SEXUAL HARASSMENT PREVENTION AND ACTION POLICY

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1. THE POLICY STATEMENT

Cumbria Medical Services (CMS) is committed to providing an inclusive, supportive and safe environment for everyone who works here. This policy applies to all employees, consultants, self-employed staff, casual workers, agency workers, volunteers and trainees/students.

The aim of the policy is to prevent, respond to incident that arise, and take action to effect long-term change by:

- educating all staff about sexual harassment and their role in developing a culture free from harassment.
- fostering a working environment that supports the dignity and respect of all and is free from any form of discrimination, bullying, harassment and violence including gender-based violence.
- where harassment does occur, providing a process and procedure for dealing with it to ensure it is properly managed;
- capturing learning from what happened to help create an environment free from harassment;
- monitoring our progress in achieving a workplace free from harassment; and
- building continuous improvement into our culture.

Everyone has a part to play in being aware of, preventing and dealing with sexual harassment. The policy sets out the expectations for behaviour of our staff as well as what we can do to protect all staff from sexual harassment. It is supported by the Directors of CMS and they will all be visible champions of this policy.

CMS will not tolerate any form of sexual harassment in the workplace, will treat all incidents seriously and promptly investigate all allegations of sexual harassment. There is no time constraint around reporting an incident of sexual harassment under this policy and our Grievance and Disciplinary policies and procedures. At the Employment Tribunal there is a time limit for bringing cases of sexual harassment of three months less one day from the last act of harassment.

Sexual harassment will be treated as a disciplinary offence. Appropriate disciplinary action, including warnings and dismissal with or without notice in accordance with the staff disciplinary procedure may be taken against any person who violates this policy. There may also be circumstances where further training is mandated for individuals, teams of the whole organisation.

No one will be victimised for making a complaint of sexual harassment or for helping another person to make such a complaint. This means that anyone who makes such a complaint or who helps someone to make such a complaint, for example by giving evidence or information, will not be treated badly because of their actions. No one will be subject to disciplinary action or to any other detriment simply because their complaint is not upheld.

This policy and the procedures outlined in it form part of a broader intersectional anti-sexism strategy aimed at preventing and eradicating the sexual and sexist harassment of all works and all other forms of gender based violence. Details of the wider suite of related activities can be found in the policies folder on CMS' shared network.

CMS Directors have overall responsibility for this policy.

While this policy does not form part of any contract of employment or contract to provide services, and may be amended at any time as set out above, all staff will be made aware of this policy and will be expected to comply with it. This policy will be communicated to all staff on a regular basis using a variety of methods including induction, training, information and publicity, team briefings and departmental meetings.

The following policies should be read in conjunction with this policy:

- Disciplinary
- Grievance
- Capability / Absence Management
- Equal Opportunities
- Bullying and Harassment
- Data Protection
- Health and Safety
- Raising Concerns

2. WHAT IS SEXUAL HARASSMENT?

Sexual harassment is prohibited under the Equality Act 2010. It occurs when a person is subject to **unwanted conduct** of a sexual nature which has the purpose or the effect of:

- violating the person's dignity; or

- creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

Unwanted conduct that has one of these effects can be harassment even if the effect was not intended. A single one-off event or a series of incidents can amount to sexual harassment. A person can be affected by sexual harassment even if the conduct is not targeted at them.

It is also unlawful to treat someone less favourably because they have either submitted a complaint of sexual harassment or have rejected such behaviour.

Anyone can be a victim of sexual harassment, regardless of their sex, sexual orientation or gender identity or that of the harasser. Sexual harassment may occur between people of the same sex. CMS recognises that sexual harassment often arises as a form of violence against women and girls. Sexual harassment can also be a form of violence targeted at men and those with non-binary gender identities.

Under international law, sexual harassment constitutes a breach of a person's human rights.

Sexual harassment is often a manifestation of power relationships and frequently occurs within unequal relationships in the workplace, for example between manager or

supervisor and a more junior colleague, or a longstanding employee and a new joiner. It frequently arises as a result of sexism and power inequalities between women and men. In cases where sexual harassment is found to have occurred, such abuses of power will be taken into account in deciding what disciplinary action to take.

CMS also recognises that certain vulnerable or minority groups may be more at risk from sexual harassment. Where a person has more than one protected characteristic, this may increase the risk of them experiencing sexual harassment. This is because multiple categories of identity such as gender, race, sexuality, trans status, religion and disability can interact in ways that create complex systems of oppression and power which can result in harassment based on a combination of different aspects of a person's identity. This is referred to as intersectional harassment.

3. WHAT IS 'UNWANTED CONDUCT'?

Unwanted conduct covers a wide range of behaviour which is unwanted or unwelcome.

Types of behaviour which constitute sexual harassment include, but are not limited to:

Physical Conduct

- Unwelcome physical contact including patting, pinching, stroking, kissing, hugging.
- Fondling or inappropriate touching.
- Physical violence, including sexual assault and rape.
- The use of job related threats or rewards to solicit sexual favours.

Verbal Conduct

- Banter
- Mimicry
- Comments on a worker's appearance, age, private life, etc.
- Sexual comments, stories, jokes or pranks
- Sexual advances
- Repeated and unwanted social invitations for dates or physical intimacy
- Insults based on the sex of the worker
- Condescending or paternalistic remarks
- Sending/sharing sexually explicit messages/images (by any medium)
- Coercion
- Gas lighting (a form of covert emotional abuse)

Non-Verbal Conduct

- Display of sexually explicit or suggestive material or imagery
- Graffiti
- Acts affecting a person's surroundings
- Posts or contact on social media
- Sexually suggestive gestures
- Facial expressions
- Whistling
- Leering
- Predatory behaviour

The effect of such behaviour and whether it is unwanted should be considered from the point of view of the person who feels harassed (the "recipient").

