

Policy for the Prevention and Resolution of Bullying At Work

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

Policy for the Prevention and Resolution of Bullying at Work

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Foreword

This Policy for the Prevention and Resolution of Bullying at Work has been developed with specific reference to the WRC (Workplace Relations Commission) Code of Practice for Employers and Employees on the Prevention of Bullying and Resolution of Bullying at Work, which was jointly prepared by The Health and Safety Authority and the Workplace Relations Commission. It reflects a collective approach by all ETB (Education and Training Boards) stakeholders to provide guidance for ETBs (Education and Training Boards), their staff and representatives on good practices and procedures for identifying, preventing, addressing and resolving issues around workplace bullying.

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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) Bullying 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 (Association of Secondary Teachers of Ireland), IMPACT, INTO, SIPTU (Services Industrial Professional & Technical Union), TUI (Teachers Union of Ireland) (Teachers Union of Ireland), UNITE and unions represented by the CDET Trade Union Group.

This policy applies to all new complaints, whether informal or formal, from <<<< Date>>>>. 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 Bullying 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

The purpose of this Policy is to provide guidance for the ETB, employees and their representatives on what constitutes good practice and procedures for addressing and resolving issues around workplace bullying.

1.3 Specifically, the Policy:

- provides practical guidance on identifying, managing and preventing bullying at work arising from the ETBs' duties under *section 8 (2)(b)* of the 2005 Act;
- 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 bullying in the workplace is not acceptable and that complaints of bullying will be dealt with sensitively. The Policy reinforces obligations on the ETB to progress complaints informally where possible and otherwise, as appropriate, formally; it emphasises the importance of records being kept of interventions and decisions in line with the General Data Protection Regulation (EU) 2016/679 and the Data Protection Act 2018; and
- clearly identifies the roles and responsibilities of both organisations responsible for this Policy, WRC and HSA, and outlines these graphically by way of a flow chart

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, it is not a judicial process. In circumstances where legal action is invoked, the policy will be suspended, and the operation of the 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 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, 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 (Chief Executives) 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 not been involved 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 themselves 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 themselves 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 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.
- 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.

2. What is harassment and bullying at work

2.1 What is harassment at work?

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

This Policy refers to behaviours which come within the definition of workplace bullying only. The Policy does not extend to harassment under the Employment Equality Acts 1998-2015.

Harassment/sexual harassment for the purposes of the Employment Equality Acts is any unwanted conduct related to any of the discriminatory grounds under the Employment Equality Acts. Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature. Discrimination on the basis of the nine grounds specified in the Acts (gender, civil status, family status, sexual orientation, religion, age, disability, race and membership of the Traveller community) comes under the remit of the Employment Equality Acts and promoting awareness of equality in the State is the responsibility of the **Irish Human Rights and Equality Commission (IHREC)**. In this regard, IHREC has published a Code of Practice on Sexual Harassment and Harassment at Work, giving practical guidance on addressing issues around harassment at work (Statutory Instrument 208 of 2012 Employment Equality Act 1998 (Code of Practice) (Harassment) Orders 2012).

This Policy refers to workplace bullying only and does not include harassment cases; such incidences must be dealt with under the Sexual / Harassment Policy.

It is, however, important to reiterate that where individuals reference a bullying and harassment case, the two are distinct concepts, and the agencies overseeing this Policy only have a remit for bullying.

2.2 What is bullying at work?

For the purposes of this Policy, bullying in the workplace is defined as follows:

“Workplace bullying is repeated inappropriate behavior, 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 be reasonably regarded as undermining the individual’s right to dignity at work.”

An isolated incident of the behavior described in this definition may be an affront to dignity at work, but, as a once off incident, is not considered to be bullying.”

This Policy does not aim to address physical assault at work. The ETB promotes a zero-tolerance approach to such behaviour. Violence is a criminal matter and should also be reported to An Garda Síochána. Allegations in relation to physical assault may also be subject to the appropriate stage of the relevant disciplinary procedure.

2.3 How does bullying manifest itself within workplaces?

In line with the above operational definition, workplace bullying should meet the criteria of an ongoing series of an accumulation of seriously negative targeted behaviours against a person or persons to undermine their esteem and stand in a harmful, sustained way.

Bullying behaviour is offensive, ongoing, targeted and outside any reasonable ‘norm.’ A pattern and trend must be involved so that a reasonable person would regard such behaviour as clearly wrong, undermining and humiliating. It involves repeated incidents or a pattern of behaviour that is usually intended to intimidate, offend, degrade or humiliate a particular person or group of people - but the intention is not important in the identification process.

Bullying activities involve actions and behavioural patterns, directly or indirectly, spoken and/or written and could include the use of cyber or digital means for the goal of bullying. Such bullying events, delivered through cyber means, may also be covered by the requirements of the 2005 Act.

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

- Exclusion with negative consequences
- Verbal abuse/insults
- Being treated less favourably than colleagues in similar roles
- Belittling a person’s opinion
- Disseminating malicious rumours, gossip or innuendo
- Socially excluding or isolating a person within the work sphere

- Intrusion - pestering, spying or stalking
- Intimidation/aggressive interactions
- Excessive monitoring of work
- Withholding information necessary for proper performance of a person's job
- Repeatedly manipulating a person's job content and targets
- Blaming a person for things beyond their control
- Use of aggressive and obscene language
- Other menacing behavior.

