

Dignity at Work

AN ANTI-BULLYING, HARASSMENT AND SEXUAL HARASSMENT
POLICY FOR THE STATE INDUSTRIAL EMPLOYEES WORKING IN
THE CIVIL SERVICE

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1. Introduction and Executive Summary

This document, which has been agreed at Joint Industrial Council (JIC) replaces the current anti-harassment, sexual harassment, and bullying policy, for State Industrial employees working in the Civil Service. The 'Dignity at Work' policy will not preclude State Industrial employees from accessing other appropriate dispute resolution routes where applicable – the policy will only set out procedures on dignity at work matters.

This policy aims to promote respect, dignity, safety, and equality in the workplace. Every member of staff should be aware that all forms of bullying, harassment, and sexual harassment are unacceptable and every member of staff has a duty to behave in an acceptable and respectful manner.

Section 2 of the policy sets out the aims of the policy.

Section 3 of this policy defines bullying, harassment, and sexual harassment. It also outlines the difference between bullying, harassment, and sexual harassment as defined by this policy and what may be considered as normal workplace conflict.

A key aim of the policy is to provide awareness regarding the steps which individuals may take if they believe that they have been bullied, harassed, or sexually harassed. Section 4 of this document outlines the recommended procedures which should be followed by all parties to complaints regarding bullying, harassment, and sexual harassment.

As part of the revised procedures, a new role, that of the *Designated Person*, is being introduced to the process for the first time. The introduction of this role was required by the *HSA Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work*, and guided by the principles set out therein. Also as part of the revised procedures, the role of the Contact Person will generally be provided by the Civil Service Employee Assistance Service (CSEAS), contact details of which can be found in Appendix D.

The intention of this policy is to encourage the use of informal resolution methods and the use of mediation as often and as early as possible during disputes. Complaints should only proceed to formal investigation once efforts to utilise local resolution methods or mediation have been exhausted, or are considered to be unsuitable due to the nature of the complaint.

Finally, dealing with issues regarding bullying, harassment, or sexual harassment can be stressful and distressing for all parties concerned. A significant amount of advice and support is available. A list of useful contacts can be found in the appendices to this document, and via the Department of Public Expenditure and Reform's website, hr.per.gov.ie

This revised policy comes into effect from 29 March 2021 and is agreed by:

Employee Side:

Jay Power, SIPTU

Employer Side:

Niall Quinn, PSPPD, DPERS

Date: December 2020

2. Policy Statement

Aim of the Policy

2.1. The key aims of this policy are to:

- Achieve a work environment where dignity and respect are to the forefront of our values
- Create an environment where bullying, harassment, and sexual harassment are not tolerated in any form
- Ensure that each individual is aware of his/her responsibility to behave in a way that reflects a culture of dignity and respect.

Principles underlying the Policy

2.2. It is Civil Service policy that every member of staff has a right to work in an environment free of any form of bullying, harassment, or sexual harassment. These behaviour(s) are totally unacceptable. Aside from the impact upon the individual and colleagues, such behaviour(s) can harm working relationships, undermine morale, and damage efficiency across the workplace.

Each individual has a responsibility to ensure that his/her behaviour reflects a culture of dignity and respect. These procedures provide a framework for those who believe they have experienced bullying, harassment, or sexual harassment.

All complaints or queries raised in relation to bullying, harassment and sexual harassment will be treated seriously, fairly, and in the strictest of confidence. Complaints should be progressed promptly and the cooperation of all parties involved in a dispute must be given in progressing the matter in accordance with the processes set out in Section 4. This policy emphasises the importance of an informal resolution of a problem where possible, and highlights the use of mediation as a valuable tool when dealing with workplace conflict.

It is important that complaints which are made under this policy are genuine and not vexatious in nature. Such behaviour undermines genuine complaints made by colleagues, may cause stress and upset to those wrongly accused, and can waste the time of those working to investigate the complaint. Malicious or vexatious complaints are viewed as misconduct, will not be tolerated, and may be subject to disciplinary procedures.

Legislative Commitments

2.3. The Employment Equality Acts 1998-2011 place an obligation on all employers in Ireland to prevent harassment in the workplace. Harassment and sexual harassment on any of the following grounds – gender, civil status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller community – are all forms of discrimination in relation to conditions of employment.

Bullying in the workplace can impact upon the health, safety and welfare of staff. Under the Safety, Health and Welfare at Work Act 2005, employers have a duty to prevent any improper conduct or behaviour which is likely to put the safety, health and welfare of employees at risk. This obliges senior management, and line managers, to ensure that reasonable steps are taken to ensure a work environment free of bullying, harassment or sexual harassment. This includes developing an anti-bullying policy, and dealing with established complaints of bullying in the workplace. Employers are required to deal with complaints as a priority issue.

This Act also outlines the duty of staff not to engage in behaviour which would endanger the health, safety and welfare of the individual or other members of staff.

The Health and Safety Authority's (HSA) Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work also highlights that bullying, harassment or sexual harassment should not be tolerated in the workplace. The HSA Code of Practice contains guidance notes for employers and employees, which have been incorporated in the complaints process contained in section four of this document.

The HSA Code of Practice includes the new role of 'Designated Person', who will oversee each complaint which is referred to the HR Unit. A more detailed description of this role can be found in Appendix B of this document.

The Labour Relations Commission has also published a Code of Practice for Addressing Bullying in the Workplace. This also sets out that employers must take reasonable steps to prevent bullying in the workplace, and to have established procedures for dealing with complaints of bullying.

The Employment Equality Act 1998 (Code of Practice) (Harassment) Order 2012 (S.I. No. 208 of 2012) contains a number of obligations for employers, such as ensuring that policies and procedures are in place and are accessible to staff, and to ensure that natural justice and impartiality are adhered to during investigations. This also sets out an obligation for employers to take reasonably practicable steps to prevent bullying, harassment or sexual harassment in the workplace, to reverse the effects of it, and to take reasonable steps to prevent its re-occurrence.

Timelines

- 2.4. The timelines outlined within this code should be treated as a guide to all parties involved in the complaints process. It is in the interests of all parties that complaints are progressed in a timely and efficient fashion, in compliance with the timelines in this policy.

