



& CDET B Craft Unions (e.g. TEEU, INPDU, UCATT and BATU)

HARASSMENT/SEXUAL HARASSMENT PREVENTION POLICY – COMPLAINT PROCEDURE FOR ETB STAFF

Version: February 2018



kcetb

Bord Oideachais agus Oiliúna
Chill Chainnigh agus Cheatharlach
*Kilkenny and Carlow
Education and Training Board*

INTRODUCTION

The Education and Training Board sector has revised its policies and procedures for dealing with complaints of harassment/sexual harassment. This policy and procedure complies with the Labour Relations' Commission (LRC) *Code of Practice Detailing Procedures for Addressing Harassment/Sexual Harassment in the Workplace* (SI¹ 17/2002) and SI 208/2012.

The revision of Education and Training Board (ETB)² policy has been carried out on a partnership basis and has been agreed by Education and Training Boards Ireland (ETBI)³ and trade unions representing staff in the education and training board sector including ASTI, IMPACT, INTO, SIPTU, TUI, UNITE and unions represented by the CDETB Trade Union Group.

This policy applies to all new complaints, whether informal or formal, from February 2018.

Existing complaints being processed through the Formal Procedure of previous Codes/Prevention Policies should continue to be processed through those policies. Where a complaint is at the informal Stage of the previous version of the *Harassment/Sexual Harassment Prevention Policy* and is to escalate to the Formal Stage, that process should now continue using this Procedure at the Formal Stage.

STATEMENT OF ETB POLICY

This policy, the *Bullying Prevention Policy - Complaint Procedure for ETB Staff* and the *ETB's Dignity at Work Charter*, together comprise the ETB's dignity at work policy.

The ETB is committed to working together to maintain workplace environments that encourage and support the right to dignity at work. All who work in the ETB, its customers, clients and business contacts are expected to respect the right of each individual to dignity in their working life and have a responsibility to ensure that these rights are respected at all time. The best way to seek to eliminate harassment/sexual harassment is to foster an environment which discourages such behaviour. All persons at all levels working in the ETB have an important role to play in creating a working environment where personal dignity is respected. All employees are expected to comply with this policy and management will take appropriate preventative measures.

Any individual who experiences harassment/sexual harassment will be supported by the ETB in bringing such behaviour to an end. Breach of this policy can be subject to disciplinary action up to and including dismissal.

Sexual harassment and harassment infringe the provisions of this policy and are forms of misconduct which undermine the integrity of the employment relationship. The ETB will not tolerate such conduct by an employee or other individual in connection with work or the workplace.

¹ 'SI' abbreviation for statutory instrument

² Education and Training Boards (ETBs), established under the Education and Training Boards Act, 1 July 2013

³ Education and Training Boards' Ireland (ETBI), established under the Education and Training Boards Act, 1 July 2013

PURPOSE OF THE POLICY AND COMPLAINT PROCEDURE

This policy and complaint procedure seeks to encourage and promote a healthy, respectful working environment in all ETB schools, centres, colleges and offices *and* provides a fair procedure where inappropriate or unacceptable behaviour is dealt with efficiently, effectively and fairly, through agreed procedures for the making of, and dealing with, complaints of harassment/sexual harassment.

This policy is necessary to:

- Foster a positive work environment
- Ensure that each individual is respected in his/her professional life
- Promote an acceptance of difference
- Attract and retain good quality staff
- Ensure that professional standards are maintained
- Provide a fair, consistent and expeditious mechanism to process allegations of harassment/sexual harassment that comply with relevant Codes of Practice, relevant legislation and statutory instruments
- Outline the principles for the employer, the staff member and their representatives, in the event of allegations arising
- Provide a mechanism to process allegations that affords all concerned full rights in accordance with natural justice.

SCOPE OF THE POLICY AND COMPLAINT PROCEDURE

The policy applies to all ETB staff:

- In the workplace
- At work-associated events such as meetings, conferences
- At work-related social events, whether on the ETB's premises or off-site.

It is important to note that the complaint procedure in this policy is **not a legal process**.