There may be other sexual behaviour, which though not unwanted, is still inappropriate in the workplace (including in a place that may legally count as work such as at a work event or walking home). For example, engaging in a consensual sexual act in the workplace. CMS does not permit sexual contact in the workplace and any such behaviour may still be addressed as a breach of the sexual harassment policy. CMS recognises that if this behaviour were allowed to take place, there is a risk of one party believing that the conduct is welcome and the other considering the conduct to be unwanted, either at the time or in hindsight. This can increase the risk of sexual harassment.

4. EXAMPLES OF SEXUAL HARASSMENT

The following examples are intended to provide illustrations of the types of behaviours that will constitute sexual harassment. They are not exhaustive – there are many more examples of such behaviour. Importantly, sexual harassment can arise in various forms and to different degrees. As part of the review process for this policy, CMS will ensure that the specific examples given in this policy are updated so as to reflect the specific work environment in which its staff operate taking into account the composition of the workforce and the types of work undertaken.

Certain types of harassment may be linked to more than one aspect of the recipient's identity. This is intersectional harassment. Examples that illustrate this are included her, but this policy is not fully intersectional and must be read with the Bullying and Harassment policy for further guidance on other forms of discrimination.

Some forms of sexual harassment are clear violations of a person's dignity:

Example One

A black female worker overhears two colleagues discussing whether she would be willing to have sex with them. They express the view that she would be "really easy to get into bed" because "black women love sex".

Sexual harassment does not have to be targeted at one individual:

Example Two

A music promoter adds a link to their email signature to a promotional video for a rock band. In the video, scenes of a sexual nature are portrayed by actors. Every time they send an email to their colleagues and to their contacts outside the organisation, this link is received.

Sexual harassment does not have to be intentional:

Example Three

A worker believes that her male colleague uses the fact that she is in a wheelchair as an excuse to make physical contact with her. She feels the situation is complicated by the practicalities and power dynamics of needing support from others with certain tasks. She wants to report the issue but thinks he may not realise he has been doing this.

It is not necessary for the recipient to say that they object to the behaviour for it to be unwanted:

Example Four

A young woman's body is repeatedly referred to by two of her colleagues. These comments are made in front of her over several months. She does not voice an objection to the comments, sometimes laughing at them and, on one occasion, she responds by making equally offensive comments about one of her colleagues.

There may be circumstances in which a course of conduct is not unwanted in the earlier stages, but at some point 'oversteps the mark' and becomes unwanted.

Example Five

Two work colleagues become friendly, often having lunch together and occasionally meeting up outside of work. One Friday night, after a few drinks at the put, they kiss and agree to meet again the following weekend. On the Monday morning, one takes the other to one side and explains that they regret what happened and would like to keep their relationship professional. The employee who wishes to keep the relationship going texts and emails the other employee several times a day over the next week, expressing their affection and upset at the 'change of heart' and repeatedly asking to meet up outside of work despite this request being repeatedly refused.

There may be circumstances where behaviour feels appropriate to those involved but causes concerns for others who may see or overhear it, even if nothing is targeted at them. This could still amount to sexual harassment in breach of this policy.

Example Six

A group of employees are chatting in the office about the finale of a TV show that they have all been watching. The TV show is popular though it is renowned for being sexist and sexually explicit at times. Those engaged in the conversation are all comfortable talking about the show and the sexual content, focusing on scenes depicting lesbian activity. However, others who sit in the open plan office feel uncomfortable. They are worried that the group may try to involve them in the conversation as they do not want to talk about the show that they find misogynist, homophobic and degrading to women. They do not think anyone needs to be discussing it at work. They are also worried that if they voice that view they will be judged by the group who like the show.

5. WHEN DOES THIS POLICY APPLY?

This policy will apply to any unwanted conduct that occurs in the course of a person's work and which takes place at their place of work, including in their home while working from home, on their commute, or at/while travelling to a place which is not their place of work if they are there for any reason related to their work, including for a work-related social event, business trip, training session or conference.

6. WHAT IF THE ALLEGED PERPETRATOR IS NOT A MEMBER OF STAFF?

The sexual harassment of staff will not be tolerated, whether caused by those that work here or third parties including patients, suppliers, or visitors to CMS premises.

Any instance of work-related sexual harassment should be reported in line with this policy, regardless of who the alleged perpetrator is. We act in accordance with the EHRC's Guidance on third party sexual harassment and employer's liability available here: Sexual harassment and harassment at work (equalityhumanrights.com)

7. PREVENTING SEXUAL HARASSMENT

This section should be read in conjunction with the policies listed in section 1. The Health and Safety policy is particularly relevant and other policies will provide context-specific guidance. For instance, the Bullying and Harassment policy should be consulted when alleged misconduct may incorporate intersectional discrimination.

As set out in section 2, sexual harassment can be more prevalent in certain environments, including where there are disparities in power between different groups of staff. That is often linked to women and men working at different levels of seniority within organisations, and includes power disparities as a result of disability, sexual orientation, gender identity, race and age. Women are the overwhelming majority of those who are sexually harassed at work. Disabled women, young women and LGBT workers experience even greater rates of sexual harassment. Women of colour frequently experience racialised sexual harassment.

High levels of workplace stress can be a contributory factor in creating a working environment in which sexual harassments is more likely to occur. Stress occurs where there is either excessive demand on staff and/or reduced resources. It can arise due to excessive working hours and limited recovery time, work precarity, high levels of staff absence/sickness and turnover that leave remaining workers to pick up additional tasks. In these contexts, workers' ability to self-regulate can be overwhelmed to create 'hot spots' of more pervasive workplace incivility, including raised levels of bullying, harassment, verbal and physical incivility and violence of which sexual harassment is an extreme outcome.

8. THE EMPLOYERS' DUTY OF CARE

The law imposes a duty of care on employers to provide a safe system of work for all staff. This includes a specific obligation to protect the health, safety and welfare of their staff and others who might be affected. In discharging this legal duty, we recognise that there are certain measures that can help to prevent sexual harassment in the workplace including ensuring that adequate measures are in place to tackle sexism and address inequality between women and men and people with non-binary identities, as well as other forms of discrimination including racism, ableism, homophobia, transphobia and ageism, and to prevent the conditions which cause and exacerbate high levels of stress. CMS is committed to the adoption and operation of such measures, including:

- **Improving the gender balance at all levels of the organisation**

- **Improving diversity and inclusion at all levels of the organisation**

- **Staff Survey:** ascertaining how working conditions impact on staff and identifying any areas of concern. To this end an annual workplace survey will be conducted the results of which will be consulted on to identify any action that needs to be taken.

