

## How to manage discrimination from patients and their guardians/relatives



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## Introduction

We support a zero-tolerance approach to abuse and harassment of doctors, healthcare workers and employees by patients and their guardians/relatives, and harassment on the basis of protected characteristic is included in this. We support a doctor's right to refuse treatment to patients in some circumstances, if they are discriminating against, abusing or harassing the doctor or other colleagues. These broad principles of course apply to all healthcare staff and employees in healthcare settings, but this guidance focuses on doctors and the professional/regulatory context in which doctors practice in the UK.

Negotiating between a patient's right to healthcare and a healthcare professional's right to be protected from abuse and discrimination can seem like a difficult path to navigate in a caring profession. Medical professionals spend their everyday working lives in these environments. They should be able to count on their employers to meet a duty of care: to keep their working environment safe, protect them from abusive behaviour and to maintain an environment where everyone is treated with respect and civility. This guidance provides a framework for how to navigate this difficult area. This is a topic that is difficult but can be managed effectively when employers acknowledge that they have a duty of care and put in place effective measures to deal with it. This guidance contains key principles to consider when making a decision about the right course of action, as well as suggested steps to take – pre-emptively, at the point of an incident, and post-incident.

This guidance is focused on discrimination and abuse that occurs from patients/guardians/relatives towards healthcare workers. Where possible it states this clearly but if not stated it should be inferred that all people associated with the patient are included.

This guidance provides an explanation of the types of behaviour that constitute harassment on the basis of a protected characteristics and how to deal with that harassment in healthcare settings. It also covers all communications between patients (their guardian/relatives) and the healthcare worker – including where communication might happen outside of the physical workplace setting, such as via email, phone calls and social media.

This guidance distinguishes between patients who are being abusive and those who are expressing a preference.

This guidance does not relate to conscientious objection or the manifestation of religious and cultural belief for doctors when participating in some procedures.

Some of the references in this guidance relate specifically to England, however the legislation and principles presented are equally relevant to Scotland, Northern Ireland and Wales.

Many of these issues will also apply to medical students, although some of the duties to protect and support them will fall on their medical school/university rather than the employer as they are not direct employees. Work-placement settings and medical schools/universities should work together to support students when incidents like these occur.

# Section 1: Background

## Key principles

1. All healthcare workers have a right<sup>1</sup> to work in an environment free from abuse, harassment, and unlawful discrimination.
2. Employers should take active and explicit steps to protect their staff from abuse, harassment, and unlawful discrimination. This should involve the police and social services where appropriate.
3. The impact of discrimination on doctors should be acknowledged and appropriate support including wellbeing interventions provided for those who are on the receiving end of abuse and discriminatory behaviours.
4. All patients have a right to emergency healthcare regardless of their behaviour, where this can be provided safely.
5. All patients have a right to non-emergency care, but this is conditional.
6. There are some instances in healthcare where requesting a personal characteristic of a healthcare worker is valid (see Section 3: Exceptions).

## Definitions

**Assault** (which is colloquially taken to include battery) includes any act by which a person intentionally or recklessly causes another to suffer or apprehend immediate unlawful violence. Physical contact is not necessary, merely the belief that you are imminently about to be physically harmed. For example, spitting at someone may be an assault whether it makes contact with the victim or causes fear of immediate unlawful physical contact.

There are several definitions of harassment in criminal, civil and employment law.

**Harassment** in criminal law is defined as threatening, abusive or insulting words or behaviour that are likely to 'cause fear of, or to provoke, immediate violence' or cause 'harassment, alarm or distress'.

**Harassment** under the Equality Act 2010 is 'unwanted conduct related to a protected characteristic' that:

- violates someone's dignity whether it was intended or not.
- creates an intimidating, hostile, degrading, humiliating or offensive environment for the person, whether it was intended or not.

Harassment can also be unwanted conduct that is sexual in nature, termed 'sexual harassment'.

