



& City of Dublin ETB Craft Unions (e.g. TEEU, INPDU, UCATT and BATU)

## Policy for the Prevention and Resolution of Sexual Harassment and Harassment at Work

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## Foreword

This Prevention of Harassment and Sexual Harassment at Work Policy has been developed with specific reference to the Irish Human Rights and Equality Commission ('IHREC') Code of Practice on Sexual Harassment and Harassment at Work which has been prepared by IHREC with the approval of the Minister for Children, Equality, Disability, Integration and Youth and after consultation with relevant organisations representing equality interests. It reflects a collective approach by all ETB Stakeholders to provide guidance for ETBs, their staff and their representatives on good practice and procedures for identifying, preventing, addressing and resolving issues around workplace sexual harassment and harassment.

# Table of Contents

Foreword.....	1
1. Introduction.....	4
1.1 Consultation.....	4
1.2 Aim and Commitment .....	4
1.3 Specifically, the Policy:.....	4
1.4 General Provisions of the Policy .....	5
1.5 Records .....	6
2. Definitions and Scope.....	7
2.1 What is harassment? .....	7
2.2 What is sexual harassment? .....	8
2.3 What is the impact of Sexual Harassment and Harassment?.....	9
2.4 Who engages in sexual harassment or harassment behaviours?.....	10
2.5 Why deal with sexual harassment and harassment at work? .....	10
2.6 What is not sexual harassment and harassment at work?.....	10
2.7 Who is involved in sexual harassment and harassment at work?.....	11
2.8 What are the effects of sexual harassment and harassment at work? .....	11
3. Management of sexual harassment and harassment at work .....	12
3.1 Prevention .....	12
3.1.1 Role of the Employer.....	12
3.1.2 Role of employees .....	13
3.1.3 Organisational culture.....	13
3.2 Preventative measures/actions .....	13
3.3 Contact Persons role.....	14
4. Intervention in workplace sexual harassment and harassment.....	14
Responding to a workplace sexual harassment and harassment complaint at the workplace ....	14
Early intervention matters .....	14
The value of mediation .....	14
4.1 Informal process .....	15
4.1.1 Informal process.....	15
Recommended steps in an informal process are: .....	15
4.1.2 Closure of informal stage .....	16
4.2 Formal process.....	16
4.2.1 Formal complaint .....	17
4.2.2 Investigation .....	18

4.2.3	Communications of outcomes.....	21
4.2.4	Appeals.....	21
	External Appeal.....	21
5.	Conclusion of formal process and follow up.....	22
6.	Workplace Relations Commission (WRC).....	22
6.1	Role of the WRC.....	22
6.1.1	Introduction.....	22
6.1.2	System for processing sexual harassment and harassment complaint/cases.....	22
7.	General.....	26
7.1	Communication of Policy.....	26
7.2	Monitoring by the ETB.....	26
7.3	Training and Supervision.....	26
7.4	Reviews.....	27
	Appendix 1:.....	28
	Terms Of Reference for the Conduct of a Formal Investigation.....	28
	Appendix 2: Sources of Other Information and Advice.....	33

# 1. Introduction

## 1.1 Consultation

In accordance with the provisions in the code referred to above, the revision of the Education and Training Board (ETB) Sexual harassment and harassment Prevention Policy has been carried out on a partnership basis and has been agreed by Education and Training Boards Ireland (ETBI) and trade unions representing staff in the education and training board sector including ASTI, FORSA, 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 September 1<sup>st</sup>, 2025. Existing complaints being processed through the Formal Procedure of previous Prevention Policies should continue to be processed through those policies. Where a complaint is at the informal Stage of the previous version of the Sexual harassment and harassment Prevention Policy and is to escalate to the Formal Stage, that process should now continue using this Procedure at the Formal Stage from the above agreed date.

## 1.2 Aim and Commitment

The purpose of this Policy is not simply to prevent unlawful behaviour but provide guidance for the ETB, employees and their representatives on what constitutes good practice and procedures to encourage best practice and a safe and harmonious workplace where such behaviour is unlikely to occur.

The ETBs commitment to ensuring that the workplace is free from sexual harassment and harassment. That all employees have the right to be treated with dignity and respect.

## 1.3 Specifically, the Policy:

- provides practical guidance on identifying, managing and preventing sexual harassment and harassment at work arising from the ETBs' duties under the Employment Equality Acts (1998 - 2005).
- is based on good industrial relations principles governing effective engagement and processes in the workplace.
- highlights the procedure to be followed and the need to clearly state that sexual harassment and harassment in the workplace is not acceptable and complaints of sexual harassment and harassment will be dealt with sensitively. The Policy reinforces obligations on the ETB to progress complaints informally where possible, and otherwise, as appropriate, formally; and clearly identifies the roles and responsibilities of both organisations responsible for this Policy and the role of the WRC.
- This policy and the procedures contained within will not affect the employee's right to make a complaint under the Employment Equality Act, and statutory time limits

will not be paused pending the outcome of the investigation and shall continue to run. Statutory limits for making a claim to the WRC is within 6 months of the date of the alleged incident, or of the most recent incident if there is more than one. If a complaint is not referred within the time limit, an extension may be granted by an Adjudication Officer up to a maximum time limit of 12 months where, in the opinion of the Adjudication Officer, the complainant has demonstrated 'reasonable cause' for the delay. The decision to extend the time is solely a matter for the Adjudication Officer. If a complainant is seeking an extension of time, they will need to provide detailed reasoning and any supporting documents in support of the application.