Exclusions:

The procedure is **not** intended for progressing:

1. Complaints of made by staff against students which are appropriate to being dealt with under the school/centre's (student) Code of Behaviour/Discipline.
2. Complaints made by student(s) against a staff member which are appropriate to being dealt with under the *ETB Complaint Procedure*.
3. Complaints which fall outside the definition of harassment/sexual harassment which are appropriate to being processed through other agreed procedures e.g. the nationally agreed grievance procedure.
4. Allegations which are the subject of legal proceedings or claims for redress under statutory provisions.
5. Allegations unrelated to employment.
6. Anonymous allegations.

Where an ETB staff member experiences unacceptable behaviour from clients, customers or other persons (not staff) in the course of his/her work, a complaint should be made directly to the Human Resources (HR) Department of the ETB.

GENERAL PRINCIPLES

The policy sets out for the guidance of ETB management, staff and their representatives, the general principles which must be adhered to in the operation of the procedures at all stages.

All persons invoking or engaging in, the formal procedural stages of this policy are advised that:

- 1.1 The agreed procedure is an industrial relations procedure and **not** a legal procedure. It will be conducted within the norms of industrial relations custom, practice and procedure and as such, is not a judicial process. In circumstances where legal action is invoked, the policy will be suspended, and the operation of law will take precedence.
- 1.2 Any individual/s in invoking the policy/procedure at the Formal stage must provide written agreement (by email/letter) to proceeding through the formal procedural stages in accordance with 1.1 above.
2. **The right to be accompanied/represented at all stages of this procedure is recognised.**
The parties concerned have an opportunity to avail of such accompaniment/representation normally by a work colleague or trade union representative/s.
3. **The following principles shall apply:**
 - All formal complaints shall be in writing.
 - Details of any complaints shall be put to the respondent staff member concerned.
 - Both parties to the complaint shall be given the opportunity to avail of representation during the procedure normally by a work colleague or by an authorised trade union.
 - Parties to the complaint have the right to a fair and impartial determination of the issues concerned, taking into account any representations made by, or on behalf of, the staff member and any other relevant or appropriate evidence, factors, or circumstances.
 - No allegations which have previously been investigated can be entered as part of the current investigation.
 - Access to personal information held by a ETB will be facilitated in accordance with the ETB's data protection policy (specifically with respect to the ETB's access procedure) and with the principles and requirements of Data Protection legislation.
 - When proceedings have been completed, the investigation report and all associated documentation concerned to the complaint will be filed, on a strictly confidential basis, with the Head of HR in the ETB.
 - That all matters relating to the complaint are strictly confidential to the parties and their representatives.
4. **Failure by a staff member to attend meeting(s) under the Formal stages of the procedure:**
Whilst it is anticipated that the staff member concerned will co-operate fully with this procedure, any failure to co-operate will **not** prevent the processing of a complaint under this procedure to conclusion. In instances of non-attendance at two or more meetings under the procedure, due to medical/certified reasons, the ETB reserves the right to refer either party to a complaint to the Occupational Health Service to establish their capacity to participate in the process.
5. **Processing of complaints under this policy / Persons having functions under the policy:**
Where any person having functions under the policy is a party to a complaint, s/he shall not exercise any of his/her functions under the policy in respect of the particular complaint, and such functions will, where appropriate, be undertaken by a person of similar rank nominated by the CE for that purpose. Where the CE is the subject of a complaint, the complaint would

normally be administered by the Head of HR or a person at senior ETB level who has had no involvement in the complaint.

6. **“Notice” of proposed meetings/hearings under this procedure:** Notice is considered to have been given as of the next working day directly after the date the notice is issued.
7. **Timeframes outlined in the procedure must be observed.** The procedure shall not operate during periods of approved leave unless by mutual agreement of the parties. In circumstances where the complainant applies for career break or secondment, it is expected that the complainant would make him/herself available for the duration of the entire process as specified in the policy. If not, the complaint falls. If the respondent is on career break/secondment and does not or cannot make him/herself available, the complaint is held and recommenced on resumption of duty.
8. **Whether formal or informal, a complaint must be made within six months of the latest incident(s) of alleged harassment/sexual harassment behaviour.** In exceptional circumstances, the six-month time limit may be reviewed. The decision on whether to admit an allegation under this procedure rests with the Head of HR of the ETB.
9. **Procurement of Investigation Services:** The Office of Government Procurement’s External Workplace Investigation Services is the panel from which external workplace investigators are drawn following a tender process. **Two investigators having regard to gender balance are required in all alleged harassment complaints.**