The protected characteristics are:

- age
- gender reassignment
- being pregnant or on maternity leave
- disability
- race (including colour, nationality, ethnic or national origin)
- religion and belief
- sex and
- sexual orientation

Case law has also determined that the following characteristics are also covered: caste, non-binary and gender fluid.

<sup>1</sup> This right is based on a legal and ethical duty on employers to provide a working environment free from discrimination, bias, harassment and other behaviours that impact health professionals and in turn interferes with or undermines patients' rights (social, political, human rights) to access appropriate services.

## The issue

Discriminatory requests, comments and abuse can be very distressing for healthcare workers and may cause them to feel fearful, uncomfortable, and devalued. Experiencing discriminatory actions and words can lead to short and long-term impacts on doctors' health, wellbeing and dignity.

Healthcare workers most often work in settings where they engage with people. In the NHS, the NHS Constitution (for England) states that 'the NHS belongs to the people'. People are diverse, with different genders, ethnicities, religions, beliefs, disabilities, ages, social backgrounds etc. Doctors, healthcare workers and patients all have these diverse and intersectional characteristics. When healthcare workers engage with patients (and their guardians/relatives), they are providing a service, and are expected to be fair, non-discriminatory, non-biased and culturally competent in the care they provide. During these patient and healthcare worker interactions the expectation is that the patient (and their guardians/relatives) will also show the healthcare worker civility and respect, to enable the worker to do their jobs, resulting in the best healthcare outcome for the patient.

No healthcare worker should be made to feel shamed because of the unlawful or disrespectful behaviour of a patient or their guardian/relative, for example refusing to be treated by them because of their personal and protected characteristics such as, colour, ethnic background, religious beliefs or other personal characteristics.

There are times when, due to a variety of circumstances, patients (and their guardians/relatives) do not show healthcare workers dignity or respect, by presenting unlawfully discriminatory or abusive behaviours or language in their interactions. This can manifest in several forms; a non-exhaustive list of frequently reported examples include:

- Hate crime, defined as an action demonstrating hostility based on race, religion, disability, sexual orientation or transgender identity.<sup>2</sup>
- Harassment of any form including sexual harassment.
- Making comments about the clinical ability of a doctor related to gender, race, disability etc.
- Making derogatory or discriminatory comments about a doctor's appearance or behaviour, related to their religion, gender identity, sexual orientation or other characteristics.
- Abusively or unreasonably refusing the care of a particular doctor.

## Right to health and care for patients

All people have a right to the highest attainable standard of health. This right is recognised by the United Nations, European Council and in the Human Rights Act 1998 in the UK.

The NHS constitution for England reiterates that patients 'have the right to access NHS services. You will not be refused access on unreasonable grounds'<sup>3</sup> It also states in its expectation of patients 'Please treat NHS staff and other patients with respect and recognise that violence, or the causing of nuisance or disturbance on NHS premises, could result in prosecution. You should recognise that abusive and violent behaviour could result in you being refused access to NHS services.'

## Legal protection

As stated above in the definitions, harassment can be a form of discrimination. When perpetrated by patients (and their guardians/relatives) towards healthcare workers it is defined as 'third-party harassment'.

The Health and Safety at Work Act 1974 states that employers have a duty to ensure the health, safety and welfare of their employees, which includes preventing abuse, harassment and bullying. This is the case for any risk to an employee's health and safety at work. An employer should act to protect a member of staff who is being abused or harassed by a third-party in the same way as if they were being harassed by a colleague. These incidents would also include wider communications between patients (their guardian/

<sup>2</sup> [Hate crime definition](#); CPS; [accessed 08-11-21]

<sup>3</sup> [NHS Constitution for England](#); Updated January 2021; NHS

relatives) and the healthcare worker – including where communication might happen outside of the physical workplace setting, such as via email, phone calls and social media.