#### 1.4 General Provisions of the Policy

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 this policy are advised that:**

- a. 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.
- b. The procedure cannot be used concurrently with any other policy, procedure or civil claim in relation to the same matter. In addition, allegations which have previously been investigated cannot be entered as part of the current investigation.
- c. Details of any complaints shall be put to the respondent staff member concerned.
- d. **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 representative(s) of a recognised trade union.
- e. **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 from coming 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.
- f. **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, they 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.

- g. **“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.
- h. **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.
- i. **Whether formal or informal, a complaint must be made within six months of the latest incident(s) of alleged sexual harassment and 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.
- j. **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. One investigator would normally be appointed. The discretion lies with the ETB as to whether a second additional investigator would be required. In such circumstances, the ETB will complete the Supplementary Request for Tender document indicating a second investigator is required.
- k. All matters relating to the complaint are strictly confidential to the parties and their representatives. This statement is intended to reflect the duties of confidentiality expected and owed to participants in such investigations. It is also the case that participants are at all times free to disclose matters relating to the complaints to advisors where necessary.

## 1.5 Records

All investigation material and records will be retained by the Human Resource Department. Investigation material may be anonymised and used for compiling statistical and management information purposes, to monitor the operation of this policy and any modifications which may be required and for training employees.

The ETB will process records and may rely on CCTV footage in accordance with its CCTV Policy, Data Processing Policy and associated Privacy Notices.

## 2. Definitions and Scope

The Employment Equality Acts (1998-2015) ('EEA') and Statutory Instrument 208 of 2012 Employment Equality Act 1998 (Code of Practice) (Harassment) Orders 2012) is the relevant legislation framework which sets out the definitions of sexual harassment and harassment at work

This Policy refers to behaviours which come within the definition of workplace sexual harassment and harassment only.

The scope of the sexual harassment and harassment provisions extends beyond the workplace, for example to conferences and training that occur outside the workplace. It may also extend to work-related social events, such as for example, a work-related party and social media sites.

Where a complaint involves a minor or a vulnerable adult employed in a work experience capacity, it would be important to note that the ETB as an employer, is subject to legal mandatory reporting requirements and is obliged to report any knowledge, belief, or reasonable suspicion that a child (or vulnerable person as defined in the Criminal Law (Sexual Offences) Act 2017) has been harmed, is being harmed, or is at risk of being harmed to the relevant authorities.

It might also be noted that if mandatory reporting is not required, there is no obligation to make a report of any allegation, and this should not be undertaken without the knowledge, consent, and wishes of the complainant i.e. information contained in a complaint must never be shared without permission from the person disclosing except where there is a legal obligation to do so. In discharging this duty an ETB is required to seek legal advice and/or seek the advice of a DLP where one is appointed.

In addition, situations may also arise where conduct complained of may also constitute a criminal offence. In such circumstances where it is suspected that a crime has been committed, the ETB shall obtain legal advice and where a report is made to An Garda Síochána, the ETB will not take any action which might compromise a criminal prosecution. An Garda Síochána has overall responsibility for the direction of any criminal investigation.

It is the function of An Garda Síochána to interview and take any statements that will form part of the criminal investigation file. The role of An Garda Síochána is to investigate alleged crimes, and it is the responsibility of the Director of Public Prosecutions (DPP) to decide on, and to carry out prosecutions. In such circumstances it may be necessary for the ETB to pause any proposed actions or investigation pending the outcome of a criminal investigation.

### 2.1 What is harassment?

Harassment is defined in section 14A (7) of the EEA as any form of unwanted conduct related to any of the prohibited grounds which has the purpose or effect of violating a

person's dignity and creating an intimidating, degrading, humiliating or offensive environment for the person. Harassment or bullying that is not linked to one or more of the discriminatory grounds is not covered by the EEA.

The conduct at issue may not be specifically directed at a particular employee but nevertheless 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 protection of the EEA extends to situations where the employee does not have a relevant characteristic related to a prohibited ground, but the perpetrator believes that s/he has that characteristic. For example, if the perpetrator believes the employee is gay and the employee is not, or that the employee has a disability such as schizophrenia and the employee does not.

Many forms of behaviour, including spoken words, gestures or the display/circulation of words, pictures or other material, may constitute harassment. A single incident may constitute harassment, and behaviour may constitute harassment of an employee even though it is not directed specifically at that employee.

Behaviour which makes for a harassment pattern will likely include not just one but a range of the following behaviour:

- Verbal harassment - jokes, comments, ridicule or songs.
- Written harassment - including graffiti, text messages, emails, social media or internet posts.
- Physical harassment - jostling, shoving or any form of assault.
- Intimidatory harassment - gestures, posturing or threatening poses.
- Visual displays such as posters, emblems, or badges.
- Excessive monitoring of work.
- Isolation or exclusion from social activities; and
- Unreasonably changing a person's job content or targets.

**The list is not exhaustive.**

## 2.2 [What is sexual harassment?](#)

Sexual harassment is defined in section 14A (7) of the EEA 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, degrading, humiliating or offensive environment for the person.

The conduct at issue may not be specifically directed at a particular employee but nevertheless has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

Many forms of behaviour can constitute sexual harassment. A single incident may constitute sexual harassment.