EMPLOYMENT EQUALITY ACTS, 1998 to 2011

The Employment Equality Acts are important both for what they promote and what they prohibit. The Acts:

- Promote equality in the workplace and between workers
- Prohibit discrimination, harassment and sexual harassment on the basis of nine different grounds

The Employment Equality Acts prohibit discrimination on the basis of 9 different grounds (With reference to Statutory Instrument SI 208/2012):

1. **Gender:** whether a man, woman, (this also includes transgender).
2. **Civil status:** whether single, married, separated, divorced, widowed, in a civil partnership within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 or being a former civil partner in a civil partnership that has ended by death or been dissolved.
3. **Family status:** This refers to the responsibility as a parent or as a person *in loco parentis* in relation to a person under 18, or as a parent or the resident primary carer of a person over 18 with a disability which is of such a nature as to give rise to the need for care or support on a continuing, regular or frequent basis.
4. **Sexual orientation:** heterosexual, bisexual or homosexual.
5. **Religion:** includes different religious background or outlook, (including absence of religious belief)

6. **Age:** applying to all people above the school leaving age⁴
7. **Disability:** which is broadly defined as including physical, sensory, learning, intellectual disability, mental illness and a range of medical conditions
8. **Race:** people of different race, colour, nationality or ethnic or national origins.
9. **Travellers:** members of Ireland's traveller community. "Traveller community" means the community of people who are commonly called Travellers and who are identified (both by themselves and others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland.

Discrimination has a very specific legal definition, being defined as the treatment of a person in a less favorable way than another person is, has been or would be treated in a comparable situation under any of the nine grounds.

In summary, harassment is any form of unwanted conduct related to any of the discriminatory grounds that could reasonably be regarded as offensive or humiliating. Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature. In both cases it is the conduct, which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the recipient. In both cases the unwanted conduct may include acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material. Harassment and sexual harassment are subjective; this means that it is the perception of the victim that determines if the conduct is improper.

In addition, equality legislation does not require a repetition of discrimination in order to constitute an offence. This means that complaints of harassment or sexual harassment can be brought on the basis of a once-off incident or more than one incident.

DEFINITION OF HARASSMENT AND SEXUAL HARASSMENT

WHAT IS HARASSMENT?

Harassment is defined in section 14A (7) of the Employment Equality Act as **any form of unwanted conduct related to any of the discriminatory grounds which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.**

Harassment/sexual harassment that is not linked to one of the discriminatory grounds is not covered by the Employment Equality Act⁵.

EXAMPLES OF HARASSMENT

Examples of harassment on any one of the nine grounds set out above, may include, but are not limited to:

- Treating people less favorably, or subjecting them to ridicule
- Undermining behaviour
- Demeaning and derogatory remarks, name-calling
- Isolation, non-co-operation or exclusion within the workplace

⁴ The minimum school leaving age is currently 16 years, or the completion of three years of post-primary education, whichever is the later.

⁵ Reference Statutory Instrument SI 208/2012

- Production, display or circulation of offensive material
- Written forms of harassment – e.g. faxes, SMS messaging, emails, notices, posting messages through social media or any other ICT or electronic device/medium
- Modifying images, recording digital images for the production and or display on any form of ICT or electronic device/medium (without consent)
- Intimidatory harassment – e.g. gestures, posturing or threatening poses

WHAT IS SEXUAL HARASSMENT?

Sexual harassment is defined in section 14A (7) of S14A (7) the Employment Equality Act as **any form of unwanted verbal, non-verbal or physical conduct of a sexual nature which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person**⁶.

In essence, sexual harassment is inappropriate and unwanted conduct **of a sexual nature**. It includes: acts of physical intimacy; requests for sexual favours; any other act or conduct including: words, pictures and gestures constitute sexual harassment if they are unwelcome to the recipient.

EXAMPLES OF SEXUAL HARASSMENT

Examples of sexual harassment may include, but are not limited to:

- Sexual gestures
- Suggestive or indecent remarks or questions
- Unwanted sexual comments and jokes
- Leering
- Unwanted physical conduct such as pinching or inappropriate touching
- Displaying sexually suggestive and/or pornographic correspondence/images including faxes, emails, websites, SMS messaging, posting messages through social media or any other ICT or electronic device/medium which uses demeaning terminology which is **gender specific**.
- Modifying images, recording digital images for the production and or display on any form of ICT or electronic device/medium (without consent)

WHAT HARASSMENT/SEXUAL HARASSMENT IS NOT

The following does not constitute harassment/sexual harassment:

- Complaints that relate other than to nine grounds
- Fair and constructive criticism of an employee's performance, conduct or attendance.
- Reasonable and essential discipline arising from the good management of the performance of an employee at work.
- Legitimate management responses to crisis situations which require immediate action.

