they could be being harassed because of their association with a person who has a protected characteristic, or because they are wrongly perceived to be in a particular group. Additionally, they do not have to be the direct recipient of behaviour to make



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a complaint. Any offensive behaviour on the grounds of a protected characteristic may be harassment, and any person may be offended by it.

4. Steps care providers will take to support and protect our staff:

Take any allegation seriously and take swift and robust action in response to any allegation made by staff of abusive or inappropriate behaviour.

Inform the staff member of their right for the allegation they are making to be formally investigated under the grievance policy, but that they do not have to do this in order for remedial and supportive action to be taken – that must happen in every case. *Note: the grievance will not be against the customer, as that is not possible, but against the organisation as the employer, because of its vicarious responsibilities to protect staff.*

Support the member of staff with extra management time and 1:1s.

Signpost the member of staff to other avenues of support, This could include occupational health, Victim Support, other support offered to staff.

Most importantly: **speak to the member of staff about how they would like us to address the situation.** Some members of staff will wish not to have to work with an abusive or discriminatory customer, whereas others will want to continue to work with the customer, with additional support. Such support could be HR support as above. This could include a facilitated conversation with the customer, so they understand the impact; a chaperone for appointments; changing the venue for physical meetings to somewhere more neutral or public, to be safer; etc.

Where this requires additional staffing input to maintain care and support for the customer, this can be as an addition to the customer's Service Agreement, but only by approval with the customer's allocated practitioner (see Section 10 below).

It may be necessary to adjust the staff member's workload to facilitate them reporting instances and seeking support, so they are not under undue pressure. They may also need to be given a break or time out to recover from the shock or trauma of an event.

Make it clear to the customer and/or family member that their actions are unwelcome, inappropriate and unacceptable, and what the consequences of their actions may be (see the below).

Take time to ensure that the learning or good practice from any intervention is applied proactively across the organisation i.e., that we do not react in silo, but take a coordinated and holistic approach to prevent instances and support staff.

Provide any individual member of staff affected with a list of the actions that we have taken, or will take, to support them, and prevent the behaviours reoccurring.



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Managers should take steps to monitor the situation on an ongoing basis, both in terms of the support the employee may need, and what is happening with the customer.

Managers should make all staff aware that we empower and support them to stop or walk away from any situations where a customer is making them feel distressed or unsafe – this may be putting the phone down, walking away, leaving if safe to do so, etc. No action will be taken against staff for doing this when a customer has behaved inappropriately. If the harassment is coming from a family member and the customer is a witness to the behaviour consideration should be given to raising the concern to the appropriate place, including to Safeguarding.

Display posters and other materials making it clear what the expectations of customers are.

Conduct a health and safety risk assessment form, and report the incident through the organisation's processes. Any incidents should be reported and proactively identify and manage risks where possible (see below).

Refer to the expectations around treatment of our staff in any contracts with suppliers.

5. Risk assessment and risk management process:

Risks may be foreseeable, so managers and employees must take steps to assess risks, then work to minimise the risk of potential incidents.

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| Step 1: Are employees going on lone visits? Does a customer and or family member have a history of abuse? |
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| Step 2: Evaluate the risks. |
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| Step 3: Record the findings |
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| Step 4: Continually review and revise the assessment to keep it safe and effective. |
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6. Action care providers may take against people who behave inappropriately towards our staff:

It will be necessary to take into account the circumstances of the case, particularly where the person behaving inappropriately may lack the mental capacity to make a decision about their actions. In other words, that they cannot reasonably be expected or required to behave in the same way as people who present with the mental capacity to make an informed and reasonable decision about their actions.

We must also be mindful of any responsibilities we have towards customers, and any safeguarding risk that may arise from taking action against them. There may also be



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extenuating circumstances. Notwithstanding this, the organisation's action will be swift and robust in dealing with unacceptable behaviours.

If there is a formal investigation, we will expect the customer to cooperate with it, particularly where the customer expects or wants either an outcome to the situation to be given, or a continuation of the service.

We will challenge unacceptable behaviour, reinforcing the expectations with regards to treatment of our staff, and the potential consequences of both the behaviour, and any continuation of the behaviour. We will do so sensitively, allowing for the possibility of raising awareness and learning on the part of the customer.

It is expected that our customers should not refuse or request service from a particular member of staff on the basis of a protected characteristic (unless there is a genuine occupational requirement: for example, customers in receipt of intimate personal care are able legally to specify the sex of the person to give them that care). If we did allow this, we would in effect be both enabling discrimination, and actively pursuing it ourselves.

If the customer gives a different reason for their refusal of a particular member of staff, or is not explicit about their discrimination, but previous or other behaviours lead us to reasonably believe that the customer's reason is on the grounds of discrimination, we will treat the situation as if that is the case, without seeking definitive proof.

Where relevant, and having consulted the staff member concerned, we will report criminal behaviour to the police.

This will apply to any offences that are related to hate crime – in criminal law, this currently includes race, disability, religion, sexual orientation or gender identity. Hate crime can include verbal abuse, intimidation, threats, harassment, assault and bullying, and damage to property.