Behaviour which makes for a sexual harassment pattern will likely include not just one but a range of the following behaviours:

- Physical conduct of a sexual nature - this may include unwanted physical contact such as unnecessary touching, patting or pinching or brushing against another employee's body, assault and coercive sexual intercourse.
- Verbal conduct of a sexual nature - this includes unwelcome sexual advances, propositions or pressure for sexual contact, continued suggestions for social contact outside the workplace after it has been made clear that such suggestions are unwelcome, unwanted or offensive, suggestive remarks, innuendo or lewd comments, graffiti, written materials, emails, text messages or social media posts.
- Non-verbal conduct of a sexual nature - this may include the display of pornographic or sexually suggestive pictures or objects. It may also include stalking, indecent exposure, leering, whistling or making sexually suggestive gestures; and
- Gender-based conduct - this includes conduct that denigrates or is abusive of an employee for reasons related to his or her sex such as derogatory or degrading abuse or insults which are gender based. This might include conduct that insults or degrades an employee because she is pregnant or because s/he is transgender.

**The list is not exhaustive.**

### 2.3 What is the impact of Sexual Harassment and Harassment?

The interchangeable use of the word's harassment and sexual harassment and harassment can lead to a misunderstanding of what each one relates to. They are legally distinct concepts and so a behaviour can be deemed either sexual harassment and harassment or harassment, not both.

- Sexual harassment, and harassment on the eight non-gender prohibited grounds, pollute the working environment and can have a devastating effect on the health, confidence, morale and performance of people affected by it.
- The anxiety and stress caused by harassment may lead to victims taking time off work due to sickness and stress, being less efficient at work, or leaving their jobs to seek work elsewhere.
- In addition to the harassment itself, employees often suffer short and long-term damage to their employment prospects if they are forced to forego promotion or to change jobs. Harassment may also have a damaging impact on employees who are not themselves directly the object of harassment, but who also experience a workplace culture where harassment is normalised and undermines the dignity of workers.
- There are also adverse consequences for employers. Harassment has a direct impact on the profitability of the enterprise where affected staff take sick leave or resign their posts. It can also have an impact on the economic efficiency of the enterprise

when employees' productivity is undermined by the hostile work culture.

- Some specific groups are particularly vulnerable to sexual harassment and harassment, such as new entrants to the labour market, those with irregular or precarious employment contracts, immigrant workers and employees in non-traditional jobs.

#### 2.4 Who engages in sexual harassment or harassment behaviours?

It is not possible or advisable to engage in guess work or stereotyping in relation to those who engage in behaviour that falls under the definition of sexual harassment or harassment at work. Each case should be taken on its own merit as generalisations are unhelpful in resolving sexual harassment and harassment complaints. Good job design for all, adequate and effective training for all and proper supervision can help ensure a workplace where any conflict or issues around behaviours are dealt with, fairly and effectively.

#### 2.5 Why deal with sexual harassment and harassment at work?

A feeling of being victimised, or targeted negatively, impacts performance and productivity at work as well as a person's mental wellbeing, and it is best to prevent situations arising where sexual harassment and harassment is facilitated.

Sexual harassment and harassment can have serious effects for both the person being sexually harassed or harassed and for those who are accused of sexual harassment and harassment. For an employer, sexual harassment and harassment can result in **dysfunctional work environments, low morale, lost time and litigation issues.**

#### 2.6 What is not sexual harassment and harassment at work?

It is important to distinguish sexual harassment and harassment from other inappropriate behaviours or indeed appropriate workplace engagement. The EEA does not prohibit all relations of a sexual or social nature at work; however, there are essential elements that must be understood.

##### **Unwelcome conduct**

The EEA does not prohibit all relations of a sexual or social nature at work. To constitute sexual harassment or harassment the behaviour complained of must firstly be unwelcome. It is up to each employee to decide irrespective of the attitudes of others.

(a) what behaviour is unwelcome and

(b) from whom, if anybody, such behaviour is welcome or unwelcome.

The fact that an individual has previously acceded to the behaviour does not stop him/her from deciding that it has become unwelcome. It is the unwanted nature of the conduct which distinguishes sexual harassment and harassment from behaviour which is welcome and mutual.

## **Violation of dignity**

In addition, to constitute harassment under the EEA the behaviour must have the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

## **Intention**

The intention of the perpetrator of the sexual harassment or harassment is irrelevant. The fact that the perpetrator has no intention of sexually harassing or harassing the employee is no defense. The effect of the behaviour on the employee is what is determinative.

Sexual harassment and harassment does not include:

- Complaints made by student(s) against a staff member which are appropriate to being dealt with under the ETB Complaint Procedure (A procedure for processing complaints made by parents/guardians of students or Adult Learner(s) current enrolled in an ETB School/Centre against a staff member employed by an Education and Training Board (ETB)).
- Complaints which fall outside the definition of sexual harassment and harassment which are appropriate to being processed through other agreed procedures e.g. the nationally agreed Policy for the Prevention and Resolution of Bullying at Work or Peer to Peer Procedure.
- Allegations which are the subject of legal proceedings or claims for redress under statutory provisions.
- Anonymous allegations.

***This list is not exhaustive.***

## 2.7 Who is involved in sexual harassment and harassment at work?

Sexual harassment and harassment at work can involve people in many different work situations and at all levels including:

- One employee to another (or group to group),
- Stakeholder to employee

The focus of this policy is on employee to employee. Where a complaint relates to a non-employee, e.g. external stakeholder / service provider, please contact the relevant contact person for further guidance.

## 2.8 What are the effects of sexual harassment and harassment at work?

Workplace sexual harassment and harassment, and related complaints can have a range of effects on all concerned – the individual being sexually harassed/harassed of course, but

also team members, colleagues, others in the organisation and the person being accused of sexual harassment and harassment. For the employer, the effects can include reputational damage, absences of employees from the workplace, reduced productivity, increased costs, poor morale, and loss of respect for managers and supervisors.