Should any employee experience or observe unwanted conduct, s/he or she is encouraged to raise the matter so that it can be processed.

⁶ Reference Statutory Instrument SI 208/2012

THE COMPLAINT PROCEDURE

INFORMAL PROCEDURE

Complaints of harassment/sexual harassment may be resolved on an informal basis and no further action may be required.

However, in circumstances where a staff member who believes s/he is being harassed/sexually harassed may choose to discuss the matter on a confidential basis with the ETB's Contact Person in the Human Resources Department.

The role of the Contact Person⁷ is to:

- Listen in confidence to the staff member's concerns
- Help the staff member understand the nature of the behaviour s/he is experiencing
- Outline, in a **non-directional manner**, the options available to the staff member in handling the situation
- Provide the staff member with the agreed procedure and all relevant associated documentation e.g. accompanying *Guidance Notes*, information on the Employee Assistance Service (EAS) etc.
- Bring specifically to the attention of the staff member that s/he may request the Head of HR to provide for mediation to address his or her concerns.
- Advise the staff member of the availability of an independent employee assistance service which provides professional guidance and counselling. It is not a matter for the EAS to provide advice on the procedure for dealing with complaints of harassment/sexual harassment or the processing of a complaint.
- Ascertain how the behaviour impacted on the staff member.

⁷ The role of the ETB Contact Person does not extend to intervening or approaching any person on behalf of the staff member. An *Aide-mémoire for ETB Contact Persons* is available in the *Guidance Notes* and supporting Manual for ETB HR Departments, template A1 refers.

MEDIATION⁸

While it is a decision for the complainant in the first instance which approach to adopt, in most cases the informal and/or mediation approach is the preferred approach of the ETB and unions representing staff in the sector. The engagement of a mediator is a matter for the Head of HR upon request from a staff member who believes s/he is being harassed/sexually harassed or a staff member who is the respondent to such a complaint.

Mediation is a process where an independent and neutral mediator assists the parties to come to agreement through a collaborative process. The mediator's role is non-judgmental and non-directive. The mediator is neither judge nor arbitrator and does not adjudicate or give decisions on the rights or wrongs of the actions of the parties. The mediator supports the parties in identifying their issues and needs and in exploring how these needs can be addressed and how they might come to agreement.

(Source: Mediators' Institute of Ireland)

Mediation is a voluntary and confidential process for resolving disputes wherein the parties agree to attempt to resolve the issues of the dispute with the aid of an accredited professional mediator.

The ETB advocates the use of mediation as an effective method to resolve matters of conflict which is both impartial and confidential in its dealings. Provision is made for the parties, by mutual agreement only, to opt for the services of an external professional mediator. In the event that this is used, a professional mediator shall be nominated by the Head of HR from the following sources:

- The Workplace Relations Commission (WRC) - Mediation Service
- The Mediators' Institute of Ireland (MII)
- Mediation Forum Ireland (MFI)

The mediator will convene a series of structured sessions with the parties to the complaint with a view to achieving a resolution of the complaint.

Engaging in mediation does not prejudice any individual's right to re-engage in the procedure at the same stage as before. All matters related to the mediated process remain strictly confidential to the parties themselves. The mediator will advise the Head of HR of the date of conclusion of the mediation and the outcome to the mediation.

⁸ Templates are available in the accompanying *Guidance Notes* and also in the *Manual for HR Departments*. Templates B1 and B2 refer.

FORMAL PROCEDURE

Where attempts to resolve the alleged complaint through informal means have not succeeded, or where the complainant elects to invoke the formal procedure as a matter of first instance, an investigation will be carried out by the ETB. All complaints will be treated seriously and in confidence.

Formal complaints must be submitted within **10 working days** of the conclusion of any mediation which has taken place. All complaints will be treated seriously and in confidence.