- **Data monitoring:** Staff data related to sickness absence rates and turnover will be carefully monitored in accordance with the Sickness policy to identify patterns of behaviour as it is recognised that they can be linked to high stress levels and associated behaviours which may be indicative of sexual harassment.

- **Good management practices:** including anti-discrimination management practices, competent and respectful people management, awareness of the consistency in taking appropriate preventions and interventions (including prompt and unambiguous action to visibly demonstrate that concerns regarding sexual harassment will be taken seriously).

- **Risk assessments:** that include consideration of factors that can increase the risk of sexual harassment including: workplace stress, power imbalances, job insecurity, lone working, patient-facing duties and lack of diversity and inclusion in the workforce.

- **Equality impact assessments:** that take account of the differential effects of organisational policies, procedures and practices on certain groups or individuals depending on sex, sexual orientation, gender identity, race, age, disability, religion or belief and pregnancy and maternity and follow-up actions to address these effects and to increase diversity and inclusion within the workforce. This will include recognition of intersectionality.

- **Continuous awareness raising:** about the nature and impacts of sexual harassment, common reactions to sexual harassment and the requirement of respectful behaviour for all staff to create a culture free from harassment and identify and address incidents when they occur. Awareness of this policy, a copy of which will be made available to all staff on the shared network and a copy will be provided to all new workers on induction. The policy will also be available, as appropriate, in translated versions for those who first language is not English and in accessible formats such as easy read, braille, large print and sign language.

- **Senior Leadership Champions:** this policy is supported and championed by senior members of staff within CMS. They will be actively involved in promoting it and being vocal champions of the policy.

- **Appropriate and targeted training:** on sexual harassment and about this policy for all staff, including supervisors and managers at all levels of the organisation. It will include ally, role model and no-more bystander training to promote clarity about sexual harassment and the value of speaking out to raise concerns. The training is mandatory for all staff and will form part of the induction for new staff and staff receiving promotions or moving to new roles. Training will include information on sexual harassment as a form of violence against women and a breach of human rights that is rooted in sexism and other inequalities, what

constitutes harassment and its impact on individuals and the organisation, how to report sexual harassment, colleagues' role in reporting and prevention, and the related responsibilities of all staff. The training will be interactive, i.e. not completed independently online, ongoing and tailored to the context of CMS' workplace. It will be gender competent and culturally competent and will address the needs of different members of staff. Training will be monitored and evaluated as part of the annual review of this policy.

This will also include targeted training for all managers potentially responsible for investigating and making decisions in relation to complaints and disciplinary processes. This will include training on recognising sexual harassment, intersectionality, understanding the variety or reactions to sexual harassment and dispelling misconceptions.

- **Trained Sexual Harassment Support Workers and confidential reporting options:** CMS will provide contact points where staff can raise concerns in a confidential discussion of their situation and be provided with information regarding how to take further action and what support is available.

- **Monitoring progress:** the policy and CMS' progress against its objectives will be transparently reported on and discussed, including team meetings and at Practice meetings.

9. RESPONSIBILITIES OF MANAGERS

All those with line management responsibility must ensure that all workers are aware of this policy and understand their own, and the organisation's responsibilities. Targeted training on sexual harassment will be provided to all managers.

Managers and supervisors have a particular duty to ensure that, within their area of responsibility, everybody is treated with dignity and respect.

To discharge this duty, they must:

- Always challenge any unacceptable or questionable behaviour that they become aware of even if they are not directly affected.

- Be aware of behaviour and language that can cause offence including jokes and banter, and if necessary, remind workers of the expected standards.

- Respond to complaints of sexual harassment swiftly, sensitively and objectively using the specified procedure outlined at Appendix 1.

- The focus in dealing with complaints should be to understand what has happened and address that proportionately, including where this involves the employer acknowledging failing and accepting fault and blame where appropriate.

- Deal directly with third party perpetrators (such as patients, visitors and contractors) outlining actions which may include withdrawing service, terminating a contract, banning from the premises if the behaviour is not moderated.

- Ensure that this policy is followed.

The Practice Manager or suitably trained member of staff will assist any line manager in dealing with complaints of sexual harassment.

All complaints of sexual harassment must be dealt with in accordance with CMS' Data Protection policy.

In terms of their own behaviour, managers are expected to be exemplars to others. Any inappropriate behaviour or response to such behaviour or abuse of a manager's positional power will serve to condone harassment and will be considered a serious breach of this policy and be managed under the Disciplinary policy.

A line manager's failure to actively implement this policy within their area of responsibility, or to fail to deal with sexual harassment when they become aware of it, could constitute a breach of this policy and their employment contract, and disciplinary action may be taken.

10. SEXUAL HARASSMENT SUPPORT OFFICERS

CMS recognises that it can be difficult for individuals to discuss or report sexual harassment, for example, if the individual's manager is the perpetrator or is aware of the harassment but has not taken action to stop it, the worker is reluctant or too embarrassed to raise the matter with their manager, or feels that their manager may lack the skills, knowledge or sensitivity to deal with complaints of sexual harassment.

CMS is committed to ensuring that such difficulties are overcome so that allegations of sexual harassment are raised and can be acted upon. To aid in this endeavour, Sexual Harassment Support Officers (SHSO) have been designated to deal with complaints of sexual harassment and to offer advice to workers who believe that they or their colleagues have experienced sexual harassment. At CMS this role is undertaken by the Practice Manager and one of CMS' Directors. SHSOs receive appropriate training.

The main role of the SHSO is to:

- Provide empathetic assistance and support to workers with complaints of sexual harassment.
- Explain the procedures for making a complaint and the potential outcomes.
- Establish the main details of the complaint.
- Help the worker to decide what they want to do.
- Pass the complaint to an appropriate manager for action if the worker decides to take the matter further.