3. Definitions

Bullying

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

Examples of bullying (not exhaustive):

- Verbal: personal insults, demeaning remarks, regular humiliation often in front of others, nicknames, ridicule, threats;
- Non-verbal or indirect: exclusion with negative consequences, hostile attitude, spreading malicious rumours;
- Abuse of power: regular excessive and inappropriate criticism, deliberately and maliciously withholding work-related information in order to undermine a colleague, repeatedly manipulating a person's job content and targets without due cause;
- Physical: aggressive behaviour, physical intimidation, unwelcome physical contact up to and including assault;
- Communications technology: insulting texts, emails, derogatory comments on social media.

An isolated incident of the behaviour described in this definition may be an affront to an individual's dignity but, as a once-off incident, is not considered to be bullying.

Harassment

- 3.2. Harassment is defined in Employment Equality legislation 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. The nine discriminatory grounds are:

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

Harassment may consist of a single incident, or repeated inappropriate behaviour.

Examples of Harassment (not exhaustive):

- Verbal harassment – jokes, comments, ridicule or songs
- Written harassment – including faxes, text messages, emails, notices or comments on social media
- Physical harassment – jostling, shoving or any form of assault
- Intimidatory harassment – gestures, posturing or threatening poses
- Visual displays such as posters, emblems or badges
- Isolation or exclusion from social activities

Sexual Harassment

- 3.3. Any form of unwanted 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.

Sexual Harassment may consist of a single incident, or repeated inappropriate behaviour.

Examples of sexual harassment (not exhaustive):

- Sexual jokes, stories, comments, use of telephone (including text messages), fax or radio systems for inappropriate suggestive comments;
- Display of offensive pictures, slogans, graffiti, written suggestive materials, etc. through email or otherwise (including a display of pornographic or sexually suggestive pictures or objects);
- Telling lies or spreading rumours about a colleague's sex life;
- Unwanted physical contact ranging from unnecessary touching to assault;
- Persisting in unwelcome attempts to form a relationship, or continue a relationship to which one party has not consented, or for which s/he have withdrawn his/her consent.

Management of Performance

- 3.4. It is the duty of management to be open with staff about performance, attendance or general conduct. Bullying and harassment do not arise where critical comments are made in an honest and constructive manner, are backed up by clear facts and are imparted in a reasonable way. The following behaviour does not constitute bullying or harassment:

- The proper exercise of authority by management;
- Constructive and fair criticism of a staff member's conduct or work performance.

General Disputes

- 3.5. It is acknowledged that occasionally there may be disputes or disagreements between colleagues which, although they can evoke strong feelings and result in a difficult working environment, may not match the definitions of bullying, harassment or sexual harassment as outlined above.

While resolving such disputes may be difficult, State Industrial employees are encouraged to address disputes in a proportionate way, availing of existing mechanisms, supports and procedures in the process. Parties to such disputes may seek to resolve issues in accordance with the principles of mediation, namely, voluntary participation, positive engagement, moderate language, and respectful thinking.

Local managers, or internal or external professionally qualified mediators if required, will facilitate this process in accordance with these principles.

4. How to deal with Bullying, Harassment, & Sexual Harassment

- 4.1. Please note that the steps outlined below are an overview of the potential steps involved in resolving a complaint. Individuals are not required to follow each step in a linear or sequential fashion. For example, a complaint may proceed directly to the Designated Person phase, or not proceed further than the Local Resolution phase as appropriate.
- 4.2. Timelines are mentioned at several stages in the process. It is in the interest of all parties that complaints are progressed in a timely and efficient fashion. Therefore, those managing the complaints process should adhere to timelines wherever possible. Similarly, individuals involved in a complaint should fully co-operate with and participate in the process.
- 4.3. Where it is not possible to adhere to timelines at any stage of the process, the person managing that stage of the process should make a record setting out:
 - a) The circumstances which have led to the timeline being exceeded
 - b) The impact (if any) which this will have on the process.

If delays have been caused by either the complainant or the respondent, they should be required to explain, in writing, the reasons for this delay.

This information should be made available to the HR Manager for review.

- 4.4. **Mediation** is available at every step of the process. This is a voluntary process, which can be a very effective method of dispute resolution. Further information about mediation can be found in Appendix A of this policy document. Please speak to your line manager or another suitable manager in your area, the Civil Service Employee Assistance Service, a member of your organisation's HR Unit, or your Trade Union if you would like further information or advice about entering the mediation process.

Reminder: Not all steps below must be followed in a linear fashion. For example, complaints can proceed directly from the individual stage to the Designated Person Stage as appropriate.

Individual

- Individual considers whether bullying, harassment or sexual harassment has occurred
- Additional information and support is available from:
 - Your Organisation's HR Unit
 - Contact Person
 - Civil Service Employee Assistance Service
 - Self Audit Checklist (see Appendix C)
 - Trade Union representative
 - D/PER HR website
 - Family, friends as appropriate

Bullying, Harassment, and Sexual Harassment Complaint Procedures

Local Resolution

- If possible, the complainant should approach the respondent(s) or ask a manager to do so on their behalf, to advise of the offending behaviour and the impact which it has on the individual, and to ask that it discontinue
- The complainant may refer a complaint to the next appropriate Line Manager
- The Line Manager should attempt to resolve the matter locally and/or offer mediation to both parties with the intention of resolving the matter

Designated Person

- Complaint is referred to the HR Unit, who will appoint a Designated Person to oversee the complaint
- The Designated Person will engage with both parties to:
 - Provide relevant information
 - Familiarise themselves with the background, context and details relevant to the case
 - Encourage the use of mediation with the intention of resolving the matter

Investigation

- The HR Manager will appoint an investigator to formally investigate the complaint
- The investigator will examine the complaint, relevant evidence and witness statements
- The investigator will complete a report for the HR Manager
- The HR Manager will decide, based on the investigation report, if any further action is required

Review Process

- If either party is dissatisfied by the conduct or outcome of an investigation, they can apply for a review to assess:
 - If policy and procedures have been followed correctly
 - Whether the conclusions reached by the investigator can be validly drawn from the evidence on the balance of probability
- The review will be conducted by a senior officer from another organisation

Mediation

- Do I think that I may have been subject to bullying, harassment or sexual harassment?
- If so, what can I do?