Investigation

1. The complainant writes in confidence to the Head of Human Resources (HR) to request that an investigation under the Formal Procedure be undertaken. This letter shall include the **completed Complaint Form**⁹ (i.e. the written statement of complaint) which must be signed and dated by the complainant.

The complaint form must be completed in full having regard to such matters as:

- Clear specific allegations against named individual(s)
- Dates and times of incident(s)
- **A list of witnesses if any.** The complainant is required to submit the names and contact details of witnesses to specific incident/s (if any), in a list as part of the complaint submitted and within the timeframe prescribed by the policy. Only persons who are in position to offer direct evidence in respect of an alleged incident(s) may be nominated by the complainant. **Generalised statements in the nature of character references are not witness statements.** Copies of witness statements (if any) will be provided to both parties to the complaint in accordance with natural justice and fair procedure.
- Direct quotes, if they can be recalled;
- A brief description of the context of each incident;
- A brief description of the impact/effect each incident had on you;
- Any other relevant supporting evidence;
- Except for mediation, details of previous approaches made to the respondent (if any) and the outcome of same.

The complaint form must be used on submission of a formal complaint.

It will be the responsibility of the Head of HR (save where s/he is a party to the complaint) to assess, on review of the letter and complaint form, whether the complainant's submission has addressed the essential elements required of a written statement of complaint before progressing.

In circumstances where the complaint form is incomplete or considered inadequate for the purposes of commencing an investigation, the Head of HR shall communicate such to the complainant and return all information previously supplied. The Head of HR shall advise that

⁹ Refer *Guidance Notes/Manual for HR Departments – Template C - Complaint Form*

the complaint form be resubmitted having regard to the required items listed above at stage 1, subsection 1.

2. The Head of HR (or his/her nominee) **within 5 working days** writes to the complainant acknowledging formal receipt of the complaint form¹⁰.

An investigation shall not proceed and the timeframes documented in the procedure shall not activate until such time as the Head of HR (save where s/he is a party to the complaint) is satisfied that the complaint form provides the necessary information to commence processing the complaint¹¹.

3. When the Head of HR is satisfied that the complaint form is adequate to enable the process to be progressed, s/he then writes to the respondent **within a further 5 working days** confirming that a formal complaint has been received¹² enclosing a copy of the **Response to Complaint Form**¹³, the complaint and supporting evidence/documentation, if any, received from the complainant.
4. The respondent has an **additional 10 working days** (from the date of issue by the ETB of the complaint form and supporting evidence/documentation, if any), to respond using the Response to Complaint Form. When completed, this form should be sent to the Head of HR with relevant supporting evidence/documentation (if any). Any counter complaint if raised by the respondent, will be processed as part of the respondent's response to the complaint under the remit of the same investigation.

The respondent is required to submit the names and contact details of witnesses to specific incident/s, if any, as part of the response to the complaint and within the timeframe prescribed by the policy. Only persons who are in position to offer direct evidence in respect of an alleged incident(s) may be nominated by the respondent. **Generalised statements in the nature of character references are not witness statements.** Copies of witness statements (if any) will be provided to both parties to the complaint in accordance with natural justice and fair procedure.

5. Within a **further 10 working days**, the Head of HR/nominee will complete the **Supplementary Request for Tender – External Workplace Investigation Services**¹⁴ with personal details such as names and contact addresses redacted and submit to the Office of Government Procurement (OGP). The OGP will process the sRFT and communicate the outcome of the tender process to the ETB's Head of HR/nominee. The Head of HR/nominee will liaise with the successful company as appropriate.

A services' contract¹⁵ must be signed prior to any investigation commencing. Terms of reference for the conduct of the investigation are available herein at appendix 2.

¹⁰ Refer *Manual for HR Departments*, templates D1 or D2 as appropriate

¹¹ The Supplementary Request for Tender (sRFT) is undertaken by the ETB having achieved the complaint and response statements. This is the document upon which a tender process will be undertaken with the Office of Government Procurement (OGP) to procure investigation services.

¹² Refer *Manual for HR Departments*, template E1

¹³ Refer *Guidance Notes/Manual for HR Departments*, template E2 - Response to Complaint Form

¹⁴ Refer *Manual for HR Departments*, template F: Supplementary Request for Tenders – External Workplace Investigation Services' form for completion by Head of HR/nominee in ETB

¹⁵ Services contract provided directly by OGP to the investigation company/Framework Member first for review and signature, then to the ETB as Framework Client.