For the employee concerned, (the target of the sexual harassment and harassment behaviour) the effects can include stress, associated physical and/or mental ill health, low morale, reduced performance and lower productivity. Some people decide to leave their employment, exposing themselves to financial and other strains by so doing.

For an innocent party who is the subject of a complaint, or unaware of the effects of the behaviour (the person accused of sexual harassment and harassment), the consequences can likewise be significant in terms of anxiety, panic, distress and potential social embarrassment/career damage.

The effects of even one complaint of alleged sexual harassment and harassment is pervasive across an organisation. Both individuals involved will likely be negatively impacted, as may be their respective teams, managers and the broader groups and co-workers around them at the workplace.

The spiraling negative consequence of sexual harassment and harassment claims cannot be over-stated, so it is in the best interests of all concerned to have robust preventive approaches and effective clear, transparent procedures in place, which are used effectively. All involved, but especially managers and those in positions of leadership/authority, should be competent and capable of managing such matters efficiently and effectively. Roles and responsibilities in that regard should be made known to all.

### 3. Management of sexual harassment and harassment at work

#### 3.1 Prevention

Every individual in the workplace has a role in promoting a positive workplace free from sexual harassment and harassment behaviour.

##### 3.1.1 Role of the Employer

Management and others in positions of authority have a particular responsibility to ensure that harassment does not occur and that complaints are addressed promptly. The policy should state that, in particular, management will:

- provide good example by treating all in the workplace with courtesy and respect.
- promote awareness of the ETBs policy and complaints procedures.
- be vigilant for signs of harassment and take action before a problem escalates.
- respond sensitively to an employee who makes a complaint of harassment.

- explain the procedures to be followed if a complaint of sexual harassment or harassment is made.
- ensure that an alleged perpetrator is treated fairly.
- ensure that an employee making a complaint is not victimised for doing so; and
- monitor the situation after a complaint is made to prevent recurrence.

### 3.1.2 Role of employees

Employees must respect the dignity of others in the workplace. employees contribute to a harassment-free work culture by co-operating with management and trade union strategies to eliminate harassment from the workplace.

Create a cooperative relational climate within the workplace by their own behaviour. How they behave, and how that behaviour is responded to, feeds into a broader sense of what is acceptable. Employees both individually and within teams and groups have a role in promoting positive behaviour to others, relating in clear, civil and respectful ways to everybody in the workplace.

### 3.1.3 Organisational culture

The culture of an organisation is an important factor in creating, establishing and maintaining a positive workplace environment free from sexual harassment and harassment, intimidation or any on-going negative behaviour which might lay the foundation stone for a sexual harassment and harassment culture.

There are several elements important to a positive workplace including good leadership (leading by example), a culture of involvement and a proper flow of communication, intolerance of inappropriate behaviour, training of staff on acceptable behaviour or conduct, an open and transparent pattern of relating based on mutual respect and dignity for all.

A positive culture is one in which employees are comfortable raising issues of concern to them, especially of inappropriate behaviours and where there are supportive, effective and fair processes underpinning this in place.

## 3.2 Preventative measures/actions

- Promotion and reinforcement of a positive workplace culture.
- Effective Anti-Sexual harassment and harassment Policy developed, used and promoted regarding improper and proper behaviours.
- Widespread policy awareness.
- Appropriate training as required for those managing complaints and for line management.
- Contact Persons/appropriate advisory support services are available. Details are

- available from the ETB HR Department.
- Clear roles and goals for all.

### 3.3 Contact Persons role

There may be value in appointing a Contact Person who acts as the first step for anyone enquiring about a possible sexual harassment and harassment case. Where the organisation can support this, it often helps to resolve matters earlier and more effectively. The role of the Contact Person generally would be a supportive one - to listen and offer guidance on options in line with ETB policy and procedures, all on a strictly confidential basis.

The main purpose of the role is supportive listening and information provision. The Contact Person will have no role in the investigation of any complaints and should not be tasked with any further involvement in the details or right and wrongs of a complaint.

The contact person will be provided with appropriate training to enable them to fulfill the role.

## 4. Intervention in workplace sexual harassment and harassment

Responding to a workplace sexual harassment and harassment complaint at the workplace

Early intervention matters

Any complaint about, or awareness of, alleged sexual harassment and harassment requires quick, calm and consistent attention. As a general principle, it is worth emphasising that early intervention offers the best possible potential for a good outcome, particularly regarding restoring workplace relationships. However, this does not equate with a rushed approach. Each case should be treated on its own merit. A matter that is protracted, for whatever reason, becomes more difficult to resolve in a positive way. Set out hereunder is both an informal and formal procedure for dealing with a workplace sexual harassment and harassment complaint.

The value of mediation

Mediation is an important consideration for resolving issues at an early stage. It is an informal voluntary process where an impartial and competent third party enables individuals to work through conflict or disagreement, with a view to improving their relationship. It is a valuable tool at any stage in a procedure, but particularly beneficial at the earliest possible stage. It is established that the earlier a mediation process is used, the greater the potential for resolving the matter satisfactorily. It is important that suitably qualified mediators (MII

registered), whether internal or external, are used. The WRC provide a free quality assured mediation service.