- ❖ If an individual thinks that s/he has been bullied, harassed or sexually harassed, s/he needs to seriously consider whether this is the case before making a complaint.
- ❖ A number of sources of information and support are available to assist with this consideration and to help provide clarity regarding issues related to bullying, harassment, and sexual harassment, before, during, and after a complaint has been made and/or resolved.
- ❖ These supports will provide information on what constitutes bullying, harassment, and sexual harassment as per Section 3, as well as information regarding how complaints are handled and possible avenues which may be explored to resolve the issues.

Sources of information and support may include any of the following:

- ❖ Your organisation's HR Unit
- ❖ Civil Service Employee Assistance Service (CSEAS)
- ❖ Contact Person
- ❖ Self-Audit Checklist (please see Appendix C)
- ❖ Trade Union representative
- ❖ Colleagues, family members or friends as appropriate
- ❖ Department of Public and Expenditure and Reform website

Further information regarding all of the relevant contacts and supports can be found in Appendices B and D of this document.

Disciplinary Issues

- ❖ Complaints regarding bullying, harassment or sexual harassment are extremely serious, and will be treated as such by management.
- ❖ Complaints which are upheld may be pursued by the HR Manager as a disciplinary issue, in accordance with the provisions of the Disciplinary Code.
- ❖ Similarly, complaints which are found to be malicious or vexatious may also be pursued as a disciplinary issue, in accordance with the provisions of the Disciplinary Code.

MEDIATION

Mediation is a voluntary confidential process that allows both parties resolve their conflict in a mutually agreeable way with the help of a neutral mediator. Mediation can be used to achieve early intervention and resolution for **any** workplace conflict under this policy. The option to avail of mediation is available at any stage throughout the complaint procedure. See Appendix A of this document for further information.

Local
Resolution

• Attempt to resolve matter locally

Attempt resolution directly with the relevant parties

1. An individual who believes that s/he has been bullied, harassed or sexually harassed should, if possible, inform the person(s) concerned directly that their behaviour is unwanted, unacceptable and ask them to stop.
2. The individual should raise the issue with the person(s) concerned as soon as possible, but no later than four months after the most recent event(s), unless there are extenuating circumstances which may be taken into consideration. In many situations this approach is effective, as a direct communication between both parties can help to build both understanding and awareness. It can often be the case that a person is not aware of their behaviour, that it is unacceptable, or the impact which it has on the other person.
3. Resolution at this stage could involve an apology from the one person to another and/or an agreement that the unacceptable behaviour will not happen again.
4. If the complainant believes that this approach is unsuitable or if it has been unsuccessful, s/he should raise the issue with an appropriate Line Manager. This should be done as soon as possible, but no later than four months after the most recent occurrence of unwanted behaviour involving new complaints as outlined in Point 2 above, or within 10 working days of an unsuccessful attempt at resolving the matter directly with the other party.
5. It is recognised that circumstances may occasionally exist where, for good reasons, a complainant cannot pursue his/her complaint through the line management structure. In such circumstances, the complainant may bring the matter directly to the organisation's HR Manager as soon as possible, but no later than four months after the most recent occurrence of unwanted behaviour or attempted resolution between both parties as previously outlined in Point 2 above.

Attempt resolution with assistance from appropriate line manager

6. Once the complaint has been brought to his/her attention, the Line Manager should try to resolve the issue locally. This may involve encouraging all parties to engage in meaningful dialogue in an effort to gain a level of consensus or agreement. This should take place as soon as possible, but no later than 10 working days from when the issue was brought to their attention.
7. The complaint may be verbal or written. If verbal, a written statement of what is complained of should be taken by the line manager, and signed by the complainant. A copy should be given to the complainant.
8. The Line Manager may refer the complaint directly to the organisation's HR Unit if they feel that this is the most appropriate method of resolving the matter. This may involve situations where it is clear that local resolution or mediation may not be suitable to resolve the matter.
9. If the Line Manager's attempts to resolve the issue locally have been unsuccessful, the Line Manager should ensure that the parties are made aware of mediation as an option, provide them with information and encourage the parties to avail of the process. If both parties consent to engagement with the mediation process, the Line Manager should contact the HR Unit to have a Mediator appointed.
10. If Mediation is either unsuccessful or unsuitable as a means of conflict resolution, e.g. if one or more parties to the complaint refuse to take part in mediation, the complaint should be referred to the organisation's HR Unit as soon as possible.
11. While complaints at the local resolution stage can be either verbal or written, complainants should be encouraged to make their complaint in writing should they wish to progress the issue via the HR Manager.
12. If the HR Manager is the subject of the complaint, management of the complaint should be passed on to another senior member of management as appropriate.

- Designated Person assigned to progress complaint

HR Manager considers if complaint may involve a criminal offence

13. Upon receipt of a bullying or harassment complaint (verbal or written), the HR Manager will first consider if the complaint may constitute a criminal offence.
14. If the HR Manager considers that there is a possibility that a criminal offence has occurred, the complaint should be referred to the Garda Síochána as soon as possible.
15. Any further Departmental investigation may be put on hold pending advice from the Garda Síochána as to whether to continue processing the complaint.

Designated Person appointed

16. The HR Manager will appoint a Designated Person (DP) to progress the complaint, as soon as possible, but no later than 10 working days after receiving the complaint. The full role and responsibilities of the Designated Person are set out in Appendix B of this document.

Designated Person meets with both parties

17. The DP will, within 10 working days of appointment to the case, consult with the complainant to ascertain the details and context of his/her complaint.
18. The DP will, within 10 working days of appointment to the case, and after consulting with the complainant, will consult with the respondent(s) to present the complaint including relevant details and evidence of alleged behaviour.