6. Within the same timeframe (*at 5 above*), the completed Response to Complaint Form¹⁶ and supporting evidence/documentation if any, will be forwarded to the complainant.
7. Within a **further 3 working days** of the establishment of the services' contract, the Head of HR will furnish all documentation to the investigator/s and advise the parties to the complaint of the name/s of the investigator¹⁷.
8. The Head of HR (or his/her nominee) will be responsible for all matters pertaining to the administration of the investigation e.g. arrangements and notification of investigation meeting/s; liaising with the parties to the complaint; liaising with investigator etc.
9. **The** investigation shall be conducted in accordance with the specified terms of reference (and protocol therein) available in *Appendix 2*.
10. The investigation report must issue to the parties to the complaint and the Head of HR no later than **60 working days** from the date the services contract is signed. **The investigation report shall determine, in respect of each element of the complaint, whether there is a case to be answered that the behaviour falls within the definition of harassment/sexual harassment contained in the policy and whether there is a case to be answered that the respondent engaged in the behaviour in question.** In addition, the report shall provide an overall determination whether or not there is a case to be answered that the respondent engaged in harassment/sexual harassment. The investigation report may, where appropriate, determine that there is a case to be answered that a complaint was vexatious/malicious in intent. This will conclude the investigation.
11. The time limits advised with respect to the 60 working days may be extended only in very exceptional circumstances subject to the discretion of the ETB's Head of HR in consultation with the investigation company.
12. It will be the responsibility of the investigator/s to forward copies of the final investigation report to the parties to the complaint and the Head of HR. In cases where the complaint involves more than one complainant and/or respondent, a copy of the investigation report will issue to each of the parties to the complaint.

The final investigation report will be referred by the Head of HR to the relevant Director¹⁸ for consideration. If it has been determined that there is no case to be answered, the Director shall so notify the parties. If it has been determined that there is a case to be answered, the Director shall so inform the parties of the appropriate action to be taken.

¹⁶ Refer *Manual for HR Departments*, template E3

¹⁷ Refer *Manual for HR Departments*, template H refers

¹⁸ Where the Director is a party to a complaint, the Chief Executive of the ETB will nominate another Director from the ETB to undertake this function.

PROTECTION AND SUPPORT

Staff shall be protected from intimidation, victimisation or discrimination for filing an allegation of harassment/sexual harassment or assisting in an investigation. Retaliation against a member of staff for complaining about harassment/sexual harassment is considered a disciplinary offence.

Throughout the investigation, and/or following the investigation if appropriate, counselling support may be made available to the complainant and the respondent through the Employee Assistance Service. Further information on counselling/the Employee Assistance Service can be obtained from the ETB Contact Person.

Regular checks will be made by HR to ensure that the harassment/sexual harassment has stopped and that there has been no victimisation for referring a complaint in good faith. Retaliation of any kind against a staff member for complaining or taking part in an investigation is a serious disciplinary offence.

COMMUNICATING THE POLICY

The ETB is committed to promoting and fostering dignity in the workplace. The ETB will provide this policy and supporting *Guidance Notes* to all staff through appropriate means (e.g. direct correspondence, staff handbook, staff intranet, CPD, induction and mentoring programmes and/or on the ETB website). This policy is also available to download from www.etbi.ie and from websites of trades unions subscribing to this policy.

REVIEW

This policy will be reviewed by the parties to this agreement at national level no later than **three** years from the official implementation date or where legislation determines change is warranted.

APPENDIX 1

APPROVED OFFICE OF GOVERNMENT PROCUREMENT PANEL FOR EXTERNAL WORKPLACE INVESTIGATION SERVICES¹⁹

Panel status at 1 September 2016.

This may be subject to change over time as determined by the OGP

Investigation Companies/Organisations	
1.	Acrux Consulting Ltd
2.	Collier Broderick Management Consultants
3.	Raise a Concern Ltd

¹⁹ Refer *Manual for HR Departments Appendix I*

APPENDIX 2

TERMS OF REFERENCE FOR THE CONDUCT OF A FORMAL INVESTIGATION

This appendix provides terms of reference governing investigations under the formal procedure.