CMS will ensure that Sexual Harassment Support Officers receive special training in carrying out their role. Sexual Harassment Support Officers will discuss cases in complete confidence and will not divulge information to any other person without the agreement of the worker (save in cases where there is a serious risk to health and safety and sharing with appropriate parties is considered necessary in which case this will be done in a minimal way using anonymous/non-identifiable information whenever possible). Sexual Harassment Support Officers will have sufficient facility time within their roles to carry out their duties.

A worker who makes any disclosure to a Sexual Harassment Support Officer about sexual harassment is under no obligation to take further action. Workers who have been sexually harassed are not obliged to refer their complaints to Sexual Harassment Support Officer(s) and any such disclosure is made voluntarily.

When information is shared with the Sexual Harassment Support Officer it will be kept confidential at that point (save in cases where there is a risk to health and safety and sharing with appropriate parties is considered necessary as explained above). The Sexual Harassment Support Officer will explain the next possible steps and what may happen next with information, the safeguards in place, who it is kept confidential from and the circumstances in which it may be shared.

11. RESPONSIBLITIES OF WORKERS

All Staff have a responsibility to contribute to a respectful and productive working environment. This includes supporting and caring for their colleagues and service users. All staff have a duty to assist in the creation of a safe working environment, where sexual harassment is not tolerated.

To discharge this duty, individual members of staff must:

- Ensure they understand what sexual harassment is.
- Be aware of how their behaviour may affect others.
- Challenge unacceptable behaviour wherever possible as long as it is safe to do so. Forms of intervention include: calling out behaviour that is unacceptable when it happens and addressing the person who is behaving inappropriately; taking steps to defuse the situation/redirect those involved; checking in with the recipient of the behaviour after it has taken place, assuring them that what occurred was not acceptable.
- Report incidents of sexual harassment when witnessed and/or support recipients of sexual harassment in reporting it.
- Co-operate in investigations into alleged sexual harassment.

12. WHAT SHOULD I DO IF I HAVE SEXUALLY HARASSED SOMEONE OR BEEN ACCUSED OF DOING SO?

If you have, or are concerned that you have, engaged in unwanted conduct of a sexual nature (intentionally or otherwise), you should take responsibility for your actions as soon as you can, as they may amount to sexual harassment. This is important as it may prevent the recipient of your behaviour from experiencing further trauma. For further advice, you should contact a Sexual Harassment Support Officer who will treat any information as detailed above.

If you have been questioned, accused, charged or prosecuted for a criminal offence (including one of sexual harassment, assault or rape) in relation to anything that has happened in a work context you must report this to us immediately.

This applies even if you deny the alleged conduct or do not consider the alleged conduct to be connected to work. A failure to report this could amount to gross misconduct in itself.

Alleged sexual harassment may be investigated by CMS under this process, the Disciplinary policy or otherwise and could also amount to an act of misconduct/gross misconduct or otherwise result in your dismissal (including summary dismissal).

If, at any time, you are asked (verbally or in writing) by someone who considers your behaviour to amount to sexual harassment to stop, you must not persist in that behaviour. You should also report the incident to your manager or a Sexual Harassment Support Officer. In such circumstances, it is important that you reflect on your behaviour and the way in which it is perceived and experienced by others. Remember that everyone has the right to decide what behaviour is acceptable to them and to have their feelings respected by others. An authentic apology and genuine assurance that the behaviour will not be repeated may be enough to end the matter. However, in some cases a direct apology without a third party to facilitate may not be appropriate and advice from Sexual Harassment Support Officer should be sought in advance. You should be sensitive to the reaction/potential reactions of the recipient. If the recipient refuses to accept your apology or is upset further by it, you should not persist in contacting them. You should also seek advice from a Sexual Harassment Support Officer and/or report your behaviour to your line manager or a senior manager at this point.

13. WHAT SHOULD I DO IF I AM THE RECIPIENT OF UNWANTED CONDUCT OF A SEXUAL NATURE?

You can report any concerns to your manager or a Sexual Harassment Support Officer. In some cases, you may feel able to ask the perpetrator to stop the behaviour. If that is ineffective, or you do not feel able to do this, an informal discussion with a Sexual Harassment Support Officer can be a useful way of talking through what has happened and deciding what further action you wish to take. Such discussions will be dealt with in confidence. However, if the harassment is of such a serious nature because of the high immediate risk to the safety of the complainant, or others with whom the perpetrator may come into contact, the employer may need to take further action. Information on external support that is available will be provided whenever you report sexual harassment (pleas also see links at the end of this policy).

Recipients of sexual harassment are encouraged to report any instances of sexual harassment, victimisation or discrimination experienced. Reporting is an important step in preventing the behaviour and it is important to the recipient's ongoing health, safety and wellbeing, and will enable them to access appropriate guidance and support. However, CMS recognises that there may be many reasons that someone how has experienced sexual harassment may not report it and are committed to making it easier and less stressful to do so.

14. WHAT SHOULD I DO IF I HAVE WITNESSED UNWANTED CONDUCT OF A SEXUAL NATURE?

You do not have to be the recipient or target of sexual harassment to raise a concern or make a complaint. If you see it happening, or become aware of it, you should report it provided it is safe to do so and you feel able to do so. CMS recognises that past experience of sexual harassment may make this difficult. Your actions can be important in helping create a culture free from sexual harassment and ensuring that there are no bystanders. Tackling sexual harassment is everybody's responsibility. Those who have witnessed sexual harassment can use the reporting mechanisms outlined below.

15. REPORTING MECHANISMS

It is important that any concerns are reported as you may be the first to formally raise something that has been occurring for some time.

There are different ways in which you can report such behaviour (see Appendix 2 for a Process Flowchart). These different methods recognise that each individual who experiences sexual harassment will have different needs and might desire different outcomes. You should choose the reporting mechanism(s) that you feel most comfortable with.