The list is not exhaustive.

2.4 Who bullies at work?

It is not possible or advisable to engage in guesswork or stereotyping in relation to those who bully. It may be that those who bully have general difficulty working with others, adapting to changing circumstances or handling conflict. However, people with these characteristics may also not engage in bullying behaviour, so each case should be taken on its own merit as generalisations are unhelpful in resolving bullying 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 bullying at work?

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

Bullying can have serious effects for both the person being bullied, for an individual who wrongly feels bullied but who is engaged instead in a conflict situation, and for those who are accused of bullying. For an employer, bullying can result in **dysfunctional work environments, low morale, lost time and litigation issues.**

2.6 What is not bullying at work?

It is important to distinguish bullying from other inappropriate behaviours or, indeed, appropriate workplace engagement. As set out in the definition above, a once-off incident of bullying behaviour may be an affront to dignity at work and may be unsettling but does not of itself make for an adequate level of distress as to fall within the definition of bullying and other remedies should be sought for these scenarios. As a once-off, such behaviours cannot be presumed to be done in a targeted, purposeful and unremitting way.

Apart from once-off behaviours, other on-going behaviours which may upset or unsettle a person may not come within the bullying definition either. Behaviour considered bullying by one person may be considered as a routine interaction by another, so the 'reasonableness' of behaviours over time must be considered. Disrespectful behaviour, while inappropriate, is not bullying in itself. Conflicts and disagreements do not, in themselves, make for a bullying pattern either. There are various workplace behavioural issues and relationship breakdowns which are troubling, upsetting and unsettling but are not of an adequate level of destructiveness to meet the criteria required for a bullying case.

Objective criticism and corrections that are intended to provide constructive feedback to an Employee are not usually considered bullying but rather are intended to assist the employee with their work.

Bullying does not include:

- expressing differences of opinion strongly.
- offering constructive feedback, guidance, or advice about work-related behaviour which is not of itself welcome.
- ordinary performance management.
- reasonable corrective action taken by an employer or Line Manager relating to the management and direction of employees (for example, managing a worker's performance, taking reasonable disciplinary actions, or assigning work).
- workplace conflict where people disagree with or disregard the others' point of view.
- Complaints made by staff against students which are appropriate to be dealt with under the school/centre's (student) Code of Behaviour/Discipline.
- Complaints made by student(s) against a staff member which are appropriate to be dealt with under the ETB Complaint Procedure (A procedure for processing complaints made by parents/guardians of students or Adult Learner(s) currently 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 bullying which are appropriate to being processed through other agreed procedures e.g. the nationally agreed Peer to Peer Procedure.
- Allegations which are the subject of legal proceedings or claims for redress under statutory provisions.
- Allegations unrelated to employment.
- Anonymous allegations.

This list is not exhaustive

2.7 Who is involved in bullying at work?

Bullying 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., an external stakeholder/service provider, please contact the relevant contact person for further guidance.

Factors which are known to be associated with a risk of bullying at work are:

- A. high turnover of staff, high absenteeism and/or poor morale,
- B. mismanagement or poor management of relationships in the workplace - bullying is more likely to be a factor in workplaces that do not have an effective management system based on respect and awareness or sensitivity to the impact of behavior on others
- C. gender/age/status imbalance
- D. other factors - composition of the workforce, interface with the public, history of tolerance of unacceptable behavior, lack of/inadequate procedures or no adherence to procedures
- E. absence of clear reporting structures and clear job/role descriptions

2.8 What are the effects of bullying at work?

Workplace bullying and related complaints can have a range of effects on all concerned – the individual being bullied, of course, but also team members, colleagues, others in the organisation and the person being accused of bullying. 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 bullying behavior), 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 bullying), 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 bullying are 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 bullying claims cannot be overstated, so it is in the best interests of all concerned to have robust preventative 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 bullying at work

3.1 Prevention

Every individual in the workplace has a role in promoting a positive workplace free from bullying behavior.

3.1.1 Role of the Employer

Every ETB should:

- Uphold the duty to manage and conduct work activities in such a way as to prevent any improper conduct or behavior likely to put at risk an employee's safety, health Or welfare at work. This duty on employers means that they must act reasonably to prevent workplace bullying patterns developing and where there are complaints, the employer must react reasonably, assess a complaint, record actions and put in place a suitable response based on each case arising.
- Prepare a **Safety Statement** under *section 20* of the **2005 Act** based on an identification of the hazards to safety, health and welfare at the place of work, an assessment of the risks involved and setting down the preventive measures necessary to protect safety, health and welfare. Risk is the likelihood of a hazard causing harm and the extent of that harm.
- Operate this workplace anti-bullying policy to ensure a system is in place for dealing with complaints and that disciplinary action may follow where bullying is found to have occurred. (See template in Appendix 1).
- The ETB shall make available to all parties' access to the Employee Assistance Provider.