## 4.1 Informal process

### 4.1.1 Informal process

A prompt and problem-solving approach offers the best potential for addressing allegations of sexual harassment and harassment effectively. This collaborative and non-adversarial approach is particularly important in situations where people must continue to work together into the future. There are several elements to this process:

- People, being confident that they will be listened to, will be taken seriously and that their issues will be assessed fairly, quickly and effectively.
- Managers having the confidence and capacity to engage on such issues and to respond and consult appropriately.
- Confidentiality to be respected by all.
- A focus always on the future workplace relationship and a problem-solving orientation

An informal approach may effectively address unwanted behaviour without recourse to any other action. Sometimes the person who is alleged to be engaging in the behaviour is genuinely unaware that the behaviour being complained about is disrespectful or unwelcome or undermining and/or causing distress.

Recommended steps in an informal process are:

- i) In the first instance, the unacceptable behaviour/acts should be raised by the employee (the person who considers that they have experienced sexual harassment or harassment) with the person involved but only if they feel comfortable in doing so. This should be done quickly and calmly, focusing on the facts regarding acts done and their consequences.
- ii) Where an employee perceives that the concerns relate to an immediate manager, the employee may wish to discuss the matter informally with their manager's manager or a person at the next level of management.
- iii) If it is more suitable, the individual who perceives that they are the recipient of unacceptable behaviour should discuss their concerns with the contact person who will provide information on options to resolve the matter.
- iv) Where from this interaction the focus remains on an informal solution, the individual contacts the HR Manager who will make arrangements for the mediation process to commence.
- v) The focus of the above is to seek to resolve the matter informally by agreement without recourse to any other steps. An informal discussion is often sufficient to alert the person concerned to the effects of the behaviour alleged and can lead to a greater understanding and an agreement that the behaviour will stop. It can also

lead to an explanation of the original intention of the behaviour and/or an agreement to modify the behaviour. On the other hand, it may be that the behaviour is valid and reasonable, and the reaction of the offended party is at odds with the generally accepted understanding of the behaviour.

- vi) In the context of being aware of an allegation by an employee, and whether the matter has been resolved, there may be value in the ETB nominating a person to review good practice generally in the workplace around dealing with such matters. For example, an awareness campaign highlighting examples of appropriate behaviour as well as improper behaviour and some explanation of effects to be brought to everyone's attention.

#### 4.1.2 Closure of informal stage

The following are some of the steps that should ideally be used to close off informal proceedings, ensuring that both parties have their rights met:

- Obtain closure after a resolution is found through informal procedures. Both parties should be given support or periodical reviews, insofar as is reasonable, which, if necessary, could include counselling or other appropriate interventions or support services.
- Where a complaint has been assessed as vexatious, the matter should be progressed through other relevant procedures.
- In many situations, with the co-operation of all parties, the matter can rest here.

## 4.2 Formal process

It is good practice that all informal resolution avenues - as set out above - should be contemplated and where appropriate, exhausted before a formal process is invoked.

Proceeding to a formal process should not be viewed as automatic, and it is important that it is recognised that it is the reasonable evidence-based decision of management. Escalating a complaint to a formal process should only be done following a review of all aspects of the circumstances surrounding matters complained about. Being able to evidence a reasonable decision-making process is important and may be required to defend the ETBs duty of care at a later stage, so a record of that should be kept by the ETB HR Department (see HR Handbook).

This process includes a formal complaint and a formal investigation. The purpose of an investigation is to set up a fact-finding approach and determine the facts and credibility or otherwise of a complaint of alleged sexual harassment and harassment. It is a significant step, and all parties should be aware of possible consequences. In particular, an investigation will make it more difficult to restore normal workplace relations and may not have the desired outcome for the parties concerned. The outcome of an investigation may eventually, and separately, lead to a disciplinary process being instigated in respect of the

person complained about, but the investigation itself will be a fact-finding one with the focus on what did or did not occur.

Where an investigation is to be carried out, the procedures outlined below should be followed.

#### 4.2.1 Formal complaint

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.

An employee will not be victimised or subject to sanction, for making a complaint in good faith, supporting a complainant, giving evidence in proceedings, or by giving notice of an intention to do any of the foregoing.

- The complainant should make a formal complaint in writing that should be signed and dated. Where this is not possible, a written record should be taken of the complaint by the assigned person and signed by the complainant and dated.
- The complaint should be confined to precise details of alleged incidents of sexual harassment and harassment, including their dates, and names of witnesses, where possible.
- The complainant and the respondent should be advised of the aims and objectives of the formal process, the procedures and approximate ideal timeframe involved, and the possible outcomes.
- Both parties must be given any relevant documents including a copy of the Policy for the Prevention and Resolution of Sexual Harassment and Harassment at Work
- Both parties should be assured of support as required throughout the process.
- An initial procedural meeting may be organised by the HR Manager at which each person is met with separately, starting with the person making the allegation. The other party, when met with, should be given a copy of the complaint in full, and both should be given any relevant documents including the ETBs Policy for the Prevention and Resolution of Sexual Harassment and Harassment at Work. This meeting is optional and will be offered to both parties, the focus of which will be on the process and will not deal with the substance of the complaint or responses to same.

Appropriate interim arrangements can be made to facilitate all concerned parties, where possible, pending the outcome of the investigation. Depending on the circumstances of the case, this might include for example, alternative line management structure, change of workstations, or requesting the complainant and/or alleged perpetrator to stay at home on fully paid leave. Where such arrangements are put in place, they are done so without prejudice and any such measure does not amount to a penalisation or sanction on any of the parties concerned

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.

#### 4.2.2 Investigation

The investigation should be governed by terms of reference, see Appendix 1.