Previously, an employer could be in breach of the Equality Act 2010 if they failed to take reasonable steps to prevent third-party harassment at work where they were aware of it having occurred on at least two occasions. This provision, known as Section 40, related to all protected characteristics, but was repealed by the government in 2013. In 2021 the UK government confirmed that it will introduce a new duty on employers to pro-actively prevent sexual harassment. They have also indicated that as part of this they will reintroduce protection from third-party harassment – it is not clear yet whether any new law will apply only to sexual harassment or all forms of harassment more broadly.

The Employment Rights Act 1996 allows employees with two years of continuous service to bring a claim to an employment tribunal if they have been unfairly dismissed. Where an employee has been forced to leave their job because of unlawful or unreasonable actions by their employer or because their employer has failed to protect their employees from bullying and harassing behaviour, the employee may be able to claim that their forced resignation amounted to unfair dismissal under the Employment Right Act 1996. Generally speaking, in such cases the employee has to be able to show that their employer's conduct was so bad that it left them with no choice but to consider their employment terminated. Legal advice should be taken before resigning.

In summary, the right of a doctor to refuse treatment in some circumstances is based on a legal and ethical duty on employers to provide a working environment free from discrimination, bias, harassment and other behaviours that impact health professionals and in turn interferes with or undermines patients' rights (social, political, human rights) to access appropriate services.

### Government guidance

Racial abuse in any form is unacceptable and illegal.<sup>4</sup> However, we know that there is a historic and ongoing issue of people who use services making requests for a different healthcare professional to care for them on the basis of their race. In 2019 the then Secretary of State for Health, Matt Hancock, sent [a letter](#) to all NHS staff stating that 'if a patient asks to be treated by a white doctor, the answer is "no". Your management must and will always back you up... staff of all backgrounds should rightfully expect to work in an NHS that exhibits a healthy, inclusive and compassionate culture.' The BMA absolutely agrees with the principle that all staff must be treated with dignity and inclusivity and that managers must support this but feels that Mr Hancock's phrasing was very broad-brush and does not take account of the context and complexities that can sometimes be present at the point of care (see Section 3: Exceptions).

The NHS has a 'zero tolerance to violence' policy and supporting campaign. The policies and principles under both this campaign and trust policies can be applied to some instances of discriminatory behaviour from patients (and their guardians/relatives) towards healthcare workers. It is important to recognise that an organisation can have a zero-tolerance approach to violence and simultaneously recognise that the violence might be related to an acute pathology affecting a patient's behaviour.

### Duty of care from employers

Organisations that run patient-facing services cannot control the behaviour of those patients (or their guardians/relatives) – but each situation can be managed effectively to ensure the minimum harm to the healthcare worker and maintain a safe working environment. We know from our members that far too often when doctors experience discriminatory abuse there are no clear supportive pathways, often compounded by confusion about the role of bystanders/witnesses and gaps in local employer policies and processes. Ultimately unlawful discrimination is an issue of health, safety, and wellbeing for all healthcare workers, and ensuring that all workers in our health service are treated with equality, dignity and respect must be a matter of priority.

<sup>4</sup> For example under the Human Rights Act 1998, Equality Act 2010 in England, Wales and Scotland with similar legislation in Northern Ireland, and section 66 of the Sentencing Act 2020 relating to hate crimes.

The NHS Constitution for England states that staff in the NHS have a right to 'have healthy and safe working conditions and an environment free from harassment, bullying or violence' and 'are treated fairly, equally and free from discrimination'. But most importantly, employers who allow their staff to be discriminated against by patients, by allowing patient preference that cannot be justified (as set out in Section 3: Exceptions) is a form of institutional discrimination. Employers who do not take action to address the discriminatory behaviours of patients, could be subject to legal action.<sup>5</sup>

Protection from unlawful discrimination from patients (and their guardians/relatives) on the basis of protected characteristics is often implicit in employer policies of zero-tolerance against violence and harassment. However, in reality these policies are not often used to manage instances of discrimination.