For serious and/or repeated behaviours, we may take the decision to withdraw services to that customer – this would include, but is not confined to, any abuse related to a protected characteristic, and more generally any violence, threats of violence, stalking or doxing (finding out personal information about someone and publishing it online). For services commissioned by Suffolk County Council such decisions will be taken jointly so that it can be deemed an "agreed hand back".

Other actions we may take may include: placing time limits on contacts; restricting the number of contacts; limiting the customer to one medium of contact and/or requiring them to communicate only with one named member of staff; taking action to remove posts on social media and/or limit future access to the organisation's social media; requiring contacts to take place in the presence of a witness; refusing to discuss a



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particular issue further; setting up a facilitated conversation between the customer and the member of staff (if both parties agree); changing the staff member who is serving the customer (not at the request of the customer, but guided by the preference of the staff member); a chaperone for meetings or appointments; and changing the venue or time of meetings.

We will display posters to remind customers about acceptable behaviours.

Where customers may not have mental capacity as an adult – for instance but not exclusively, children, or adults who have dementia, learning disabilities or mental health conditions – we may be more constrained in terms of the expectations we can put upon the customer, and also our ability to withdraw the service. However, action should still be taken to support the staff member, as per the guidance above, and, wherever possible, to let the customer know that their behaviour was unacceptable. We need to be sensitive in how we do this – an inappropriate comment, if handled well, can be a teachable moment.

The above actions may cause a delay, interruption or dip in quality of service to the customer, which will have happened as a consequence of their unacceptable behaviour.

We will minimise this as much as we can, bearing in mind our statutory responsibilities, but some dip or delay may be unavoidable whilst the matter is being addressed.

7. Process for reporting and recording incidents:

Concerns should initially be raised with the person's line management or a senior manager, in accordance with the provider's own policies. They should consider any information received and address it in accordance with the requirements of this policy.

8. Manager actions for reporting:

Manager receives concern and creates action plan with employee, including response to customer. Manager undertakes an initial assessment of the information received, to determine if further investigation will be necessary and if so, who is best placed to complete this, considering skills, knowledge and areas of expertise. Some concerns may be resolved by agreed action without the need for investigation.

Manager completes Health & Safety incident notification form.



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Manager notifies senior management and HR. The senior management team maintain a log of all concerns received and the action taken. This will help to ensure that all complaints received are addressed on a consistent basis, no matter where they have been initially reported or investigated.

9. Investigations by Adult and Community Services and commissioned providers:

Allegations of harassment, discrimination or abuse by an adult or carer must be taken seriously and investigated at the earliest possible opportunity.

It is important to note that the adult or carer may have valid concerns and be unable to express them in a constructive way; and the investigation should consider whether this has resulted in use of harassing, discriminatory or abusive behaviour. The concerns should be investigated to ensure all parties have adequate opportunity to share relevant information.

10. Roles for operational practitioners:

A Mental Capacity Assessment may be required to consider the person's capacity to form intent to harass, discriminate or abuse, while also considering the adult's executive capacity when using or weighing up information in the situation. Consultation with Legal Services may be required.

The practitioner should collaborate with Safeguarding, Service Development and Contracts and Care Quality Commission if appropriate. The practitioner and Contract Manager should jointly determine what information is to be shared if there is to be a change in commissioned provider.

Head of Operations and Partnerships must be notified if considering a withdrawal of care provision or deciding not to seek alternative commissioned services. In these situations, this information should be escalated to Area Director.

Where there are situations requiring immediate action and the customer does not have an allocated practitioner within ACS, the provider should approach the Contract Manager to seek support in facilitating urgent allocation of operational resource to fulfil these responsibilities.

11. Roles for commissioned providers:

Contracted Providers have an obligation to support their staff in the delivery of care, and to protect them from 3rd party harassment, and maintaining continuity of care, in accordance with the ADASS Eastern Regional Contract.



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The provider must alert Customer First, the allocated practitioner and their Contract Manager as soon as possible of any circumstances where the delivery of care and support is affected through issues of harassment, abuse and discrimination in accordance with this guidance if they are experiencing difficulties which they require our help to resolve. Where the customer concerned does not have an allocated practitioner, the Contracts manager will facilitate urgent allocation of operational resource.

It is expected that the contracted provider will support the affected member of staff and take the steps outlined in paragraphs 4 – 8 above.

The provider must ensure they have taken all reasonable steps to maintain continuity of care where possible including evidence of where they have tried to resolve the difficulty in partnership with social work services and the allocated contract manager.

12. Roles for Service Development and Contracts:

When a provider is having difficulty delivering care and support, the practitioner and Contract Manager must explore options together with the contracted provider to resolve the concerns prior to sourcing an alternative service. Where the customer does not have a current allocated practitioner, the Contract Manager will facilitate the allocation of such resource to support this process.

The Contract Manager will ensure that contracted providers have appropriate policies and procedures in place to effectively manage situations of harassment, discrimination and abuse. Where contract monitoring identifies deficits in this area, the Contracts Manager will require the contracted provider to develop this as a matter of priority.

