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Bord Oideachais agus Oiliúna Dublin and Dún Laoghaire
Átha Cliath agus Dhún Laoghaire Education and Training Board

**BULLYING PREVENTION POLICY –
COMPLAINT PROCEDURE FOR ETB STAFF**

Nationally agreed for implementation on 1 September 2016

INTRODUCTION

The Education and Training Board sector has revised its policies and procedures for dealing with complaints of bullying. This Prevention Policy and procedure complies with the recommendations of the Government Task Force Report on Bullying in the Workplace and the following Codes:

- The Health & Safety Authority's *Code of Practice on the Prevention of Workplace Bullying*
- The Labour¹ Relations Commission *Code of Practice Detailing Procedures for Addressing Bullying in the Workplace (Statutory Instrument 17/2002)*

The revision of Education and Training Board (ETB)² policy has been carried out on a partnership basis and has been agreed by Education and Training Boards Ireland (ETBI³) and trade unions representing staff in the education and training board sector including ASTI, IMPACT, INTO, SIPTU, TUI, UNITE and unions represented by the CDET Trade Union Group.

This policy applies to all new complaints, whether informal or formal, from 1 September 2016.

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

STATEMENT OF ETB POLICY

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

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

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

Bullying infringes the provisions of this policy and is a form of misconduct which undermines the integrity of the employment relationship. The ETB will not tolerate such conduct by an employee or other individual in connection with work or the workplace.

¹ Labour Relations Commission now known as the Workplace Relations' Commission

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

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

PURPOSE OF THE POLICY AND COMPLAINT PROCEDURE

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

This policy is necessary to:

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

SCOPE OF THE POLICY AND COMPLAINT PROCEDURE

The policy applies to all ETB staff:

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

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

Exclusions:

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

1. Complaints made by staff against students which are appropriate to being dealt with under the school/centre's (student) Code of Behaviour/Discipline.
2. Complaints made by student(s) against a staff member which are appropriate to being dealt with under the *Code of Practice for dealing with Complaints made by Parent/s, Guardian/s of a Student or by a Student (who has reached the age of eighteen) currently enrolled in a school/centre, against a Staff Member employed by <Named> Education and Training Board (ETB)*.
3. Complaints which fall outside the definition of bullying which are appropriate to being processed through other agreed procedures e.g. the nationally agreed grievance procedure.
4. Allegations which are the subject of legal proceedings or claims for redress under statutory provisions.
5. Allegations unrelated to employment.
6. Anonymous allegations.

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

GENERAL PRINCIPLES

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

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

- 1.1 The agreed procedure is an industrial relations procedure and **not** a legal procedure. It will be conducted within the norms of industrial relations custom, practice and procedure and as such, is not a judicial process. In circumstances where legal action is invoked, the policy will be suspended and the operation of law will take precedence.
- 1.2 Any individual/s in invoking the policy/procedure at the Formal stage must provide written agreement (by email/letter) to proceeding through the formal procedural stages in accordance with 1.1 above.
2. **The right to be accompanied at all stages of this procedure is recognised.** Reference in the policy to “*representative*” includes:
 - (i) a work colleague of the staff member’s choice or;
 - (ii) representation by an authorised trade union...but not any other person or body unconnected with the particular ETB.
The nature of meetings is such that legal representation is **not** required.
3. **The following principles shall apply:**
 - All formal complaints shall be in writing.
 - Details of any complaints shall be put to the respondent staff member concerned.
 - Both parties to the complaint shall be given the opportunity to avail of representation during the procedure by a work colleague or by an authorised trade union but not any other person or body unconnected with the particular ETB.
 - Parties to the complaint have the right to a fair and impartial determination of the issues concerned, taking into account any representations made by, or on behalf of, the staff member and any other relevant or appropriate evidence, factors, or circumstances.
 - No allegations which have previously been investigated can be entered as part of the current investigation.
 - Access to personal information held by a ETB will be facilitated in accordance with the ETB’s data protection policy (specifically with respect to the ETB’s access procedure) and with the principles and requirements of the Data Protection Acts, 1998 and 2003.
When proceedings have been completed, the investigation report and all associated documentation concerned to the complaint will be filed, on a strictly confidential basis, with the Head of HR in the ETB.
 - That all matters relating to the complaint are strictly confidential to the parties and their representatives.
4. **Failure by a staff member to attend meeting(s) under the Formal stages of the procedure:**
Whilst it is anticipated that the staff member concerned will co-operate fully with this procedure, any failure to co-operate will **not** prevent the processing of a complaint under this procedure to conclusion. In instances of non-attendance at two or more meetings under the procedure, due to medical/certified reasons, the ETB reserves the right to refer either party to a complaint to the Occupational Health Service to establish their capacity to participate in the process.