All parties to the process have a responsibility to participate without undue delay in any investigation initiated in response to an allegation of sexual harassment and harassment.

During the investigation, there is an expectation that work will continue as normal.

The objective of an investigation is to ascertain whether, on the balance of probability, the behaviours complained about occurred, it having already been established that the behaviours come within the description of workplace sexual harassment and harassment. Details of the complaint, the responses of the person complained of, all witness statements and other relevant evidence relied on for this purpose.

The following procedure shall apply.

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** (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 the complaint form be resubmitted having regard to the required items listed above at stage 1, subsection 1. Where a complaint form is required to be resubmitted, all timelines will commence on receipt of an adequately completed complaint form.

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

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 complaint.

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 received enclosing a copy of the **Response to Complaint Form**, 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** with personal details such as names and contact addresses redacted and submit to the Of-

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

6. Within the same timeframe (*at 5 above*), the completed Response to Complaint Form<sup>14</sup> 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 investigator.
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 the element is credible and whether there is a case to be answered, that the behaviour falls within the definition of sexual harassment and 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 sexual harassment and 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 Director for consideration. The Director shall decide, in light of the investigator's report and the findings of fact therein, what action is to be taken arising from that report.

Where a complaint is against a Chief Executive, the Chief Executive shall nominate a Director as the liaison person between the Head of HR and the Department

In such circumstances the final report will be referred to the Department for processing.

#### 4.2.3 Communications of outcomes

Effective communication of any outcome is critical. In this regard, the ETB should ensure that outcomes are communicated sensitively and fairly. All parties directly involved in the complaint (the complainant(s) and respondent(s) are entitled to know whether the complaint is upheld in whole or in part, or if it is not upheld and the reason(s) why.

For the avoidance of doubt, specific details of disciplinary action, or other actions to be taken against any party are confidential, and other parties are not entitled as a matter of course to receive this information as part of the outcome.

Health and Safety duties on the ETB require that, having identified a hazard, they must put control measures in place. These involve prevention actions, managed elimination of the behaviour, protective measures, and remedial actions, where appropriate. The ETB should also keep records of all such actions taken.

#### 4.2.4 Appeals

##### External Appeal

If the procedures contained in this Policy do not resolve a sexual harassment and harassment complaint or should the individual not be satisfied with the outcome of the procedures s/he has the option of lodging a claim with the WRC (or the Circuit Court in a gender claim) under the Employment Equality Acts (EEA). A complainant should be aware that strict time limits apply to making a complaint under the EEA, and a complaint must be referred to the WRC within 6 months from the last act of discrimination.

Information, guidance and complaint forms are available on the WRC website; [www.workplacerelations.ie](http://www.workplacerelations.ie)

#### 4.2.5 Management of vexatious complaints

A vexatious complaint can be described as an allegation being made without foundation, and with malicious intent, where a person knowingly or without regard to whether it is true or not, accuses another person of allegedly sexual harassing or harassing them. This could also apply to where one person maliciously complains of someone allegedly sexual harassing or harassing a third party, without fully exploring the veracity of the claim.

A vexatious complaint has the power to disrupt another person's life to a significant extent and the potential damage should not be underestimated. Being accused of sexual harassment and harassment can have a serious impact on any person and reduce his or her reputation in the eyes of others, even if later shown to not have been proven. Those making complaints, and those involved in early assessment of the circumstances of a complaint, should always be mindful of the context and situational aspects of the event and accept the different perspectives and points of view different people bring to the same event.

Making a vexatious complaint, if proven, can have serious implications for the employment of the person making such a complaint and this includes disciplinary action, where established.

## 5. Conclusion of formal process and follow up

It must be accepted that investigations can result in very divisive relationships for individuals, teams and departments. Some types of reconciliation or rehabilitative meetings, or team working sessions may be considered as appropriate to restore healthier working communication for the future. In many situations, with the co-operation of all parties, the matter can rest here.

At the end of the formal process, documentation should be kept by the ETB, in line with the ETBs Data Protection Policy.

## 6. Workplace Relations Commission (WRC)

### 6.1 Role of the WRC

#### 6.1.1 Introduction

Should the individual not be satisfied with the outcome of this procedure s/he has the option of lodging a claim with the WRC (or the Circuit Court in a gender claim) under the Employment Equality Acts (EEA). A complainant should be aware that strict time limits apply to making a complaint under the EEA, and a complaint must be referred to the WRC within 6 months of the last act of discrimination (see para. 69 below).

#### 6.1.2 System for processing sexual harassment and harassment complaint/cases

### **Forum for redress: Section 77(1)**

The WRC is now the main forum for dealing with employment complaints. Established under the Workplace Relations Act 2015, it has absorbed the functions previously carried out by

the Equality Tribunal, the Labour Relations Commission and the Employment Appeals Tribunal.

Harassment complaints on both gender and non-gender grounds, including dismissal, are investigated at first instance by the WRC and by the Labour Court on appeal. Both the WRC and the Labour Court operate as quasi-judicial bodies when dealing with equality claims. In sexual harassment complaints (and all gender-based complaints) the employee may bypass the WRC and refer the matter to the Circuit Court.

Information and guidance is available on the WRC website. Relevant forms and equality decisions since 1996 are also available. The WRC provides a complaint form for referral of complaints on its website. Complaints can be lodged online. It is essential that a complainant use the employer's correct legal title, or it may be impossible to establish liability.

A party to proceedings before the WRC (or the Labour Court) may be represented by themselves or by any individual or body authorised by that party if the Labour Court so permits.