### Professional regulation

Doctors can feel conflicted between a duty to provide care and their right to be protected from abuse. There have been reports that some doctors have feared that the GMC might question their fitness to practise when they found themselves in the situation of potentially refusing to treat a patient.

In 2019, the BMA wrote to the GMC asking for confirmation that if doctors refused to treat abusive patients in some circumstances (where there was not an urgent need for care and the behaviour was not related to a clinical condition) they would not be censured by the GMC. The GMC said that its position was aligned with the BMA's, it advised that:

- Where the GMC receive a complaint about a doctor, they have a legal duty to consider the case and do this by reviewing the specific facts of each case on an individual basis, taking into account the reasons for a doctor's actions or decisions.
- 'A doctor who is able to show that they had made the decision to refuse care to a patient appropriately and professionally, in line with the local policy and procedure, BMA guidance and [the GMC's] ethical guidance would be in a good position to justify their actions should they be challenged'.

#### *A doctor's beliefs*

This guidance does not relate to conscientious objection based on personal belief or values – the [BMA](#) and the GMC provide guidance on personal beliefs and conscientious objections. Doctors must not refuse to treat a particular patient or group of patients because of their own personal beliefs or views about the patient(s).

<sup>5</sup> Legal action could be taken in all health and care settings, including public, private and independent.

## Section 2: Steps to take

### All employers

Employers should take all reasonable steps to protect their employees from harassment or abuse.

They should:

- have clear notices on premises and on websites that unlawful discriminatory behaviour is not acceptable.
- support workers by giving guidance on how to respond when faced with an abusive patient. Employers should have mechanisms in place so workers can report it and access support after any distressing event, including liaison with police and legal action when appropriate.
- review their policies and mechanisms for supporting their employees in dealing with racial or other forms of abuse and the reporting and recording of cases of bullying, harassment and discrimination by patients, their families and other third parties, such as contractors.
- make clear in notices and communications with patients that such behaviour is not acceptable.
- make it explicit in their zero-tolerance policies for violence that they also cover discrimination from patients (and their guardians/relatives) against healthcare workers.
- create a specific zero-tolerance policy for unlawful discrimination against healthcare workers (see Annex 1: Model policy).
- take steps actively and publicly – such as displaying posters across NHS premises - highlighting its zero-tolerance approach to discrimination.
- consider how harassment may operate outside of the physical workplace environment, via communications online and in social media platforms. These situations should also be covered in the policies and how to protect employees.
- put in place safeguarding protocols to explicitly include sexual harassment and harassment related to protected characteristics.
- provide wellbeing support for workers after distressing events.
- provide bystander training for all staff members to be able to effectively respond when discriminatory behaviours are presented by patients (and their guardians/relatives), to give confidence to all members of staff to report incidents of discrimination they witness.

### General practice

For general practitioners running a primary care service there are additional steps that can be taken to manage patients who are abusive, discriminatory or harass staff on the basis of their protected characteristics. These include:

- Formally communicating with a patient via a letter about the impact of their behaviours and the potential that action could be taken, including reporting the behaviour to the police if it is deemed to be unlawful discrimination or hate crime.
- Removal of patients from GP practice lists. The BMA provides [guidance](#) on how to do this.

The following sections sets out steps that should be taken when an incident of abuse, harassment or unlawful discrimination on the basis of a protected characteristic occurs. These steps can be taken by any worker in a position to do so (the healthcare professional on the receiving end, other workers who are bystanders/witnesses, clinical managers, site managers, security, senior managers, etc). However, ultimately it is the duty of senior leaders to ensure that policies are adhered to, and that the healthcare worker is protected.

### When a patient requests a healthcare worker with a particular characteristic

If a patient (or their guardian/relative) requests a particular personal characteristic that appears to be on the basis of unlawful discrimination,<sup>6</sup> potential responses include:

(See below section 3: Exceptions for situations when a request for a particular characteristic might be lawful and valid).

<sup>6</sup> Unlawful discrimination as defined in UK legislation and employment law, such as the Equality Act 2010, Human Rights Act 1998.