Recording the complaint

19. The complaint should ideally be in writing, signed and dated. The complaint should be confined to precise details of alleged incidents of bullying, harassment or sexual harassment including their dates and names of witnesses, where possible. Where this is not possible, a written statement should be taken of the complaint by the Designated Person, and signed by the complainant.
20. The DP will remind both parties of the importance of confidentiality and that any breaches of confidentiality may be subject to proceedings under the Disciplinary Code. The DP will also ensure that both parties have copies of relevant HR policies and information, including a copy of this Policy and the *Disciplinary Code*.
21. The DP will advise both parties of possible options and/or resolution methods (e.g. mediation, investigation, withdrawal of complaint, etc.) which may be explored and the timelines involved.

22. The DP should also ensure that all parties are kept informed throughout this stage of the process, as appropriate.

Compulsory Mediation Information Session

23. The DP will provide information on mediation to all parties, including, but not limited to, the benefits of mediation, the role of all parties during mediation, the ownership of the outcome. This must be carried out prior to an offer of mediation by the DP.
24. The DP will offer mediation to both parties as an option to resolve the issue among the parties themselves. If both parties agree to enter the mediation process, the DP will ask the HR Unit for referral of the complaint to a Mediator as soon as possible.

Reporting to HR Manager

25. The DP should present to the HR Manager, within 20 working days of appointment to a case, a written report which should include:
- A record of all stages of the process that took place, i.e. meetings with all parties, mediation, etc. These records should not include comprehensive details of what was discussed but just that discussions took place. The purpose of the records is to provide evidence of an organisational response and an attempt at resolution.
 - Indication of whether the alleged behaviour may constitute bullying, harassment or sexual harassment as defined in Section 3 of this document. If this is not the case, the DP will indicate if alternative resolution approaches were suggested and/or taken up (e.g. referral to grievance procedure, management of underperformance, etc.)
 - Indication that examples of alleged behaviour by the respondent(s) have been provided by the complainant including time, dates, location, names of witnesses, etc.
 - A copy of the written complaint signed by the complainant

- Complaint is formally investigated

HR Manager appoints investigator

26. The HR Manager will decide, upon receipt of the DP report and the written complaint, if a formal investigation is required in accordance with this policy.
27. If the decision is taken to proceed with a formal investigation, the HR Manager will appoint an investigator to examine the complaint as soon as possible, but no later than 10 working days from receipt of the DP report.
28. The terms of reference defining the scope of the investigation, including indicative timelines, should be agreed between the investigator and the HR Manager before commencement of the investigation and copied to the relevant parties. While it is recognised that the length of the investigation may be dependent on the complexity of the case, the number of witnesses etc., generally the time limit for the investigation should not, except in exceptional circumstances, exceed 3 months.
29. All participants should be reminded of the importance of confidentiality at all times during the investigation process.

Formal Investigation commences

30. All parties must fully engage with the investigation in order to avoid delays. An investigator is entitled to draw conclusions from the failure to co-operate with the investigation (e.g. in the absence of an explanation by the respondent(s) that, on the balance of probability, the alleged incident did occur). Failure to co-operate with the investigation may result in disciplinary procedures.
31. The complainant, the respondent(s) or any witnesses should be allowed to be accompanied during the investigation process by a person of their choice, such as a colleague or a Trade Union representative.
32. If one of the parties involved in the investigation is absent from work due to sick leave, s/he should be referred to the Office of the Chief Medical Officer (CMO) as soon as possible but no later than 10 working days from the notification of the sick leave absence. The CMO should not only be asked about fitness for work, but “fitness to participate” in the investigative process.
33. The investigator should begin the investigative process with a thorough interview with the complainant to ascertain the facts related to the complaint. This interview should seek to determine:
 - What precisely is alleged
 - Who was allegedly involved
 - When and where the alleged incident(s) occurred
 - Whether there were any witnesses to the event(s)

34. Following the interview with the complainant, the investigator should meet with the respondent(s). The respondent(s) should be:
- Informed of the allegations which have been made against them
 - Provided with a copy of the complainant's written statement
 - Provided with an opportunity to comment on the alleged incident(s)
 - Asked to identify if there were any witnesses to the alleged events
35. The complainant will be provided with a copy of the statement provided by the respondent(s) within 10 working days from the date of the interview of the respondent(s). Each party must be fully aware of the case that is being made by the other party. The investigator should not take evidence into account without first obtaining what comments or reply may be made to that evidence by the other party. It is important that both complainant and respondent have copies of all statements which may inform the investigator(s) decision.
36. Following the interviews with the complainant and the respondent(s), the investigator should approach relevant witnesses named during the interviews, to obtain their account of events. It is for the investigator to determine which witnesses need to be interviewed, that is on the basis of disputed accounts of events or issues of a substantive nature.
37. Witnesses should only be provided with information which is necessary to allow the investigator to determine what occurred in relation to the allegation. Witnesses should also be informed that the investigation is a confidential process, and they should not discuss the matter with other parties.
38. Both the complainant and the respondent(s) should be provided the opportunity to comment on the witness statements as soon as possible, but no later than 10 working days following receipt of the witness statements.
39. The investigator should then consider all of the evidence which has been presented to them, in a bid to reach a conclusion on what transpired, and provide a written report to the HR Manager containing the findings of their investigation. This outcome of the investigation should include one of the following outcomes
- a) That, on the balance of probability the complaint is upheld for reasons which are stated
 - b) That, on the balance of probability the complaint is not upheld for reasons which are stated (cases where there was insufficient evidence to decide the complaint are included in this category)
 - c) The investigator may, depending on the circumstances, make a finding of 'no case to answer' where the complainant withdraws a complaint or refuses to engage with the investigation.

Role of HR Manager following receipt of Investigators report

40. The complainant and the respondent(s) should be informed in writing of the findings of the investigation by the HR Manager within 10 working days following receipt of the investigation report.
41. The complainant and the respondent(s) can comment on the findings of the investigation within 10 working days of notification of the investigation's findings.