### **Mediation**

The Director General of the WRC may refer harassment complaints for mediation where it appears to him/her that the complaint is one capable of being resolved. Such referrals are assigned to a mediation officer who engages with the parties to resolve matters. The mediation officer records in writing the terms of any resolution and provides this to the Director General of the WRC. The terms of the resolution are confidential and binding on the parties.

### **Investigation by the WRC**

A complaint which is not considered appropriate for mediation, or is not resolved at mediation, is investigated by an adjudication officer of the WRC. The complaint may be determined on the basis of written submissions unless one, or more, of the parties' objects WRC hearings are conducted in public unless the relevant Adjudication Officer decides, of their own motion, or following an application from a party to the proceedings, that due to the existence of 'special circumstances', the proceedings should be conducted in private. By way of example, 'special circumstances' may include circumstances where a party has a disability or medical condition, which they do not wish to be revealed; cases involving issues of a sensitive nature such as sexual harassment; cases involving a protected disclosure; or cases which could result in a risk of harm to a party if the hearing is held in public, or if the parties are named in the decision.

It should be noted that the fact that the parties both consider that there are 'special circumstances' or that an individual's reputation might be impacted by having an employment or equality complaint ventilated in public does not automatically constitute a reason for the hearing to be heard in private.

Ultimately, it is a matter for the Adjudication Officer to decide based on the facts of the case in accordance with the law and fair procedure. Such decisions will generally be made by the

Adjudication Officer at the hearing though parties may indicate their views in advance of the hearing. Once it has been decided that a case is to proceed in public, members of the public may be admitted into the hearing. If the Adjudication Officer decides that the hearing should be held in private, members of the public will not be admitted.

Following the hearing, the Adjudication Officer will prepare a written decision on the case. This will encompass a decision or recommendation in respect of each complaint or dispute. This will be issued to the parties. The decision will also be uploaded to the WRC website. An anonymised version of the decision may be uploaded where the Adjudication Officer decides at the hearing, of their own motion, or following an application from a party to the proceedings, that due to the existence of 'special circumstances', the decision should be anonymised.

### **Powers of investigation**

Both the WRC and the Labour Court have extensive powers on foot of a search warrant to enter an employer's premises, to require the production of records, documents, etc., which are considered material information relevant to an investigation, or to inspect any work in progress on the premises. Both the WRC and the Labour Court may require a person to produce information relevant to an investigation or to attend before the WRC or the Labour Court and give evidence before them. A disclosure of information to the WRC or Labour Court in the course of an investigation (or during mediation) does not give rise to any liability.

### **Right to information**

The complainant has a right to seek 'material information' from an employer about alleged acts of sexual harassment or harassment, the employer's failure to deal with them or about relevant procedures. There is no obligation on the employer to provide the information, but the Circuit Court, the WRC or the Labour Court, in subsequent proceedings, may draw such inferences as seem appropriate from the failure to supply the information. If requesting information from an employer, the complainant can use Form EE2, which is available on the WRC website.

An employee has separate statutory rights to access personal information held by his or her employer, as provided for under the Freedom of Information Act 2014 and/or the relevant data protection legislation.

### **Redress**

The maximum that can be awarded to complainants who were in receipt of pay at the time of the referral of the claim (or at the time of dismissal) by the WRC, and the Labour Court on appeal, is 104 weeks of pay (or €40,000, if greater); for other complainants the maximum award is €13,000 (for example, complaints concerning access to employment).

There is no limit on the amount of compensation which may be awarded by the Circuit Court in gender-based harassment complaints.

An order for equal treatment or for a specified course of action may also be made. In complaints involving dismissal, the WRC, Labour Court or the Circuit Court may also order re-instatement or re-engagement.

### **Right of appeal**

A party to a case in which the WRC issues a decision may appeal to the Labour Court within 42 days of that decision by notice in writing. The Labour Court will issue a determination in due course and has the same options regarding redress as the WRC. A determination of the Labour Court may be appealed by either of the parties to the High Court on a point of law.

### **Enforcement**

Decisions of the WRC not carried out within 56 days may be enforced by the District Court. Decisions of the Labour Court not carried out within 42 days may also be enforced in the District Court. An application for enforcement may be made to a judge on the District Court, by, for example, a complainant or a body of which the employee is a member.

### **Duplication**

An employee may not seek redress for harassment under the Employment Equality Acts if they have instituted proceedings at common law in respect of the same complaint. A person who has referred a harassment claim to the WRC is not entitled to damages at common law in respect of that claim if it has been settled in mediation or an investigation has begun.

### **Time limit: Section 77(5)**

A complaint of harassment or sexual harassment must be made within 6 months of the alleged occurrence, or most recent occurrence, of such harassment. The time limit of six months may be extended by up to a maximum period of 12 months for reasonable cause. If a complaint is not referred within the time limit, an extension may be granted by an Adjudication Officer up to a maximum time limit of 12 months where, in the opinion of the Adjudication Officer, the complainant has demonstrated 'reasonable cause' for the delay.

The decision to extend the time is solely a matter for the Adjudication Officer. If a complainant is seeking an extension of time, they will need to provide detailed reasoning and any supporting documents in support of the application.

### **Victimisation and section 98 offence**

Victimisation occurs under the EEA where an employee is dismissed, or subjected to other adverse treatment by her/ his employer for any of the following reasons:

- making a complaint of sexual harassment or harassment.
- issuing proceedings.
- having represented or supported a complainant.
- being a witness.
- having opposed an act which is unlawful under the EEA; or
- having given notice of an intention to do any of the above.