CMS retains the right to investigate concerns that it becomes aware of even if these are based on anonymous reporting or complaints are withdrawn. CMS' ability to investigate and take action may be restricted in these circumstances, and it will act with respect and empathy towards any person who has raised a concern but no longer wishes to be involved in the process. As an employer, CMS may still pursue matters if it is appropriate and proportionate to do so. This is important to ensure that it can tackle concerns about potential sexual harassment within the organisation.

Reporting to a Sexual Harassment Support Officer

An informal discussion with a Sexual Harassment Support Officer can be a useful first step in talking about what has happened. See section 10 for details of the Sexual Harassment Support Officer role and confidentiality rules.

This may be followed by a formal report. There is no obligation to make a formal report, but as outlined below, for legal reasons, formal action to address specific incidents will normally only be taken once a formal report has been received.

Reporting to an External Third Party including the Police

Any person can make an anonymous report of sexual harassment. Such reports can be made at any time in place of, or in addition to an informal or formal report and will be dealt with in the strictest confidence. The person making the report should provide as much detail as they feel comfortable with. No one within CMS will have direct access to the information contained in the anonymous report.

No direct action can be taken against any individual perpetrator of sexual harassment in response to an anonymous report, but the data generated from such reports will be gathered and stored in compliance with data protection laws. This can be very important in revealing a pattern of behaviour. High level data will be collated and, once all possible identifying features have been removed, it will be passed to CMS in order to inform CMS ab out the extent and nature of sexual harassment. If appropriate, structural changes to the way in which the organisation currently operates will be made with a view to preventing sexual harassment.

A person may also report concerns about sexual harassment to the police when they consider it appropriate to do so.

Informal Reporting

If a person reports sexual harassment to a line manager, but does not want to take the matter any further, the individual receiving the complaint will keep in contact with them to periodically check whether the situation has improved.

Although the wishes of the complainant to keep the report on an informal footing will be adhered to wherever possible, there may be some circumstances where the harassment is of such a serious nature that the employer will need to take action because of the high immediate risk to the safety of the complainant, or others with whom the perpetrator may come into contact with. In such situations, the employer will put in place appropriate safeguards, such as instigating a formal investigation with suspension, or transfer of the alleged perpetrator, to prevent further harassment, or victimisation of the complainant.

Formal Reporting

If information action does not stop the sexual harassment, or a formal report is made, a formal procedure should be initiated in line with the grievance outlined in the CMS' Grievance policy.

The process allows both the complainant and the person against whom the complaint is made the right to be accompanied by a trade union representative, or a colleague, or any other person of the complainant's choosing.

A person who believes that they have been sexually harassed and who decides, whether after discussions with a SHSO or not, to formally report it should, in the first instance, report the alleged act or acts to their line manager. If they do not feel that the line manager is an appropriate person, for example if the line manager is the person doing the harassment, the senior report should be made to a Sexual Harassment Support Officer or a more senior manager. Where possible, the worker should set out in writing details of the complaint including dates and times of the alleged incident(s) and an account of the behaviour. They should also include what their desired outcome is; Sexual Harassment Support Officers can support workers in establishing this.

All complaints will be handled and investigated in a timely and confidential manner. The complainant will be invited to a meeting with the person to whom the report is made within 10 working days of reporting the alleged act or acts. The worker will have the right to be accompanied at this meeting by a trade union representative or a work colleague. Following this initial meeting, the person to whom the complaint is made will instigate an investigation to be undertaken by another person, 'the Investigator', and will then step back from the process.

16. THE INVESTIGATION

At the outset of the investigation the position concerning confidentiality will be explained to participants before they take part. In practice, there will be a requirement for those giving evidence (including complainers and alleged perpetrators) to the investigation to keep what they have said in the process confidential (though they will be given details of those in the organisation that they can speak to for support). It will also be explained how the information they provide in the process may be used and shared in the future. While the sensitive nature of information will be respected and it will be managed accordingly, participants should understand that the information may be used as part of a subsequent HR process. For example, it could form part of a disciplinary investigation in which case the information would be shared with the alleged perpetrator. It may be that materials are ultimately used as evidence in legal proceedings which could be held in a public forum. Within the organisation, confidentiality will be maintained as far as possible, with information only being shared when appropriate. CMS may at times need to involve external agencies where a criminal offence may have been committed, or if maintaining confidentiality would pose a risk to the complainant or to others. In all other circumstances, breach of confidentiality may be a disciplinary offence.

Staff shall be guaranteed a fair and impartial hearing whether they are the complainant or the alleged perpetrator.

As a first stage in investigating the complaint, a manager ('the Investigator') will arrange to interview separately the complainant, and the alleged perpetrator, both of whom may be accompanied by a trade union representative or work colleague. CMS recognises that the complainant may prefer to talk to an investigator of the same sex and this will be facilitated wherever possible.

Managing a complaint under this policy will mirror the structure of the CMS' grievance process while also recognising the unique issues and skillsets that may be needed to properly manage a sexual harassment complaint.

An investigator will be appointed. The default position is that the investigator will hold the same role as the grievance hearer. Their remit will be to:

(i) investigate the complaint;
(ii) provide an outcome to the complainant; and
(iii) where appropriate make a recommendation as to whether the matter should be referred to a disciplinary process centred around the alleged perpetrator.

CMS' default approach is for the person investigating the concern to decide on the outcome for the complainant because they will have a first-hand understanding of all of the information and have spoken with all witnesses. This reduces the need for the person raising the concern to re-tell their story to multiple people and CMS hopes will therefore minimise the need to re-open any past trauma. However, the person raising the complaint under this policy will have the option of requesting that a separate person be appointed for stages (i) and (ii) above. That would create separation between the investigation stage and the decision making stage. The person raising the complaint should request this at the time of raising the complaint should they wish to build in that separation. CMS will then discuss the impact of that change in process with them and agree a final approach with the preference of the complainant being accommodated unless it would be unreasonable to do so.