1. Immediately engage with the individual who has displayed discriminatory behaviours – in your communications use language and tone that is clear, calm and objective.
2. If possible, ask the patient (or their guardian/relative) why they are making that request.
3. Tell the individual that their behaviour is unacceptable in this healthcare environment. Be specific and give examples of their language/behaviours that were discriminatory or inappropriate.
4. If the request appears to have no reasonable merit (see section 3), advise patients (or their guardians/relatives) that these requests cannot be accommodated.
5. Inform them that the available health and care professional is capable of delivering their care.
6. If the patient agrees to remove their request – consult with the healthcare professional. Colleagues/managers should not assume that the professional will not be willing to continue to provide care, but should make clear that if they wish to withdraw on wellbeing grounds, that this will be respected.
7. If patients (or their guardians/relatives) insist on their request, advise them of the likely impact on being able to receive care at that organisation, their right to seek care elsewhere and the process involved in seeking care at another provider. Additionally, there may be certain situations where a professional decision can be made based on duty of care for the patient, to remove the guardian/relative displaying the behaviours and continue treatment of the patient.
8. Carefully document such a refusal to confirm that the patient truly understands the risks, benefits, and alternatives to their request.

### Abuse, harassment and hate crime

When a patient (and their guardians/relatives) are abusive (physically or verbally) take the following steps:

1. Make the environment safe. This may mean calling the police or security services, removing the perpetrator from the environment and/or consider moving the person who is receiving the abuse to a safe space temporarily for their protection and wellbeing.
2. Immediately engage with the individual who has been abusive telling them that their behaviour is unacceptable in this healthcare environment. Be specific and give examples of their language/behaviours that were abusive.
3. Consider the following immediate options:
  - a. Asking the individual to leave immediately (backed up by police/security if needed).
  - b. Telling them that they will have to adjust their behaviours or they may be asked to leave the service.
  - c. Advise them of their right to seek healthcare elsewhere but that all employers do have a duty to protect their staff from abuse.
4. If the patient is having emergency care or does not understand the situation due to an underlying pathology, consider how to revisit the conversation at a point when they may be able to understand (this could include sending a letter at a later date when they are no longer in care). See Section 3 for more information on this.
5. Carefully document the incident and actions taken. Write objective facts and observations, avoid noting subjective opinions. See annex 1 on monitoring in the model policy.
6. Additional steps to consider:
  - a. Ban the individual from the department or use a behavioural agreement for future encounters.
  - b. Report the behaviour to the police if it is deemed to be unlawful discrimination and/or hate crime.
  - c. Complete an internal incident reporting form.

### Healthcare workers on the receiving end of the incident

When faced with incidents of harassment on the basis of your personal or protected characteristic consider taking the following steps. If you have witnessed an incident these steps might also be relevant as witnessing an incident may also have significant impact on a healthcare worker.

1. Talk to your colleagues and managers about your concerns and the impact of the incident on your wellbeing.
2. Contact the BMA (if you are a doctor), your union, staff support networks and employee assistance programmes for advice and wellbeing support.
3. Advise your employer of their duty of care to take steps to protect you from abuse.
4. Consider what steps you would like the employer to take and share these options with them.
5. Share this guidance and model policy with your employer.
6. If no action is taken, consider making a complaint through formal complaints and grievance procedures. Seek advice on how to do this through the organisation's human resources department and your union representatives, such as the BMA.
7. Document all incidents with dates, times, people involved, and actions taken.

## Section 3: Exceptions

There are some instances where patients are discriminatory that should be dealt with differently. These can be categorised under three headings:

1. **When a patient's behaviours are linked to an underlying condition or pathology** e.g. mental health illness, dementia.
2. **When the behaviour is from a legal guardian of the patient e.g.**, parent of a child or person who has power of attorney for a patient.
3. **When the characteristic of the healthcare worker will affect the physical and mental wellbeing of a patient** e.g. requesting a specific gender for a personal or sensitive care, or psychological treatment.