5. **Processing of complaints under this policy/Persons having functions under the policy:** Where any person having functions under the policy is a party to a complaint, s/he shall not exercise any of his/her functions under the policy in respect of the particular complaint, and such functions will, where appropriate, be undertaken by a person of similar rank nominated by the CE for that purpose. Where the CE is the subject of a complaint, the complaint would normally be administered by the Head of HR or a person at senior ETB level who has had no involvement in the complaint.
6. **“Notice” of proposed meetings/hearings under this procedure:** Notice is considered to have been given as of the next working day directly after the date the notice is issued.
7. **Timeframes outlined in the procedure must be observed.** The procedure shall not operate during periods of approved leave unless by mutual agreement of the parties. In circumstances where the complainant applies for career break or secondment, it is expected that the complainant would make him/herself available for the duration of the entire process as specified in the policy. If not, the complaint falls. If the respondent is on career break/secondment and does not or cannot make him/herself available, the complaint is held and recommenced on resumption of duty.
8. **Whether formal or informal, a complaint must be made within six months of the latest incident(s) of alleged bullying behaviour.** In exceptional circumstances, the six month time limit may be reviewed. The decision on whether to admit an allegation under this procedure rests with the Head of HR of the ETB.
9. **Procurement of Investigation Services:** The Office of Government Procurement’s External Workplace Investigation Services is the panel from which external workplace investigators are drawn following a tender process. 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.

DEFINITION OF BULLYING

Bullying at work has been defined as *“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. An isolated incident of the behaviour in this definition may be an affront to dignity but as a once-off incident is not considered to be bullying⁴”*.

A key characteristic of bullying is that it usually takes place over a period of time. It is regular and persistent inappropriate behaviour which is specifically targeted at one employee or a group of employees.

⁴ Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work, Health & Safety Authority, March 2007

WHAT BULLYING IS NOT

The following does not constitute bullying:

- An isolated incident of inappropriate behaviour may be an affront to a person's dignity at work but, as a once-off incident, is not considered to be bullying.
- Fair and constructive criticism of an employee's performance, conduct or attendance.
- Reasonable and essential discipline arising from the good management of the performance of an employee at work.
- Legitimate management responses to crisis situations which require immediate action.

EXAMPLES OF BULLYING

A pattern of the following behaviours are **examples** of types of bullying.

Verbal forms of bullying include:

- Shouting, swearing, name calling, personal insults, use of nicknames, or malicious gossip
- Public reprimand, ridicule, sarcasm or humiliation
- Belittling or patronising comments
- Singling out
- Unnecessary telephone calls made to someone's home; invading their privacy
- Taking credit for another's ideas
- Using a person as the butt of jokes

The list is not exhaustive

Non-verbal forms of bullying include:

- Undermining a person's authority, work or achievements
- Removing for no justifiable reason, areas of work responsibility from an individual
- Setting impossible objectives; i.e. setting someone up to fail
- Deliberately blocking another staff member's development
- Cyber bullying (e.g. whether through emails, websites, SMS messaging, posting messages through social media or any other ICT communication) or electronic device/medium.
- Modifying images, recording digital images for the production and or display on any form of ICT or electronic device/medium (without consent)
- Changing priorities or objectives unreasonably; "moving the goal posts"
- Deliberate wrongful attribution of blame
- Damage to a person's work area
- Ostracising or freezing out; withholding information, resources or training
- Pushing, shoving
- Threatening non-verbal gestures.

The list is not exhaustive.

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

This procedure does not aim to address physical assault at work.

THE COMPLAINT PROCEDURE

INFORMAL PROCEDURE

Complaints of bullying can often be resolved on an informal basis and no further action may be required.

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

The role of the Contact Person⁵ is to:

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

MEDIATION⁶

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

⁵ The role of the ETB Contact Person does not extend to intervening or approaching any person on behalf of the staff member. An *Aide-mémoire for ETB Contact Persons* is available in the *Guidance Notes* and supporting Manual for ETB HR Departments, template A1 refers.

⁶ Templates are available in the accompanying *Guidance Notes* and also in the *Manual for HR Departments*. Templates B1 and B2 refer.