The HR Manager should, within 10 working days of receipt of comments from both parties:

- Consider the findings of the investigation and comments provided by both parties
- Decide upon the outcome of the process
- Inform both parties if the matter is to be further pursued as a disciplinary issue
- An investigation under this policy shall be the fact finding investigation as required for the purposes of the Disciplinary Code

- Application made to review decision

43. If the complainant or the respondent is dissatisfied with the conduct and/or outcome of an investigation, s/he can apply in writing, within 10 working days of receipt of the decision, to the HR Manager to review the process, clearly indicating the specific grounds for review.

It should be noted that this review will be a paper based exercise and that the role of the Reviewer is not to re-investigate the incidents which gave rise to the complaint. Rather, the Reviewer shall consider:

- Whether the investigation has followed the correct procedures contained in this Policy
 - Whether the investigator's conclusions could or could not reasonably be drawn from the evidence on the balance of probability
44. A suitable senior manager from outside of the organisation should be appointed within 10 working days of the application, to review the conduct or outcome of the investigation*.
45. The HR Manager should inform the other party of the application for review and on what grounds this application has been made as soon as the application has been received.
46. The Reviewer should provide a report to the HR Manager containing his/her findings in relation to the procedures followed and conclusions which were drawn during the investigation.
47. The HR Manager should consider the findings of this report and decide upon a relevant course of action.
48. The HR Manager should inform both parties of his/her decision, and the reasons behind the decision, no later than 10 working days from the date of their receipt of the Reviewer's report.

*In certain circumstances it may be appropriate to assign the review to a member of the external investigative panel given the complexity of the case.

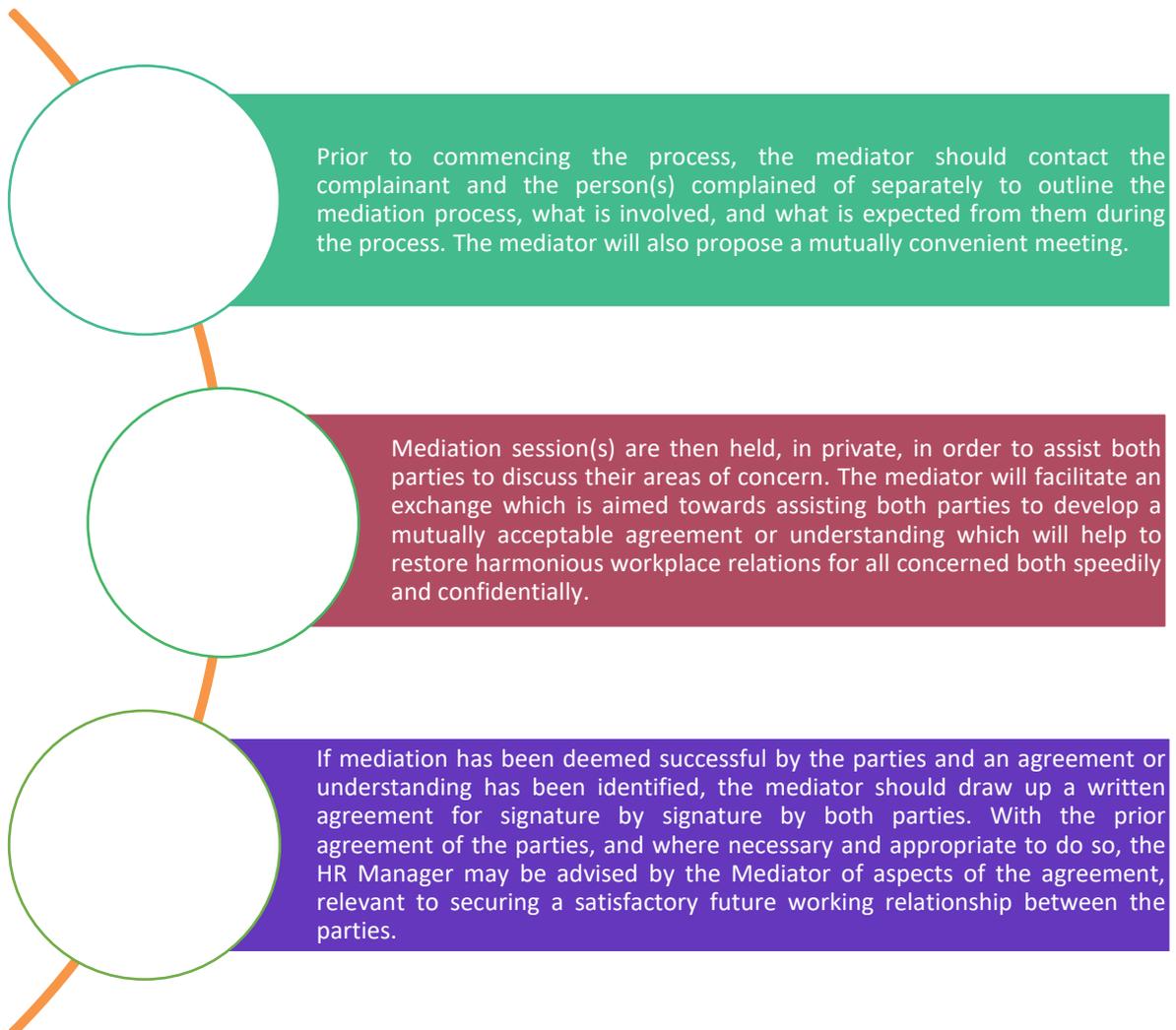
APPENDIX A - MEDIATION

Mediation is a voluntary and confidential process for solving disputes, which is available to parties at each stage of the complaints process.

Mediation is a process which allows all parties to have their views heard on issues of concern in a safe environment, which can help to deliver workable agreements which are agreeable to all parties.

Confidentiality is crucially important to the process and should be adhered to at all times.

Once Mediation has been requested, and where all parties agree to participate, the HR Manager should appoint a suitable mediator, usually through the Civil and Public Service Mediation Initiative, to commence the process.



What is Mediation?

Mediation is a voluntary confidential process that allows two or more disputing parties resolve their conflict in a mutually agreeable way with the help of a neutral third party, a mediator (Stein 1997).

Mediation focuses on the interests or needs of the parties and on solutions, not on determining or assigning blame. The mediator does not impose a solution but rather works with all parties to create their own solution.