As explained at (iii) above, one possible outcome could be that disciplinary action is recommended, in which case the investigation carried out under this policy will form part of the disciplinary investigation. An independent manager will always be appointed as Disciplinary Hearer. The Disciplinary Hearer will be responsible for satisfying themselves that a reasonable investigation has been carried out for the purpose of the disciplinary matter they are tasked with considering (that may be the same as, wider than, narrower than, or otherwise different from the complaint investigated under the sexual harassment policy). In doing so, they may instruct the Sexual Harassment investigator to carry out further investigation for the disciplinary process. A separate disciplinary investigator may be appointed to complete the disciplinary investigation (and that person will be able to rely on all materials contained in the sexual harassment investigation as far as appropriate).

The Disciplinary Hearer may also carry out further investigation themselves. It is possible that in a sexual harassment matter a disciplinary hearer may wish to speak to certain witnesses including the person who raised the complaint first hand to gain a fuller understanding of their evidence. The Disciplinary Hearer will conduct a fair disciplinary process while remaining mindful of minimising the circumstances in which a complainant is required to re-tell their account as this may re-open past trauma.

A timeline for completion of the investigation will be set and communicated to the complainant, along with regular updates on progress. Should the timeline be subject to change, a clear explanation will be provided to the complainant by the investigator. CMS will also explain to recipients of sexual harassment when information may be shared with an alleged perpetrator to ensure that they are not surprised at any stage in the process.

If the sexual harassment constitutes a potential criminal offence, such as a sexual assault, indecent exposure, stalking and/or offensive communications, the investigator will provide them with appropriate support should they wish to report the matter to the police. In such cases, CMS will liaise with the police regarding the investigation and any linked grievance and/or disciplinary processes and take advice on how to conduct a fair process. Where there is an ongoing risk of serious harm to an individual, the investigator will contact the police directly and inform the complainant that they have done so. CMS may choose to begin liaising with the police on an anonymous/no names basis for high level guidance where appropriate.

CMS also recognises that when a workplace matter is also the subject of potential criminal investigation, the alleged perpetrator may be seeking independent legal advice, and as part of that may be advised not to participate in the internal work process as this could impact upon criminal proceedings. CMS will not draw any adverse inference from any lack of participation in the process for this reason (i.e. CMS will not assume that a failure to respond suggests a person is guilty of wrongdoing). However, CMS may still need to progress matters and take a decision on next steps based on the information available.

CMS will ensure that the complainant, and the alleged perpetrator, are not required to work together while the complaint is under investigation. In a serious case, as a precautionary measure for the protection of the complainant or to prevent interference in the investigation, the alleged perpetrator may be suspended while investigation and any subsequent disciplinary procedure are undertaken. Such suspension will be for as short a time as possible, will be on full pay and will not amount to a disciplinary sanction.

At the end of the investigation, the investigator will provide a detailed response in writing to the complainant specifying outcomes wherever appropriate. If the complaint is upheld, this will include details of the action taken to address the specific complaint and of any preventative or structural measures taken to safeguarding against future incidents of a similar nature.

If the outcome of the complaint is that the matter will proceed to a disciplinary process, the complainant will have a right to know that this will be pursued under a disciplinary procedure. However, they will not have the right to know what the outcome of that procedure was or if any sanction has been imposed. CMS recognises that this can be incredibly frustrating. Some sanctions (for example, an exit from the organisation or apology) will be visible and this can help to reassure the complainant that action has been taken. Other sanctions are “invisible” to others in the organisation (for example, a disciplinary warning or training requirement) and this can lead to concern that no action has been taken. In other situations, processes can be delayed (for example, to accommodate illness or hurdles in the investigation process). CMS wish to reassure all those involved that just because action cannot be seen does not mean steps are not being taken. As an employer CMS has a duty towards all employees and must respect the confidentiality expectation of staff who are subject to disciplinary proceedings.

If relocation proves necessary, the perpetrator and not the complainant will be relocated unless the person complaining requests otherwise.

Where the complaint is not upheld, or proceeds to a disciplinary process under which the outcome involves the alleged perpetrator remaining with the organisation, the disciplinary outcome will include the option of a facilitated reconciliation meeting, at which the perpetrator will be required to attend and the complainer will have the option to attend at their discretion. Support will be made available to all parties involved. The aim will be to understand and re-build professional relationships where possible, failing which to provide closure as far as possible and enable the organisation to learn and move forward. Mediation and/or an offer of redeployment may also be offered to affected parties.

17. OUTCOME AND SANCTIONS FOR COMMITTING SEXUAL HARASSMENT

In some cases the outcome of a complaint under this procedure may be an information resolution, such as an apology or mediated discussion with the alleged perpetrator about how their behaviour is received, or that the matter is not found to amount to sexual harassment. If this is the case the information will be provided to the complainant and any alleged perpetrators. There will be support provided in dealing with the outcome.

If a complaint of sexual harassment is upheld, then it may progress to a disciplinary process. The sexual harassment investigation is likely to be the basis of that disciplinary investigation. The outcome of that disciplinary process could range from no sanction, to a sanction including warnings, compulsory transfers (without protection of wages or salary), and dismissal (with or without notice). These steps will be taken in accordance with the staff disciplinary procedure.

CMS also recognise that the standard of proof in a workplace matter is lower than in a criminal matter. As such, it is possible for there to be different outcomes in different processes as a result of their different remit and scope.

Any decisions taken under this procedure do not preclude any person from pursuing a grievance in the usual way under the staff grievance procedure (though in some cases CMS may consider that it is appropriate for the matter to be addressed pursuant to this policy rather than the grievance process where the concern relates to sexual harassment). An individual may also report the matter to the police if they believe that a criminal offence may have been committed (and they are not required to wait for the outcome of this process to do so).

18. RIGHT OF APPEAL

The complainant has the right of appeal against the decision following the investigation within 10 working days of receiving the decision from the investigator.

Any appeal must be made in writing, stating the reasons for appeal.

On receipt of an appeal, a meeting will be arranged with a more senior manager who has not previously been involved in the procedure, to consider the appeal. The complainant will be given the opportunity to put forward their case and explain why they are not satisfied with the outcome. The meeting may be adjourned by the person hearing the appeal, if it is considered necessary to undertake further investigation. The meeting will be reconvened as soon as possible.