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

(Source: Mediators' Institute of Ireland)

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

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

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

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

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

FORMAL PROCEDURE

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

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

Stage 1 - Investigation

1. The complainant writes in confidence to the Head of Human Resources (HR) to request that an investigation under the Formal Procedure be undertaken. This letter shall include the **completed Complaint Form**⁷ (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

⁷ Refer *Guidance Notes/Manual for HR Departments – Template C - Complaint Form*

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

2. The Head of HR (or his/her nominee) **within 5 working days** writes to the complainant acknowledging formal receipt of the complaint form⁸.
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 complaint⁹.
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 received¹⁰ enclosing a copy of the **Response to Complaint Form**¹¹ 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**¹² with personal details such as names and contact addresses redacted and submit to the Office of Government Procurement (OGP). The OGP will process the sRFT and communicate the outcome of the tender process to the ETB's Head of HR/nominee. The Head of HR/nominee will liaise with the successful company as appropriate.

A services' contract¹³ must be signed prior to any investigation commencing. Terms of reference for the conduct of the investigation are available herein at appendix 2.

⁸ Refer *Manual for HR Departments*, templates D1 or D2 as appropriate

⁹ The Supplementary Request for Tender (sRFT) is undertaken by the ETB having achieved the complaint and response statements. This is the document upon which a tender process will be undertaken with the Office of Government Procurement (OGP) to procure investigation services.

¹⁰ Refer *Manual for HR Departments*, template E1

¹¹ Refer *Guidance Notes/Manual for HR Departments*, template E2 - Response to Complaint Form

¹² Refer *Manual for HR Departments*, template F: Supplementary Request for Tenders – External Workplace Investigation Services' form for completion by Head of HR/nominee in ETB

¹³ Services contract provided directly by OGP to the investigation company/Framework Member first for review and signature, then to the ETB as Framework Client.

6. Within the same timeframe (*at 5 above*), the completed Response to Complaint Form¹⁴ 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 investigator¹⁵.
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 provide a rationale for the finding in respect of each element of the complaint and determine whether each element of the complaint is **upheld, not upheld or ruled out**. In addition, an overall finding will be provided and a finding in respect of the extent to which, if any, bullying occurred. The investigation report may, where appropriate, determine 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 CE of the ETB¹⁶ for consideration and a determination. The investigator/s shall make him/herself available to the ETB in accordance with the Bullying Prevention Policy, Stage 2 provisions and in the event of an appeal hearing arising.

¹⁴ Refer *Manual for HR Departments*, template E3

¹⁵ Refer *Manual for HR Departments*, template H refers

¹⁶ Where the CE is a party to a complaint, s/he will nominate an official from the ETB to undertake this function.

Stage 2 - Decision by the ETB as employer to accept or reject the findings of the Investigation Report

- 2.1 The CE, having undertaken an evaluation of the report will decide as to whether or not the investigation report should be adopted. The decision of the CE will be communicated to the parties to the complaint within a total of **15 working days** of the date of issue of the final investigation report to the Head of HR. Covering correspondence¹⁷ to the parties to the complaint will advise a right of appeal to an independent third party (*refer Appendix 3*).
- 2.2 Importantly, in arriving at a decision, the CE:
- (a) Is not to be regarded as making any assessment as to the merits or otherwise of the complaint/s made by the complainant against the respondent.
 - (b) Shall meet with the investigator/s by way of informing/satisfying his/herself that the terms of reference for the investigation have been adhered to.
- 2.3 In circumstances where the CE decides to **adopt** the findings of the investigation report, s/he shall have due regard to the procedures undertaken over the course of the investigation and, the discharge of the terms of reference by the investigator/s. Where the CE elects to adopt the report, particular regard should be had to being able to respond to the potential for a procedural appeal under the specified appeal grounds (*noted in Appendix 3*).
- 2.4 In circumstances where the CE decides to **reject** the findings of the Investigation Report, the following are grounds for rejection of the Investigation Report and/or the process that has led to the emergence of the Investigation Report i.e.
- That the terms of reference for the conduct of the investigation as attested to by the investigator/s, have not been adequately adhered to - the ETB shall reject the findings of the Investigation Report in such circumstances.**
- 2.5 Where the CE decides to reject the Investigation Report, s/he will have recourse to the following options:
- (a) Determine that the matter be investigated *ab initio* from Formal Stage investigation. In such circumstances, the Head of HR should contact the OGP and a new tender process be commenced for the appointment of new investigator/s. The Head of HR should also contact the parties concerned, by phone/email/letter, advising that a new investigation will be undertaken within the terms of reference for investigation.
 - (b) Determine that the parties engage in an alternative third party dispute resolution facility. The agreement of both parties is required in such circumstances and this would in no way prejudice the right of either party, if unsuccessful, to have the process re-commenced formally *ab initio* pursuant to the agreed Policy.
- 2.6 The decision of the CE shall complete the internal process.
- 2.7 The investigator/s shall make him/herself available to the ETB in accordance with the Bullying Prevention Policy, Stage 2 provisions and in the event of an appeal hearing arising.