Victimisation complaints may be referred to the WRC. Dismissal in this context is an offence which may be prosecuted. An employer may be required to re-instate or re-engage the employee upon conviction, or to pay both a fine and/or compensation.

## 7. General

### 7.1 Communication of Policy

This policy will be communicated effectively to all those potentially affected by it, including management, employees, stakeholders and other business contacts, such as those who supply and receive goods and services. Effective means of communicating a policy could include newsletters, training manuals, training courses, leaflets, websites, emails, toolbox talks and notice boards.

#### ***Communication with employees***

New employees, including those in management and all other positions of responsibility, will be made aware of the policy as part of any formal induction process to familiarise them with their job and their working environment and any rules and regulations that apply.

The Prevention and Resolution of Sexual Harassment and Harassment in the Workplace Policy is available to staff on [www.cityofdublinitb.ie](http://www.cityofdublinitb.ie)

Existing employees should receive updated and regular communication on the policy.

#### ***Communication with non-employees***

A summary of the **Prevention and Resolution of Sexual Harassment and Harassment in the Workplace Policy** should be prominently displayed where appropriate and as identified on the risk assessment, such as at places where members of the public, stakeholders attend.

### 7.2 Monitoring by the ETB

The ETB is committed to monitoring and recording incidents of sexual harassment and harassment at work.

Statistics and information gathered from such monitoring should be recorded and used to assist the ETB take corrective action or achieve continuous improvement in the implementation of the sexual harassment and harassment prevention policy and procedure.

### 7.3 Training and Supervision

Employees should be provided with such information, training, development and supervision as is necessary to ensure the prevention of sexual harassment and harassment and to fulfill their responsibilities under this policy. This should include:

- making employees aware of the **Prevention and Resolution of Sexual Harassment and Harassment in the Workplace Policy**.
- information on the appropriate behaviour to comply with the terms of the policy.
- training, if needed, in order to comply with the policy; and
- assistance, if necessary, to overcome a sexual harassment and harassment incident, as well as adequate and informed supervision of the work environment.

The policy should include commitments to staff training and supervision as identified in the risk assessment on issues related to sexual harassment and harassment at work, including the provision of training for managers, supervisors and for all staff, at induction or through appropriate awareness raising initiatives. Such training should identify the factors which contribute to a working environment free of sexual harassment and harassment and familiarise participants with their responsibilities under the policy and any problems they are likely to encounter.

Such training is especially important for those members of staff responsible for supervision and for implementing the policy and responding to complaints.

Best practice would ensure that records are kept by the employer of all such training.

#### 7.4 [Reviews](#)

This policy will be reviewed by the parties to this agreement at national level as scheduled by the National Consultative Forum or where legislation determines change is warranted.

It is an Executive function of the ETB to ensure that monitoring, training and reviews take place.

## Appendix 1:

### 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 sexual harassment and 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 sexual harassment and 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 *Sexual harassment and 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: One investigator is required for investigations of sexual harassment and harassment. The discretion lies with the ETB as to whether an additional investigator may be required for particularly complex cases. Two investigators, having regard to gender balance, are required in all alleged 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/web-based interviews to be sufficient. Conducting a telephone/web-based interview with a witness in such circumstances is subject to witness agreement. In such circumstances, a draft minute of the 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 an 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 to 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 sexual harassment and 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 sexual harassment and 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 sexual harassment and 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.

## Appendix 2: Sources of Other Information and Advice

Irish Equality and Human Rights Commission (IHREC),  
16-22 Green Street,  
Rotunda,  
Dublin 7,  
D07 CR20  
Phone: (01) 858 9601  
Website: [www.ihrec.ie](http://www.ihrec.ie)

Irish Congress of Trade Unions (ICTU),  
31/32 Parnell Square W,  
Rotunda,  
Dublin 1,  
D01 X682  
Phone: (01) 8897777  
Website: [www.ictu.ie](http://www.ictu.ie)

Irish Business and Employers Confederation (IBEC),  
86 Baggot Street Lower,  
Grand Canal Dock, Dublin,  
D02 H720  
Phone: (01) 605 1500  
Website: [www.ibec.ie](http://www.ibec.ie)

Workplace Relations Commission (WRC),  
Lansdowne House, Lansdowne Road,  
Ballsbridge,  
Dublin 4,  
D04 A3A8  
Phone: (01) 613 6700  
Website: [www.workplacereactions.ie](http://www.workplacereactions.ie)

Dublin Rape Crisis Centre,  
70 Lower Leeson Street,  
Dublin 2,  
D02 VW13  
Phone: 1800 77 88 88 (national 24-hour helpline)  
Website: [www.drcc.ie](http://www.drcc.ie) (Rape Crisis Centre's in Athlone, Carlow, Cork, Donegal, Galway, Kerry, Kilkenny, Mayo, Limerick, Nenagh, Louth, Leitrim & West Cavan, Tipperary, Tullamore, Waterford, and Wexford can be contacted through the above helpline.)

Health and Safety Authority,  
Metropolitan Building,  
James Joyce Street,  
Mountjoy,  
Dublin 1,  
D01 K0Y8  
Phone: (01) 6147000  
Website: [www.hsa.ie](http://www.hsa.ie)

National Disability Authority,  
25 Clyde Road,  
Dublin 4,  
D04 E409  
Phone: (01) 608 0400  
Website: [www.nda.ie](http://www.nda.ie)