Terms of Reference for investigation of complaints – Formal Stage 1

1. Investigate the complaint.
2. Conduct the investigation in accordance with the protocol.
3. Afford fair procedure and natural justice to the complainant/s and respondent/s.
4. Issue a report of the findings based on the evidence presented:
 - **Determine whether, in respect of each element of the complaint, there is a case to be answered that the behaviour in question falls within the definition of harassment/sexual harassment contained in this policy.**
 - **Determine whether, in respect of each element of the complaint, there is a case to be answered that the respondent engaged in the behaviour in question.**
 - **Provide an overall determination as to whether there is a case to be answered that the respondent engaged in harassment/sexual harassment.**
 - **Provide an overall determination, where appropriate, as to whether there is a case to be answered that a complaint was vexatious/malicious in intent.**
5. Adhere to the timeframes for expediting the investigation as advised in the *Harassment/Sexual Harassment Prevention Policy – Complaint Procedure for ETB staff*.
6. Operate within the agreed budget for the discharging of the investigation under the contract for service with the named ETB.

NB: Two investigators having regard to gender balance are required in all alleged harassment/sexual harassment complaints.

Protocol for the conduct of investigations

This protocol should be followed. The dates on which meetings are convened and the order within which meetings are scheduled, rests with the investigator but the sequencing of interviewing the complainant/s, respondent/s, witness/es should be followed.

The investigation will cover the specific complaint/s made against the named respondent/s and will also address any further information/evidence which arises during the course of the investigation but only in respect of the complaint.

A recording secretary shall accompany the investigator at all investigation meetings.

Interviewing a complainant

- Advise that the investigation will be conducted with due regard to confidentiality.
- Where parties to the investigation are being interviewed, s/he is entitled to be accompanied at the investigation interview/s by a work colleague or trade union representative.
- Forward final draft minute of the investigation interview to complainant and provide an opportunity to propose specific amendments (*to be submitted in writing*) on matters of

accuracy or fact to the minute. The acceptance of any proposed amendments is a matter for the investigator/s.

- Forward the final minute of the meeting to the complainant, setting out the basis on which any amendments proposed were rejected.

Interviewing a respondent:

- Advise that the investigation will be conducted with due regard to confidentiality
- Where parties to the investigation are being interviewed, s/he is entitled to be accompanied at the investigation interview/s by a work colleague or trade union representative.
- Forward final draft minute of the investigation interview to respondent and provide an opportunity to propose specific amendments (*to be submitted in writing*) on matters of **accuracy or fact** to the minute. The acceptance of any proposed amendments is a matter for the investigator/s.
- Forward the final minute of the meeting to the respondent setting out the basis on which any amendments proposed were rejected.

Interviewing a witness:

- Signed and dated individual witness statements to alleged incident(s) may be sought by the investigator in advance of an interview with a witness and in accordance with the timeframe prescribed by the investigator/s.
- **Invite the nominated witness to a meeting.** In such circumstances, a draft minute of the interview will be prepared by the investigator and provided to the witness. The witness shall review the draft minute, and if appropriate, propose specific amendments (*in writing*) on matters of **accuracy or fact** to the minute where applicable and within the timeframe prescribed by the investigator/s. The investigator shall review and make a determination on any amendment/s submitted in writing. A final minute will be supplied to the witness by the investigator/s.
- **Importantly, where multiple witness statements are provided in respect of a particular incident/s,** unless there is a significant divergence in evidence offered in the witness statements supplied, the investigator may deem telephone-based interviews to be sufficient. Conducting a telephone-based interview with a witness in such circumstances is subject to witness agreement. In such circumstances, a draft minute of the telephone interview will be prepared by the investigator team and provided to the witness. The witness shall review the draft minute, and if appropriate, propose specific amendments (*in writing*) on matters of **accuracy or fact** to the minute where applicable and within the timeframe prescribed by the investigator/s. The investigator shall review and make a determination on any amendment/s submitted in writing. A final minute will be supplied to the witness by the investigator/s.
- **Collective witness statements are not admissible.** This applies whether a complaint is lodged for the first time or lodged consequential to a decision to recommence the investigation of a complaint at Formal Procedure Stage 1.
- Advise the witness, in the event of attending an investigation interview/s, that s/he is entitled to be accompanied at the interview/s by a work colleague or trade union representative. It would not be appropriate for such an accompanying person to be a party to the investigation or another witness who will also be interviewed or making a statement during the course of the investigation.
- At the meeting or in the course of a telephone interview, inform the witness that:
 - The investigation will be conducted with due regard to confidentiality
 - A copy of his/her statement will be furnished to the parties to the complaint.
 - That s/he should not discuss the details of the investigation or other related matters to the complaint with any other party.