¹⁷ Refer *Manual for HR Departments* – Template J

Stage 3 – Provision for Appeal

- 3.1 It is open to either party to a complaint of bullying to appeal the decision of the CE of the ETB¹⁸ (acting on behalf of the ETB) to the agreed Appeal Officer nominated by the Workplace Relations Commission and nationally agreed between the ETBI/Unions Consultative Forum.
- 3.2 Where **no appeal is lodged** and following the expiration of the appeal period, the CE of the ETB will take appropriate action based on the finding/s of the report and such action may include initiating the appropriate disciplinary procedure for the staff member/s concerned.
- 3.3 Where **an appeal is lodged under the specified appeal grounds only**, by either party to the complaint arising from the decision to adopt the investigation report, s/he must do so in writing, within **15 working days**. Terms of reference for the appeal are supplied in Appendix 3. [Refer to appeal forms in the supporting *Guidance Notes*].
- 3.4 This concludes the provision for external referral provided for under the procedure.
- 3.5 Matters arising from the decision of the Appeal Officer shall be referred to the CE of the ETB. The CE of the ETB will take appropriate action based on the appeal outcome and such action may include initiating the appropriate disciplinary procedure for the staff member/s concerned.
- 3.6 Using this policy and complaint procedure will not affect one's statutory rights.

DISCIPLINARY ACTION ARISING

Breaches of the *Bullying Prevention Policy* will not be tolerated by the ETB. Breaches of the policy will be regarded as misconduct and may be subject to disciplinary action under the disciplinary procedure relevant for the staff member concerned. Repeated policy breaches will be taken into consideration in determining the appropriate disciplinary sanction to be applied to the staff member concerned.

Where a complaint of bullying is upheld or a complaint is found to be vexatious/malicious, disciplinary action will be taken in accordance with the appropriate stage of the ETB disciplinary policy for staff.

Records of the outcome of all or any investigations undertaken will be retained in accordance with the ETB's data protection policy and retention of records' schedule.

PROTECTION AND SUPPORT

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

¹⁸ Where the CE is a party to a complaint, s/he will nominate an official from the ETB to undertake this function.

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

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

COMMUNICATING THE POLICY

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

ETB ADOPTION AND REVIEW

ETB ADOPTION DATE:

This policy has been formally adopted by <Named ETB> on <date>.

REVIEW:

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

APPENDIX 1

APPROVED OFFICE OF GOVERNMENT PROCUREMENT PANEL FOR EXTERNAL WORKPLACE INVESTIGATION SERVICES¹⁹

Panel status at 1 September 2016.