### When a patient's behaviours are linked to an underlying condition or pathology

Sometimes, abusive behaviour can be a facet of a patient's distress and inability to cope. Unexpectedly aggressive or disinhibited behaviour can be the result of a patient's medical condition.

- Patients who are abusive should not be denied urgent treatment or immediately necessary care, where this can be provided safely.
- Where such behaviour does not arise as a result of underlying pathology, and treatment is not urgently required, we support a doctor's right to delay or refuse immediate treatment.

When a patient displays discriminatory or abusive behaviours due to an underlying pathology, it could be assumed that they have limited control over those behaviours. However, the impact of their behaviours is still relevant. For example, a healthcare worker who works on a ward where there are many patients with dementia may face racial abuse daily – no matter if the patient's illness is causing or escalating their behaviours, the doctors on the receiving end of abuse will be affected by the abuse, and it must be managed.

Where a patient has an underlying pathology that leads to the discriminatory behaviours, there are three actions to take:

1. The patient should still be challenged about their behaviour, potentially when they are in a period of awareness – if that is not possible the behaviours should be documented.
2. Secondly, the healthcare worker who was on the receiving end of the abuse should have their wellbeing checked and given support to discuss their experiences and how they would like it to be dealt with. It is essential that the negative impact on the healthcare workers is acknowledged and options for how to deal with the patient discussed.
3. Discuss all options. Moving or discharging the patient should be discussed as a viable option. It is important that the healthcare worker on the receiving end of the abuse is not moved without first discussing if this would have a negative impact on them, as this could be perceived as a punishment on the person who is the victim of the abuse.

### When the behaviour is from a legal guardian of the patient

There are situations where the discriminatory preferences don't arise from the patient being treated. For example, this may occur if the patient is a child, and their parents or guardians are making the request, or if the patient is an adult and the request is coming from those legally responsible for their health decisions. In these situations, the requestor should be spoken to directly and have all the options as to the consequences of their behaviour discussed with them. The healthcare professional subject to unlawful discriminatory behaviour should be involved in discussions about what action would honour their dignity, which could be consistent either with still seeing or with not seeing the patient, depending on their preference. In all these situations, protection of the healthcare professional should be a key concern, balanced with the needs of the patient to have appropriate and timely care.

In these situations, options could include the following (and potentially more than one at once):

- Immediately confronting the individual who has displayed discriminatory behaviours and tell that their behaviour is unacceptable in this public healthcare environment. Be specific and give examples of their language/behaviours that were discriminatory or inappropriate.
- That the legal guardian acknowledges their behaviour, apologises and agrees not to exhibit the behaviour again.

- That the behaviour will be recorded on the patient's record.
- Obtaining agreement that the legal guardian is to be asked to leave the environment.
- If the legal guardian is abusive, but their presence is necessary for the wellbeing of the child/dependant adult, delivering care with security support.
- The legal guardian being removed from the environment (with security or police involvement).
- Engagement of child protection and vulnerable adult procedures if the safety of the child/dependant adult is at risk, e.g., if the care for the patient is being restricted there may be a need to involve social services.
- Involvement of the police and security to ensure safety of healthcare professionals.
- As a last resort, discharge the patient from care – dependent on the presence of abuse, the way the request is expressed, and the health needs of the child/dependant adult.

### When the characteristic of the healthcare worker will affect the physical and mental wellbeing of a patient

There may be examples where there is evidence that there are disproportionately poor healthcare outcomes for a group and that service provision at a local level is trying to rectify those outcomes. In these instances, the consideration of the ethnicity, gender, etc., of a healthcare worker could be an organisational response to patient need based on evidence, not patient preference alone (which could be based on discrimination).