- In setting the background to the complaint, witnesses should only be given sufficient information to allow the investigating team determine what occurred in relation to the allegation.
- Forward a draft minute of the investigation interview to the witness for review in line with bullet 2 or bullet 3 above. The acceptance of any proposed amendments is a matter for the investigator/s.
- Forward, to the witness, the final minute of the witness' interview, setting out the basis on which any proposed amendments were rejected.
- **Conflicting Witness Accounts:** Where the investigator is presented with conflicting accounts of an incident and where no additional witnesses are available or where evidence is not persuasive, the case rests upon which version of events the investigator considers the more credible but a rationale must be provided.
- Should the investigator become aware that any attempt has been made to influence a witness the matter should be reported immediately to the Head of HR of the ETB. Any such interference will be regarded as a serious breach of discipline and will be subject to disciplinary action.

Further Action:

- Only documentation and statements gathered during the course of the investigation which are relevant to the complaint shall be taken into consideration.
- On completion of all interviews, each party to the complaint will be provided with a copy of the minutes of all interviews conducted (including interviews with witnesses)
- As appropriate to determining the facts of the allegation, the investigator may need to interview other persons named in statements referenced during the course of investigation meetings or indeed re-interview anyone previously interviewed (over the course of investigation meeting/s) with a view to determining whether there is a case to be answered that the respondent engaged in harassment/sexual harassment.
- If deemed appropriate by the investigator/s, meet the complainant in relation to matters arising which require further clarification.
- If deemed appropriate by the investigator/s, meet the respondent in relation to matters arising which require further clarification.
- If, during the course of the investigation, the investigator is presented with additional matters relating to the original complaint, the investigator should notify the parties to the complaint of any such information or evidence and provide an opportunity for the parties to the complaint to respond. No new complaints may be entered into this investigation.
- It is essential that detailed accurate minutes are taken at all investigation interviews conducted over the course of the investigation.
- Close investigation.
- A draft report will be prepared by the investigation team so appointed. The parties to the complaint will be provided with an opportunity to propose specific amendments (in writing) on matters of accuracy or fact to the draft investigation report. The investigator will determine the timeframe within which such submissions should be supplied.
- Having considered the written submissions (if supplied), the investigation team will review and provide a rationale as to the acceptance or rejection of the items raised in a proposed submission.
- The decision to accept/reject such items in a submission from either party to the complaint is a matter for the investigation team.
- **Prepare final investigation report.** Investigation reports must include, but is not limited to the following information, as appropriate to the specific circumstances:
 - Legal and policy basis of the investigation, as well as applicable professional standards;
 - Description of the investigator's engagement and background of the complaint;

- Summary of complainant's allegations;
- Summary of respondent's response to allegations;
- Listing of information gathered, including interviews held and documentation reviewed;
- If any witnesses or leads provided by the parties were not interviewed/pursued, an explanation why not;
- **Determination whether, in respect of each element of the complaint, there is a case to be answered that the behaviour in question falls within the definition of harassment/sexual harassment contained in this policy**
- **Determination whether, in respect of each element of the complaint, there is a case to be answered that the respondent engaged in the behaviour in question.**
- **Overall determination as to whether there is a case to be answered that the respondent engaged in harassment/sexual harassment.**
- The investigation report may, where appropriate, determine that there is a case to be answered that a complaint was vexatious/malicious in intent.
- The rationale as to the acceptance or rejection of the items raised in submissions on the draft report.
- Other relevant information.
- The final investigation report should include, as an appendix, all interview notes and documents relevant to the determinations contained in the report.
- This will conclude the investigation.
- The investigation report must issue to the parties to the complaint and the Head of HR no later than **60 working days** from the date the services contract is signed.
- The time limits advised with respect to the 60 working days may be extended only in very extenuating circumstances subject to the discretion of the Head of HR in consultation with the investigation company.
- It will be the responsibility of the investigator/s to forward on copies of the final investigation report to the parties to the complaint and copy to the Head of HR.