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

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

¹⁹ Refer *Manual for HR Departments Appendix I*

APPENDIX 2

TERMS OF REFERENCE FOR THE CONDUCT OF A FORMAL INVESTIGATION

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

Terms of Reference for investigation of complaints – Formal Stage 1

1. Investigate the complaint.
2. Conduct the investigation in accordance with the protocol.
3. Afford fair procedure and natural justice to the complainant/s, respondent/s or witness/es.
4. Issue a report of the findings based on the evidence presented:
 - **Provide a rationale, related to the evidence presented, for the finding/s in respect of each element of the complaint.**
 - **Determine whether each element of the complaint is upheld, not upheld or ruled out.**
 - **Provide an overall finding concluding whether or not bullying occurred and the extent, if any, to which it occurred.**
5. Adhere to the timeframes for expediting the investigation as advised in the *Bullying 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 bullying. 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 based interviews to be sufficient. Conducting a telephone-based interview with a witness in such circumstances is subject to witness agreement. In such circumstances, a draft minute of the telephone interview will be prepared by the investigator team and provided to the witness. The witness shall review the draft minute, and if appropriate, propose specific amendments (*in writing*) on matters of **accuracy or fact** to the minute where applicable and within the timeframe prescribed by the investigator/s. The investigator shall review and make a determination on any amendment/s submitted in writing. A final minute will be supplied to the witness by the investigator/s.
- **Collective witness statements are not admissible.** This applies whether a complaint is lodged for the first time or lodged consequential to a decision to recommence the investigation of a complaint at Formal Procedure Stage 1.
- Advise the witness, in the event of attending an investigation interview/s, that s/he is entitled to be accompanied at the interview/s by a work colleague or trade union representative. It would not be appropriate for such an accompanying person to be a party to the investigation or another witness who will also be interviewed or making a statement during the course of the investigation.
- At the meeting or in the course of a telephone interview, inform the witness that:
 - The investigation will be conducted with due regard to confidentiality
 - A copy of his/her statement will be furnished to the parties to the complaint.
 - That s/he should not discuss the details of the investigation or other related matters to the complaint with any other party.
 - In setting the background to the complaint, witnesses should only be given sufficient information to allow the investigating team determine what occurred in relation to the allegation.
- Forward a draft minute of the investigation interview to the witness for review in line with bullet 2 or bullet 3 above. The acceptance of any proposed amendments is a matter for the investigator/s.

- Forward, to the witness, the final minute of the witness' interview, setting out the basis on which any proposed amendments were rejected.
- **Conflicting Witness Accounts:** Where the investigator is presented with conflicting accounts of an incident and where no additional witnesses are available or where evidence is not persuasive, the case rests upon which version of events the investigator considers the more credible but a rationale must be provided.
- Should the investigator become aware that any attempt has been made to influence a witness the matter should be reported immediately to the Head of HR of the ETB. Any such interference will be regarded as a serious breach of discipline and will be subject to disciplinary action.

Further Action:

- Only documentation and statements gathered during the course of the investigation which are relevant to the complaint shall be taken into consideration.
- On completion of all interviews, each party to the complaint will be provided with a copy of the minutes of all interviews conducted (including interviews with witnesses)
- As appropriate to determining the facts of the allegation, the investigator may need to interview other persons named in statements referenced during the course of investigation meetings or indeed re-interview anyone previously interviewed (over the course of investigation meeting/s) with a view to determining a finding on the validity or not, of the allegation of bullying.
- 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.
- **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;
 - Assessment of credibility for each party and witness;
 - Investigator's findings of fact;
 - The investigation report shall provide a rationale for the finding in respect of each element of the complaint and determine whether each element of the complaint is upheld, not upheld or ruled out. In addition, an overall finding will be provided and a finding in respect of the extent to which, if any, bullying occurred.
 - The investigation report may, where appropriate, determine that a complaint was vexatious/malicious in intent.
 - Other relevant information.

- 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.
- The investigator/s shall make him/herself available to the ETB in accordance with the *Bullying Prevention Policy*, Stage 2 provisions and in the event of an appeal hearing arising.

APPENDIX 3

TERMS OF REFERENCE FOR APPEAL

Where **an appeal is lodged** it will be conducted in accordance with the following terms of reference.

1. With whom is the appeal lodged?

Where either party wishes to appeal the finding/s of the investigation report, s/he must do so **in writing**, within **15 working days of the date of issue by the CE of the ETB of the decision to adopt the finding of the final investigation report.**

The appeal should be lodged, in the first instance, with the ETB's Head of HR who will be responsible for forwarding the appeal onto the Appeal Officer no later than **3 working days** from receipt of the appeal.

The contact details for the Appeal Officer (nominated by the ETBI/Unions' Consultative Forum) for the purpose of hearing appeals in accordance with the terms of reference for the third party appeal are as follows:

Mr Damien Cannon
Appeal Officer
Workplace Relations Commission, Tom Johnson House, Haddington Road, Dublin 4
Phone: 01 6136737
Email: Damien.cannon@djei.ie

The decision of the Appeal Officer will be final with respect to the conduct and outcome of the appeal.

2. What constitutes grounds for an appeal?

Importantly, it is **not** the role of the Appeal Officer to re-investigate the original complaint of bullying or incidents giving rise to that complaint. Rather, s/he will review the appeal on the specific appeal grounds presented by the appellant and the response submitted by the ETB concerned. The appeal will be a procedural appeal confined to:
the terms of reference for the investigation were not adhered to.

3. Who can appeal?

Either party to a complaint may appeal within the stated appeal ground in (2) above. An appeal can only be taken in response to the CE's **adoption** of the findings of the investigation report and under the provisions of the specified appeal ground.