The decision of the person hearing the appeal shall be final.

If disciplinary action is taken against an individual as a result of sexual harassment then they will have a right of appeal as set out in the disciplinary policy.

19. PROTECTION FROM VICTIMISATION

All workers should be protected from intimidation, victimisation or discrimination for making a complaint of sexual harassment or for assisting in an investigation. Retaliating against a worker for complaining about or assisting in an investigation of sexual harassment is a disciplinary offence.

20. MANAGEMENT OF LEGAL DISPUTES

In the event of a legal dispute connected to sexual harassment, we commit to managing such matters appropriately, fairly and with empathy. We recognise that for some people, the formal court and tribunal process can re-open past trauma and cause harm. As such, we commit to always being open to the possibility of alternative dispute resolution and mediation (including judicial mediation) where this is requested by a person who alleges that they have been sexually harassed.

Where sensitive matters form part of proceedings we will always consider whether it is appropriate to apply to the court or tribunal for special orders restricting reporting or protecting anonymity of those involved. While these may not always be appropriate, and will ultimately be a matter of determination for the relevant court or tribunal, CMS will approach any legal proceedings with this in mind to minimise the adverse impact on those who have raised concerns about sexual harassment.

In some cases, a sexual harassment dispute may be resolved by way of agreement. We also commit to not making any settlement agreement, COT3 or other resolution subject to an obligation that the affected individual will be restricted from disclosing their experience of sexual harassment, for example by signing a non-disclosure agreement.

21. REVIEW AND EVALUATION OF THIS POLICY

CMS are committed to ensuring that this policy and all related procedures are effective in preventing sexual harassment and in dealing with incidents when they do occur. Essential to achieving this aim is adequate investment and continuous review and evaluation.

CMS recognise the importance of monitoring this sexual harassment policy and will ensure that it anonymously collects statistics and data as to how it is used and whether or not it is effective.

Managers and those responsible for dealing with sexual harassment cases will report on compliance with this policy to Directors, including the number of incidents, how they are dealt with and any recommendations made. This will be done on a yearly basis, and will be shared with the wider workforce. As a result of this report, CMS will evaluate the effectiveness of this policy and its strategy. CMS will take this into account when reviewing this policy and strategy. Where appropriate goals for improvement will be set publicly and monitored.

Adequate resources will be made available to fulfil the aims of this policy. The policy will be widely promoted, supported by Directors and copies will be freely available at CMS sites and on the network.

This policy will be reviewed every 12 months. CMS will also periodically monitor how successful it is in creating a workplace free of sexual harassment by other means which will include confidential staff surveys, training, raising awareness of harassment and bullying and undertaking risk assessments.

22. SUPPORT FOR THOSE AFFECTED BY SEXUAL HARASSMENT

CMS recognises that sexual harassment can cause stress, anxiety or other mental health as well as physical health problems. Deterioration in job performance which results from sexual harassment will be dealt with as a health-related issue and the person will be encouraged to seek help and support under the terms of this policy.

There will be no discrimination against individuals suffering stress caused by sexual harassment.

CMS also recognises that those who may be accused of sexual harassment, witnesses to incidents or otherwise affected such as by being a by-stander, can experience stress, anxiety or other mental or physical health problems. CMS has a duty of care to support all staff affected by these issues.

Access to independent and trained counsellors will be available to all affected staff in the strictest confidence. No details or records will be disclosed without the written permission of the member of staff concerned. Paid time-off to attend counselling sessions will be offered.

[CMS may, where appropriate, refer the individual to an occupational health provider, advise they seek advice from their GP or refer them to an independent doctor in line with CMS' Sickness Absence policy.

23. USE OF LANGUAGE

Language used when discussing sexual harassment is important. CMS recognises that this is a sensitive subject and individuals may have different reactions to certain words and terminology. While the terms "alleged perpetrator" and "complainer" have been used in this policy, when managing any complaint of sexual harassment CMS will be mindful of the language used. We will seek to use neutral terms such as individual names, initials or "Employee A" for example, rather than referring to people as "the complainer" or "the alleged perpetrator/accused". The term "victim" will not be used to describe a person who raises a compliant about sexual harassment.

If, at any time, during your involvement in a sexual harassment matter you have concerns about the terminology used, please raise this promptly so that agreed language can be identified and used in the process going forward.

APPENDIX 1
HANDLING A SEXUAL HARASSMENT COMPLAINT

Anyone approaching a member of CMS staff to say they have experienced sexual harassment or assault in any way should be offered a compassionate response and support. This may include supporting individuals in reporting sexual assault to the police or contacting other support agencies. This is regardless of whether the alleged perpetrator is another colleague, patient or visitor.

Any reports of sexual harassment or assault, regardless of any preconceptions should be taken seriously. If a member of staff reports any form of sexual harassment or assault, immediate action should be taken to ensure that the person feels safe and is safe, and they should be immediately offered a private place to talk with the most appropriate individual available. Information should not be asked for in any public place and colleagues should be given time to give their full account of any incident.

Where a colleague discloses sexual assault there must be discussion about the disclosure and next steps, this discussion should include senior management.

In instances of sexual assault colleagues should be given information about and be supported to contact ***the bridgeway***, a Sexual Assault Referral Centre in Cumbria (0808 118 6432) who offers medical, practical and emotional support to anyone who has been sexually assaulted.

Victims of serious sexual assault and rape should be encouraged not to wash or change their clothes immediately after a sexual assault as this may destroy forensic evidence that could be important if they decide to report the assault to the police.

It a colleagues wishes to call the police they should be supported to do this in a private place. Sexual assault is reported to the police by calling 101 or 999 depending on the urgency.

The decision on whether to report to the police would usually be for the individual colleague directly impacted by the sexual assault to make. However CMS may decide based on circumstances that a police report should be made regardless of the wishes of the individual.