Mediation Process

When a complaint is received by the Designated Person, by the Line Manager or by the Personnel Officer/HR Manager the two parties involved will ordinarily be invited to participate in mediation. Alternatively a staff member(s) may seek mediation themselves to resolve the dispute, through HR. Mediation will be explained in detail to the parties involved so they can make an informed decision about this alternative method of resolving disputes or complaints.

If both parties agree to attend mediation then a mediator will be assigned and the parties informed. The mediator will contact both parties and arrange to meet them both separately initially. At these meetings the mediator will gain an understanding of the issues, ensure both parties understand mediation, what will be involved, and what is expected from them. After meeting both parties separately the mediator will then arrange a suitable time and venue for the mediation session(s) in the event that all parties, including the mediator, are willing to proceed.

The mediator will then bring both parties together to identify and discuss their areas of concern. The mediator facilitates this process without offering solutions, taking sides or making a judgement. The mediator assists each party to explain the problem to the other party as they see it. The mediator facilitates an exchange in which the parties identify the issues in dispute. The objective of mediation is to enable the parties involved to resolve matters speedily and confidentially, often without recourse to a formal investigation.

Benefits of Mediation

- Mediation is an empowering process, both parties are in control of the outcome.
- It creates a safe environment for both parties to talk about the issues and the impact on them to be heard.
- It is usually fast.
- Mediation is confidential and without prejudice.

Because the terms of agreement, if reached through mediation, are made up of the decisions of the parties themselves, there is a greater likelihood that they will continue to be adhered to, rather than in circumstances where solutions are imposed by third parties. Mediation agreements are binding on the parties.

- It is a voluntary process. Either party or the mediator can withdraw at any time from the process.
- The parties involved are in control of the decisions as opposed to a solution being imposed.
- Mediation encourages a positive approach to resolving disputes or difficulties.
- Having the mediator in the session to facilitate and control the process creates an environment of exchange, exploration, and resolution in safety.

Information Session on Mediation (for the parties involved)

Mediation is a process whereby an agreed, impartial, and suitably qualified mediator meets with both parties to try to help them to resolve the dispute, complaint or issue. The mediator usually meets each party separately to begin with, to get a sense of the issues and explain the mediation process. At this session each party can ask any clarifying questions. The mediator will outline what is expected from each party i.e.

- Confidentiality
- Respect for each other
- That each party will outline the situation and the issues as they see it
- That each party will listen to the other
- That each party will engage honestly in the process
- That each party be willing to explore options for resolving the issues
- That the mediator will control the process
- That the mediator will take note of agreements/decisions reached during the session
- That whatever is discussed in the mediation processed cannot be disclosed or used in another forum
- That the mediator will not be required to give testimony at any other forum relevant to the dispute between the parties.

The mediator then arranges with both parties a suitable venue and time to meet together. The length of the meeting and breaks times will be agreed. If necessary/appropriate for a further meeting(s), day and time of the next meeting will be arranged.

During this mediation meeting both parties will outline the dispute or issues as they see it. The mediator will facilitate respectful dialogue and negotiation between the parties. The aim of the mediation is for the parties involved to reach agreement on how to resolve the dispute or issue.

Mediation may be invoked at any time in a dispute, however, other methods of dispute resolution (e.g. investigation or legal remedy) must be suspended to allow for mediation to proceed. In the event that either party withdraws from the mediation attempt the parties concerned are again free to pursue other courses of dispute resolution.

APPENDIX B – Role of the individual parties

Role of the Complainant

The complainant (the person making a complaint) will play an important role in the successful resolution of any bullying, harassment or sexual harassment complaint. The individual should take some time to make themselves aware of this policy, and the options which are available to them.

There are a number of sources of support, advice and assistance available for individuals such as the Contact Person, Civil Service Employee Assistance Service, the Designated Person, your organisation's HR Unit and others. A list of useful contacts can be found in Appendix D of this document.

The complainant should make a reasonable and genuine attempt to fully participate in attempts at resolving the dispute, to participate in mediation, attend interviews and meetings etc. as required.

The complainant must not engage in victimisation, intimidation or hostility towards the respondent.

All parties should continue to work as normal during all stages of the process, unless directed otherwise.

Those involved in a complaint should be aware that confidentiality is of utmost importance.

Malicious complaints may be viewed as misconduct.

Role of the Respondent

Similar to the role of the complainant, the respondent (the person(s) complained of) will play an important role in the successful resolution of bullying, harassment or sexual harassment complaints. Individuals involved should take the time to make themselves aware of this policy, and to make use of the many other sources of information and support during the complaints process.

The respondent should make a reasonable and genuine attempt to fully participate in attempts to resolve the dispute, to participate in mediation, and to attend meetings and interviews as required.

The respondent must not engage in victimisation, intimidation or hostility towards the complainant.

Those involved in a complaint should be aware that confidentiality is of utmost importance.

All parties should continue to work as normal during all stages of the process, unless directed otherwise. As with the complainant, there are a number of sources of support, advice and

assistance available for individuals such as the Contact Person, the Designated Person, the Civil Service Employee Assistance Service (CSEAS), your organisation's HR Unit and others. A list of useful contacts can be found in Appendix D of this document.

Contact Person (CP)

The Contact Person (CP) is someone who is available to listen and provide information to those who are concerned about bullying, harassment or sexual harassment in the workplace.

The CP will be able to explain the various resolution options, the potential supports which are available to individuals, and to explain the role of the various parties involved in the resolution process.

The Contact Person may be one of the following:

- Civil Service Employee Assistance Service (CSEAS)¹
- A nominated individual within your organisation
- A Trade Union Representative

Generally, the CP service will be provided by the CSEAS Employee Assistance Officers. This service may also be available through your organisation or Trade Union. In all cases it must be ensured that the CP has the appropriate knowledge and skills for the role.

Contact details for EAOs are also available on the CSEAS website cseas.per.gov.ie. Further details regarding the wide range of free and confidential supports which the CSEAS can provide is also outlined below.