The Head of HR will notify the non-appellant party to the complaint where an appeal has been lodged and subsequently, when delivered, the appeal outcome.

4. The Appeal Procedure

4.1 Lodging an appeal

An appeal must be lodged using the prescribed appeal form (refer BPP Appeal Form²⁰). The appeal ground should be clearly stated and be specific and completed on the prescribed appeal form. An appeal statement should not exceed the maximum threshold of words provided for in the appeal form. Supporting examples, where appropriate and drawn from the investigation and or investigation report, should be clearly referenced in line with the investigation report. Where supporting evidence/documentation is provided it must be attached in line with the particular appeal reference number on the appeal form.

The appeal form and any supporting evidence/documentation should be marked “**Private and Confidential, for the attention of the addressee only**” and forwarded to the Head of HR of the ETB (by recorded delivery).

It will be the responsibility of the Head of HR of the ETB to forward the appeal (and supporting evidence/documentation) to the Appeal Officer. This should be undertaken within **3 working days** and remitted by recorded delivery. A copy should also be provided to the CE of the ETB.

4.2 ETB Response to appeal

On receipt of an appeal and supporting appeal ground/s’ documentation, the ETB should:

- (1) Submit, by recorded delivery, its response to the appeal under the stated grounds using the **ETB Appeal Response Form (BPP ETBARF²¹)** and any supporting evidence/documentation (which should be clearly referenced to correspond with the appeal response elements), to the Appeal Officer.
- (2) A copy should simultaneously be sent to the appellant by recorded delivery.
All correspondence should be marked “**Private and Confidential**” and in the name of the addressee concerned.

This forwarding of this documentation should take place **no later than 15 working days** from the postal date receipt by the ETB of the appeal documentation.

4.3 Initial Paper Review by Appeal Officer

The Appeal Officer will undertake an **initial paper review** of the appeal and ETB response to determine whether or not the appeal is valid within the context of the appeal grounds.

Where an appeal is determined as valid:

- Following the initial paper review of appeal forms, the Appeal Officer may determine that an appeal hearing is warranted. If so, an appeal hearing date will be arranged and the parties to the appeal will be so advised by the Appeal Officer. The appellant (and his/her representatives), the ETB (and its representatives), and others as may be determined by the Appeal Officer, will be requested to attend this appeal hearing.

²⁰ Refer Template L, *Guidance Notes and/or Manual for HR Departments*

²¹ Refer Template N, *Guidance Notes and/or Manual for HR Departments*

- In such circumstance, the Appeal Officer will deal directly with a nominated person in the administrative offices of the ETB (e.g. the Head of HR/senior ETB management official) to arrange a date, time and venue for the appeal hearing²². It will be the responsibility of this nominated person (in the ETB) having consulted with the Appeal Officer, to make all necessary practical arrangements for the hearing on the specified date including advising the parties to the appeal (in writing and/or by phone) of the details of the date, time and venue arranged.

Where an appeal is determined as not valid:

- No further action will be taken by the Appeal Officer and the decision of the CE to adopt the investigation report stands.
- The Appeal Officer will provide a statement to give effect to the determination to rule on the appeal as invalid and a rationale for same.

The decision of the Appeal Officer is final.

5. How an appeal hearing operates

The overall objective is to hear the appeal against the employer's adoption of the investigation report under the stated appeal grounds. **The appeal hearing is informal and non-legalistic in its practice.** The parties can represent themselves or be represented by trade union/s or by employer/representative organisation/s. The nature of appeal hearings is such that legal representation is not required.

- The appellant (and his/her representative/s) is/are provided with an opportunity to speak to their written statements of appeal.
- The ETB (and its representative/s) is/are provided with an opportunity to speak to its written response.
- Both parties are provided, through the offices of the Appeal Officer, with an opportunity to comment on, and ask questions on, the statement/s under the appeal grounds stated by the other party/parties to the appeal.
- The Appeal Officer, acting as chairperson, may also wish to ask some questions of one or both parties.
- **The appeal hearing will not be a review of the investigation but a consideration of the stated ground/s of appeal.**

6. Appeal Outcome

The Appeal Officer shall deliver his/her decision in writing to the parties to the appeal **within 20 working days** of the date of the appeal hearing. This concludes the provision for appeal provided under the procedure.

The CE of the ETB will take appropriate action based on the appeal outcome and such action may include initiating the appropriate disciplinary procedure for the staff member/s concerned.

²² Refer *Manual for HR Departments* – Template O