There are some instances when a patient may need their healthcare worker to have a particular characteristic for valid reasons, where that personal characteristic is necessary to deliver reasonable care. This is accommodated for within the Equality Act 2010 that defines this as an 'occupational requirement',<sup>7</sup> which for example allows exclusively women to be employed as counsellors in a women's refuge. What is deemed 'valid' is broad and context-specific; examples could be for personal care or to support an agreed treatment plan where the characteristic of the patient as it relates to the protected characteristics of the healthcare workers has been identified as linked to the illness being treated. These valid reasons must be distinguished from a patient who wants to choose a healthcare worker's protected characteristic purely based on unlawful discriminatory reasons, with no clinical benefit.

Psychological impact may be another reason when having a healthcare professional of certain characteristics may be better for patient care e.g., someone who has knowledge or experience of the ethnic, cultural or religious background of a patient as it relates to their personal experiences that may be relevant to their healthcare. An example would be the practice of 'race conscious medicine' to counteract racial health inequalities and improve 'cultural safety'.<sup>8</sup> For example, having an ethnic minority psychiatrist where a patient's trauma is identified as being a result or experiences of racism, or similarly a woman psychiatrist for a woman who has been the victim of sexual violence from a man. These situations should be dealt with on a case-by-case basis, weighing up the benefits to patient care – while also planning how decisions like this should be managed to ensure that all parties understand why such accommodations have been made.

### Gender and personal care

When operating a service that deals with personal care, processes should be in place to accommodate requests that are valid. Intimate examinations and personal care may mean that some patients want a healthcare professional of the same gender.

In [paragraph 8](#) of the GMC guidance on [Intimate examinations and chaperones](#), it states '*When you carry out an intimate examination, you should offer the patient the option of having an impartial observer (a chaperone) present wherever possible. This applies whether or not you are the same gender as the patient.*'<sup>9</sup>

Whether or not a patient can request the healthcare worker to be born in a specific sex is not covered by the guidance, although it is likely to be a very small number of incidents where this issue may occur.

<sup>7</sup> *Equality Act 2010 Code of Practice: Employment Statutory Code of Practice; Chapter 13: Occupational requirements and other exceptions related to work*; 2011; Equality and Human Rights Commission

<sup>8</sup> *Racial profiling for induction of labour: improving safety or perpetuating racism?*; 2021; Douglass, C and Lokugamage, A; BMJ

<sup>9</sup> *Intimate examinations and chaperones*; 2013; GMC

When a person has affirmed their gender to be different than the sex they were assigned at birth, they are protected from discrimination. The sex they were assigned at birth becomes irrelevant to their current working and day-to-day lives. A patient does not have a right to know if a healthcare worker has a gender different to the sex they were assigned at birth. In some instances, a healthcare professional may not physically present in a way that could be assumed to be any gender.

As outlined above, in some instances, for the psychological safety of a patient, there may be occasions where accommodations can be made about the presenting gender of a professional who treats a patient – this would be on a case-by-case basis. For example, if a patient had been the victim of sexual abuse by a person of a particular gender, they may ask for a professional to examine them who physically presents in a different gender. If the patient then refused treatment from a particular healthcare worker who came to examine them, this should be dealt with sensitively, and communicated to the worker how it would be managed with their agreement. In reality, the potential situations where issues like this would arise, although limited, are varied in how they would manifest. It is important to recognise that trans people are a very diverse, heterogenous group and individuals may have transitioned at different life stages and may not physically present as trans, gender fluid or in binary gender norms that are evident to a patient.

## Section 4: Further resources

### BMA guidance:

- [Medical Ethics Today](#), the BMA's Handbook of Ethics and Law for more information on the doctor patient relationship.
- Guidance for GPs on [removing patients from your practice list](#).
- [Racial harassment charter for medical schools](#) – a charter for medical schools to prevent and address racial harassment.

### GMC guidance:

- [Intimate examinations and chaperones](#) guidance.
- Ethical guidance for doctors around [Ending your professional relationship with a patient](#).
- [Leadership and management](#) guidance that relates to the responsibilities of consultants and other senior medical leaders' responsibilities to protect staff from discrimination.