N.B. *It is not the role of the CSEAS/CP to become directly involved in the complaints procedure, nor to act as advocate for either party in a dispute.*

Civil Service Employee Assistance Service (CSEAS)

In addition to the role of Contact Person, the CSEAS provides a wide range of free and confidential supports to all employees, including line managers, designed to assist employees in managing work and life difficulties which, if left unattended, could adversely affect work performance and/or attendance and quality of life. The CSEAS operates as a regionalised shared service, under central management within the Department of Public Expenditure & Reform. Employee Assistance Officers (EAOs) are based in Dublin, Sligo, Mayo, Tullamore, Limerick and Cork.

Role of the CSEAS in relation to the Dignity at Work Policy

The CSEAS is available to offer support to employees who

¹ CSEAS can be contacted by Departments/Offices which fall within its remit.

- Experiences a conflict situation and/or interpersonal/communication difficulties in the workplace
- Feels s/he is being subjected to bullying, harassment or sexual harassment
- Has had an accusation of bullying, harassment or sexual harassment made against him/her
- Is a line manager who may need support or guidance in resolving issues arising from conflict, interpersonal difficulties, bullying, harassment or sexual harassment
- Is a colleague affected in such circumstances
- Is asked to be a witness in an alleged bullying, harassment or sexual harassment complaint.

What the CSEAS can offer

When an individual engages with the CSEAS, the EAO can provide

- Assistance in evaluating and assessing difficulties
- Help in exploring the issues and possible options for resolution
- Help in planning a structured approach to coping with and resolving issues
- Signpost to other resources
- Referral to external agencies as appropriate and in agreement with the individual (cost, if any, in such referrals will be borne by the individual concerned)
- Information on relevant policies, conflict resolution and mediation

In the interest of impartiality where two or more parties are involved in a situation where there is conflict, interpersonal difficulty, alleged bullying, harassment or sexual harassment, each party can avail of the support of a different EAO from within the CSEAS.

A line manager can consult the CSEAS where s/he is dealing with staff members in relation to any of the foregoing issues for support and advice in trying to bring about a resolution.

A line manager can also advise the individual(s) of the availability of the CSEAS as a support. Where appropriate the line manager can formally refer the individual(s) to the CSEAS.

Where HR Divisions are involved, they can consult with the CSEAS. Suggested and/or formal referrals of the individual(s) involved to the CSEAS are also options.

Re-establishing positive working relationships is an important element of the process. The CSEAS can support any of the parties in working towards this goal.

The CSEAS is a neutral support service and will not be involved in the adjudication of cases. The EAO does not represent the staff member or attend informal, formal or mediation meetings. The EAO may be available before or after meetings to provide support.

CSEAS Confidentiality

Professional standards apply in relation to confidentiality. Confidentiality is between the individual and the CSEAS. Information and personal data disclosed by employees to the CSEAS remains confidential (exceptions are listed below) and will not be disclosed to a third party without the prior knowledge and consent of the individual.

Exceptions to confidentiality

- Life-threatening situations to the individual, other parties or the public
- Where there is a statutory responsibility to report
- Where required by a court or legal process to do so
- Where non-disclosure of information could compromise the CSEAS
- Where the CSEAS becomes aware of a breach in criminal law, disclosure may be necessary

Where an individual is formally referred to the CSEAS by line management, HR Division or the Chief Medical Officer, confirmation of attendance/engagement will be given to the referring party and any proposed feedback and/or progress reports will be agreed with the staff member.

Full details on the CSEAS are available at cseas.per.gov.ie

Role of the Designated Person (DP)

The Designated Person (DP) is a new role as set out in the Health and Safety Authority's Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying and Harassment in the Workplace.

The DP will be a senior member of staff, who will oversee complaints which have been referred to the Human Resources Unit. This individual will play a pivotal role in ensuring that complaints are dealt with in a timely and efficient manner. The DP will:

- Ensure that all parties have copies of this policy and any other relevant information
- Ascertain the details relevant to the complaint, the context, and advise on the potential resolution methods which may be explored
- Provide information on mediation to all parties involved in a dispute
- If complaints are in verbal format, make a written note of what is complained of, and give a copy to the complainant
- Make a record of steps which have been taken in the process, such as a records of meetings, actions agreed, and the final report to the HR Manager. The purpose of these records, which do not include details of the discussions, are to provide evidence of the complaint being met with an organisational response and attempt at resolution

For clarity:

- The role of the Designated Person (DP) is not to conduct an investigation nor to make any decision regarding same, but rather it is:
 - to meet with the parties,
 - to familiarise themselves with the background, context, and details relevant to the case,
 - to provide information on mediation to the parties
 - to present a report to the HR Manager, indicating whether the alleged behaviour may constitute bullying, harassment or sexual harassment as defined in the policy. **The HR Manager will decide on the appropriate resolution process.**

- The HR Manager in the Department/Office in question will appoint a DP for each case. The DP will be a senior manager who has not had prior contact with or knowledge of the case.

- It is worth noting that the steps of the process do not need to be followed linearly, e.g. it is conceivable that a HR Manager may refer a serious case to formal investigation as the first step in the process.

Role of Line Manager

Line Managers are required to make both themselves and their direct reports familiar with this policy.

Line Managers have a duty of care to their staff, and are required to tackle bullying, harassment, and sexual harassment in the workplace. They should make a reasonable attempt to facilitate a harmonious work environment which promotes dignity and respect for all staff. All complaints regarding bullying, harassment or sexual harassment must be treated seriously with due regard to the sensitivities of the complainant and to the rights of the alleged offender(s). All complaints should be dealt with promptly and sympathetically. Confidentiality should be adhered to by all parties involved in the complaint.

Line Managers should be approachable should any of their staff require advice regarding any aspect of this policy or regarding any potential incidents of bullying, harassment or sexual harassment.