Where the disclosure alleges that a colleague has assaulted a patient, the police should be informed, regardless of the patient's wishes. If they do not want to report to the police, a manager will need to a third party report.

Any assault must be reported to the most senior staff responsible for the service as soon as possible. It is very important that the person is informed at every stage of what is happening and that, where possible, the same staff member is with them through these initial stages.

Where staff have been impacted by an incident, they should be offered recovery days to be given time to process what has happened and consider what action they wish to take. There should be an agreed person to as a contact for them and reminded of relevant external support if they haven't already made contact with them.

Depending on the circumstances, arrangements may need to be put in place to ensure that the individual and alleged perpetrator do not come into contact, either on a temporary or permanent basis. This may include moving or suspending colleagues in order to support the safety and wellbeing of all.

Investigation Processes and Procedures

All allegations of sexual harassment and assault are serious and should be investigated. The format of the investigation will vary depending on the circumstances of the incident. All investigations should be conducted in a compassionate and supportive manner and in line with a Just and Restorative Learning Culture approach.

It may not be appropriate to immediately alert the alleged perpetrator that a concern has been raised. However, when they are alerted, it is important that they are provided support through any investigation process. An appropriate colleague should be assigned as a point of contact to keep them updated and to sign post to relevant support.

Where a colleague is subject to a police investigation the colleague should notify the Practice Manager as soon as possible.

Patient/Visitor on Staff

If a disclosure alleges that a patient/visitor has sexually harassed or assaulted a member of CMS staff this should be investigated and escalated by local management.

Staff on Patient/Visitor

If a disclosure alleges that a member of CMS staff has sexually harassed or assault a patient this should be investigated and escalated by local management. In the majority of cases the relevant process will be set out in the Disciplinary policy.

Where the victim is considered to be a child or vulnerable adult it is important that the Safeguarding Lead is also informed.

Colleague on Colleague

If a disclosure alleges that a member of CMS staff has sexually harassed or assaulted another member of CMS staff this should be investigated and escalated by local management. All instances of sexual harassment and sexual assault are serious and in the majority of cases should be considered a conduct issue and therefore investigated in line with the Disciplinary policy.

There may circumstances where concerns of sexual harassment can be addressed through informal resolution taking place between the alleged perpetrator and individual who has disclosed the incident. However it is important that this only takes place when it is in line with the wishes of the individual who has been the target of the harassment.

An informal process might include some form of mediation and getting assurance from the alleged perpetrator that any such behaviour will not be repeated. This should only happen if the person making the complaint feels comfortable doing this.

It is important to note that informal resolution or mediation is not appropriate where allegations of sexual assault have been raised.

Incidents which taken place outside of CMS

Where allegations are raised relating to incidents taking place outside of work these may still impact on work and should be considered as per the above.

Where a colleague discloses or is involved in domestic violence outside of work relevant support is listed below.

SUPPORT

LOCAL SERVICES

Victim Services – Domestic Violence – directory of organisations across Cumbria offering support for victims of domestic abuse.

We Protect – Domestic Abuse Alliance – partnership providing a free advice line for victims of domestic abuse and reporting app aimed at support professionals.

Cumberland Council – specialist, confidential services to help those experiencing domestic abuse and require accommodation in Cumbria. There is a statutory duty to accommodate victims of domestic abuse.

The Birchall Trust – counselling and supporting survivors of rape, sexual and domestic abuse.

The Bridgeway – the Bridgeway is a dedicated service that helps women, men, children and young people in Cumbria who have been raped or sexually assaulted either receipt of in the past.

Safety Net – free service supporting the recovery of those affected by rape, exploitation, sexual and domestic abuse in Cumbria.

Victim Services – Cumbria – directory of local organisations providing support for victims of rape and sexual assault.

NATIONAL SERVICES

Rape Crisis - provides free, specialist and confidential support for victims of sexual violence or abuse. Open 24 hours a day, 365 days a year. Tel: 0808 500 2222

Survivors Trust – umbrella agency for specialist rape and sexual abuse services around the UK.

NHS help after rape and sexual assault

AMICAs free, confidential counselling and psychological support service is available 24 hours a day through the phone line or by using the website to access therapeutic modules. Contact 0116 254 4388 / www.amica-counselling.uk/contact-us

Freedom to Speak Up/Guardian Service – free, confidential service can be contacted on 0333 733 5488, if the call goes to voicemail a guardian will respond within the same working day. You can also email the guardian service at: contact@theguardianservice.co.uk

Both **AMICA and the Freedom to Speak Up Guardian Service** can act as first points of contact for colleagues wishing to disclose in confidence any concerns or incidents and discuss options available.

JUST AND LEARNING CULTURE GUIDING PRINCIPLES

- Everyone should be encouraged to live the values of compassion and kindness with colleagues, every day.

- Colleagues should be able to work in an environment where they feel supported and empowered to learn when things don't go as expected, through restorative practice.

- Colleagues should be encouraged to speak the truth about something which didn't go to plan, without fear of punitive individual repercussions.

- In the case of an adverse event, employers should not instinctively ask 'who' was to blame but 'what' led the event to occur.

- Formal disciplinary processes and suspensions should be avoided wherever possible, in favour of explorative conversations, to include discussions about all personal responsibility processes, which are informal and fair, adhering to just and learning principles.

- When there is a need for formal processes, they should be undertaken compassionately, begin with an investigation of the facts around what went wrong and be undertaken in a timely manner.

- Just and learning culture should not be mistaken for an uncritical culture where 'anything goes' – which can be as harmful and inexcusable as a 'blame culture'.

- Whilst the concept of just and learning culture predates the pandemic, Covid-19 has further emphasised the important of treating people as human beings and a just culture naturally aligns with this mind set.

- In addition to creating the culture we aspire to for the good of our colleagues; employers should recognise the potential to save time and money that can be reinvested, as a result of reduced disciplinaries, suspensions and workforce turnover.

- Wherever possible, the natural links and alignment should be drawn between the development of just and learning restorative culture locally and the national expectations around culture as directly by the NHS Chief People Officer.