### Medical defence unions:

- The Medical Defence Union provide guidance on how to deal with racist patients and [when to contact the MDU](#).
- [Safe approach to handling racist abuse](#) from the MDDUS (Medical and Dental Indemnity Protection UK).

### The BMJ has several articles of debate on the topic which provide scenario-based context to consider when thinking about how to deal with discriminatory patients:

- [Dealing with racist patients Doctors are people too](#); BMJ 1999;318:1129
- [Managing patients who express racist views](#); Baraitser, P; J Fam Plann Reprod Health Care 2006: 32(1)
- [Allowing patients to choose the ethnicity of attending doctors is institutional racism](#); Moghal, M; BMJ 2014;348:g265
- [Addressing racist parents in a paediatric setting: the nuance of zero tolerance policies](#); BMJ 2021;375:n3067

# Annex 1: Model policy – zero-tolerance of unlawful discrimination from third parties against healthcare workers

The policy should be publicised to all staff and should be easily accessible. Policies should be accompanied by training and awareness raising to cover how unlawful discrimination allegations should be investigated and what options might be available to sanction or pursue third parties who harass staff (e.g., do they need to be reported to the police, should they be refused treatment), as well as how complainants should be treated. Simply having the policy is not enough. It is fundamental that those to whom allegations are likely to be reported understand the importance of treating those complaints seriously, and how to listen to complainants.

Any policy should have these elements (where relevant more information is given below):

1. The aims of the policy
2. The legislation as it relates to protecting healthcare staff from unlawful discrimination
3. Employer commitment
4. What is not acceptable behaviour
5. How to raise a complaint (at the point of the incident and after)
6. Monitoring and follow-up.

## Employer commitment

Employers with workers who come into contact with third parties or service-users have a difficult path to tread. They need to make sure that their staff are protected and supported, but at the same time, they cannot fully control the actions of those third parties. The policy should state that unlawful discrimination of staff by patients, relative, or legal guardians will be taken seriously and appropriate action taken, where possible, to prevent harassment.

## What is not acceptable language and behaviour?

All employees must know what language and behaviour is and is not acceptable and it is fundamental for employers to educate their staff accordingly. In addition, training for managers and HR teams on how to handle complaints of harassment, including from third parties, is also essential.

## How to raise a complaint or concern

It must be also clear in the hospital or other workplace environment how to raise a complaint or concern. Guidance on complaints must specify how to raise a complaint about third parties.

When the incident is happening – it is good practice to confront the individual if it is safe to do so (unless they are unable to understand at that point in time) to be clear to them and other people who have witnessed the unlawful discriminatory behaviour that it is unacceptable. If possible, at this stage also engage the person to understand why they have made such statements/requests.

After the incident, it should be documented officially and the person who has been on the receiving end given information about their potential options for escalation and resolution, and access to wellbeing being support.

Staff should have all options presented to them – including how to contact Freedom to Speak Up Guardians or take further legal action.

### Monitoring and follow-up

Where the incident is documented will be dependent on the environment that the incident occurred in, including but not limited to:

- The patient notes if there is concern for the future safety of healthcare workers.
- The human resources notes for anyone that received/witnessed the abuse – linked to wellbeing and follow-up with that healthcare worker in their 1-1 meetings with managers.
- Internal incident reporting forms to ensure data is collected by the organisation about such incidents, that can be monitored by the organisation and national bodies such as the Health and Safety Executive. This could be health and safety incident records for that organisation/site, for example Datix in the NHS.<sup>10</sup>

### Wellbeing

The policy should ideally also give details of any appropriate third-party organisations and health care providers who can help and advise victims of unlawful discrimination, harassment (or other sexual misconduct) and wider abuse.

<sup>10</sup> In the NHS, Datix is the electronic system used to report any incident which has the potential to produce unexpected or unwanted effects; or any adverse or positive incident which has a consequence or learning point i.e., an event that causes a loss, injury, or a near miss to a patient, staff or others.

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