If approached by a direct report regarding a case of potential bullying, harassment or sexual harassment, the Line Manager should;

- Speak to individuals on all sides of the complaint in an attempt to ascertain the details and context related to the complaint
- Attempt to facilitate local resolution of the issue

- Consider if mediation may facilitate a possible solution to the issue
- Alert the Human Resources Unit to cases which cannot be facilitated by local resolution or mediation
- Where complaints are not upheld, line managers should make attempts to restore reasonable working relationships within their area.
- Those who make a complaint in good faith, or who provide evidence in relation to a complaint in good faith, should not be victimised by Line Managers

Role of HR

Complaints which are referred to the HR Unit should be treated as a serious issue. They should be dealt with in a prompt and sympathetic fashion. All complaints should be handled in confidence, and confidentiality should be adhered to at all times.

Where Contact Persons have been appointed from within an organisation, the HR Division should circulate and publicise the relevant details. HR Divisions must ensure that the Contact Persons have the appropriate knowledge and skills for the role.

Complaints of a potentially criminal nature should be passed onto the Garda Síochána. Where Departmental investigations are required, the HR Unit will pass on complaints to the Designated Person (DP) in the first instance, who will attempt to resolve the issue informally, and via mediation where possible.

Where mediation and local resolution have been unsuitable or unsuccessful, the complaint will be returned to the HR Unit, with a report from the DP of the actions taken. If a formal investigation is required, the HR Unit should appoint an impartial investigator to ascertain the facts and produce a series of recommendations.

Following the investigation, the HR Manager will be required to determine whether the complaint should be upheld or not upheld, and decide upon a course of action, potentially invoking the Disciplinary Code.

The HR Unit should maintain regular communication with the parties involved to keep them informed of progress. The HR Unit should also play a role in the positive reinforcement of this policy among staff across the organisation, and advise and support line managers where necessary.

The HR Unit should also take steps to ensure that a workplace free of bullying, harassment or sexual harassment is maintained following the resolution of the complaint.

APPENDIX C – Self Audit Checklists

Self Audit Checklist for the Complainant

Experiences of bullying, harassment, and sexual harassment can be difficult to define and explain to third parties. Recalling incidents of this nature may be quite troubling, frustrating or upsetting. Summarising these events or experiences into a complaint which can be fully understood by others can be a difficult exercise.

Therefore completing the following checklist may assist individuals to reflect upon their situation, determine what they have experienced and if it may fall into the category of bullying, harassment or sexual harassment as defined previously in this policy.

The following is for personal use, and will not be recorded or reviewed by any other party unless you as an individual choose to disclose it. While respecting the confidential nature of the process, you may wish to share this information with any/all of the following before taking a complaint: a trusted friend, colleague, union representative, line manager, contact person etc., a member of the CSEAS.

The individual may wish to consider the following:

- Have I read the Dignity at Work Policy as a basis for considering my options?
- Does the behaviour I am concerned about match the definitions of bullying, harassment or sexual harassment as set out in this policy?
- How has the behaviour I have experienced affected me?
- Do I consider the behaviour I experienced to be offensive, humiliating, intimidating, or threatening?
- If considered to be bullying, has the behaviour I am concerned about been repeated?
- Was the behaviour I am concerned about part of the normal disciplinary or PMDS procedures? Was the feedback given in an appropriate and respectful manner?
- If I do not believe my experience can be defined as bullying, harassment or sexual harassment, may the behaviour be considered to be general workplace conflict and if so, have I explored the options available to me for resolution of these issues?
- Can I resolve the situation or stop the behaviour by speaking to the person directly, and requesting that they stop this behaviour?
- If I cannot approach the individual personally, can I ask my manager to do so on my behalf?

- If I am unable to discuss the matter directly with the person concerned, could I discuss the matter with another appropriate line manager?
- Were there any witnesses to the alleged behaviour?
- Have I kept a record of the behaviour or incident(s), including times, places, and names of witnesses?
- Have I discussed the situation and options with someone I trust?
- Am I prepared to engage in dialogue and other efforts to resolve the situation, such as mediation?
- Would I benefit from speaking to an Employee Assistance Officer?

Self Audit Checklist for the Respondent

Accusations regarding bullying, harassment or sexual harassment can be as stressful for the person(s) complained of, or potential witnesses as for the complainant. It may be beneficial to complete the following checklist, which may help you to reflect upon your situation, define the problem and to consider whether any of your behaviours might be perceived as bullying, harassment or sexual harassment.

The checklist is a tool for your personal reflection and is not recorded or reviewed by any other person unless you choose to disclose it. You may wish to share this information with a trusted friend, colleague, union rep, line manager etc. in order to evaluate your options as set out in this policy.

In considering options to resolve your current situation you may wish to consider the following, or discuss these points with an appropriate contact person or manager.

- Have I read the Dignity at Work Policy as a basis for defining bullying, harassment, and sexual harassment?
- Could my behaviour which has been complained of be viewed as humiliating, intimidating or threatening?
- Is it possible that the tone or volume of my voice or my body language could ever be perceived as offensive, humiliating, intimidating or threatening?
- Could my communication or management style ever be perceived as offensive, humiliating, intimidating or threatening by someone else?
- When I feel angry, stressed or anxious, could my feelings be exhibited in a way that others might find offensive, humiliating, intimidating or threatening?
- Could the way in which I provide feedback on people's work, or monitor their performance, ever be perceived as overly critical or excessive by someone else?
- Have I excluded a particular staff member from essential information or meetings?
- Could targets or deadlines I have set be perceived by others as impossible?
- Having read the policy could my behaviour be perceived as matching the definitions of bullying, harassment or sexual harassment?
- Is it possible that my behaviour towards the complainant has been repeated?

- Do I have any records of previous interactions I have had with the complainant?
- Was the behaviour that has been perceived as bullying, harassment or sexual harassment part of the normal disciplinary or performance feedback procedure?
- Have I discussed the situation and options with someone I trust, and may I benefit from doing so?
- Would I benefit from speaking to an Employee Assistance Officer?

APPENDIX D – Useful links

- Department of Public Expenditure and Reform – Civil Service Human Resources website:

hr.per.gov.ie

- Civil & Public Service Mediation Service (CPSMI)

hr.per.gov.ie/mediation/

- Civil Service Employee Assistance Service (CSEAS)

cseas.per.gov.ie

- Health and Safety Authority – Guidelines on Bullying at Work

http://www.hsa.ie/eng/Workplace_Health/Bullying_at_Work/