Consultation with employees on health and safety matters is required under *Section 26* of the 2005 Act, in addition to the requirements of *Sections 8 and 9* of the Act.

3.1.2 Role of employees

Each employee should

- Create a cooperative relational climate within the workplace by their own behavior. How they behave and how that behavior 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 behavior to others, relating in clear, civil and respectful ways to everybody in the workplace. Employees have duties under the 2005 Act to conduct themselves properly in relation to others at work. Under *section 13* - employees' duties include to:
- comply with the relevant statutory provisions, as appropriate, and take reasonable care to protect their safety, health and welfare and the safety, health and welfare of any other person who may be affected by the employee's acts or omissions at work,

- co-operate with their employer, or any other person so far as is necessary, to enable their employer or the other person to comply with the relevant statutory provisions, as appropriate, and
- not engage in improper conduct or other behavior that is likely to endanger a person's own safety, health and welfare at work or that of any other person at work or during their employment.

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 bullying, intimidation or any ongoing negative behavior, which might lay the foundation stone for a bullying 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 behavior, training of staff on acceptable behavior 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 behaviors 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-Bullying Policy developed, used and promoted regarding improper and proper behaviors.
- 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 bullying 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 fulfil the role.

4. Intervention in workplace bullying

Responding to a workplace bullying complaint at the workplace

Early intervention matters

Any complaint about, or awareness of, alleged bullying 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 bullying 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) 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 bullying 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 in such issues and to respond and consult appropriately.
- Confidentiality to be respected by all.
- A focus should always be on future workplace relationships and problem-solving orientation.

An informal approach may effectively address unwanted behavior without recourse to any other action. Sometimes, the person who is alleged to be engaging in the behavior is

genuinely unaware that the behavior being complained of is disrespectful, unwelcome, undermining, and/or distressing.

Recommended steps in an informal process are:

- i) In the first instance, the unacceptable behavior/acts should be raised by the employee (the person who feels bullied) 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 step. 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 stage¹

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

¹ It is agreed between the parties to this policy, having regard to natural justice, the need for impartiality, the range of supports available and the provision of external mediation as a preferred option for informal resolution, that a secondary informal process is not required in the sector.

through other relevant procedures.

- In many situations, with the cooperation 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 the 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 bullying. It is a significant step, and all parties should be aware of the 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. Still, 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.

- 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 bullying, including their dates and names of witnesses, where possible.
- The person complained against should be notified in writing that an allegation of bullying has been made against them.

- 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 Code of Practice for Prevention of Bullying
- 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 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 Code of Practice for Prevention of Bullying. 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.

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 in any investigation initiated in response to an allegation of bullying.

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 behaviors complained about occurred, it having already been established that the behaviors come within the description of workplace bullying. Details of the complaint, the responses of the person complained of all witness statements and other relevant evidence are 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 the 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 five 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 five 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 ten 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 ten 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 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 five above*), the completed Response to Complaint Form¹⁴ and supporting evidence/documentation if any, will be forwarded to the complainant.
7. Within a **further three 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 the 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 bullying 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 bullying. 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, considering 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, the reason(s) why.

For the avoidance of doubt, specific details of disciplinary action or other action 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 behavior, protective measures and remedial actions, where appropriate. The ETB should also keep records of all such actions taken.

4.2.4 Appeals

Both parties may appeal the investigation within ten working days of receipt of the correspondence from the Director. Where the option to appeal is taken, the HR Manager will advise as to the appropriate process;

- appeals from staff other than teachers are processed through the adjudication service of the WRC,

- appeals from teachers are to an Independent Officer nominated by the Conciliation, Advisory and Mediation Services division of the WRC

The Adjudicator/Independent Officer will not rehear the substance of the case. Several outcomes are possible; the Adjudicator/ Independent Officer may conclude the investigation was conducted properly and fairly, and hence its conclusions should stand. The Adjudicator/ Independent Officer may, on the other hand, conclude that the investigation process was flawed in some respect and could recommend, for example, that the investigation be reheard.

Where staff have access to the State's IR machinery, they may lodge the appeal using the WRC complaint form, and the adjudication service will assign the case to an adjudicator.

Where staff do not have access to the State's IR machinery, the following arrangements shall apply;

- A complaint form may be requested from Human Resources to be returned to Human Resources for forwarding to the independent officer.
- The independent officer will engage with the parties to invite submissions.

The independent officer will schedule a meeting with the parties to explore the merits of the appeal. In this regard, the Independent Officer will be responsible for inviting the parties to attend an oral hearing/s on a date so determined by him/her, but which ideally would not exceed **20 working days** from the date of referral by the party.

All documentation submitted to the Independent Officer by either party should simultaneously be copied by that party to the other party no later than **five working days** in advance of the date of the oral hearing.

- At the oral hearing, each party shall be invited to speak to their written statements (which will have been submitted no later than five working days prior to the oral hearing/s date), following which the independent officer will issue a determination as to whether or not the appeal is upheld. This determination will issue to the parties no later than **20 working days** from the date of the oral hearing.

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 bullying them. This could also apply to where one person maliciously complains of someone allegedly bullying 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 bullying 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 the 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 type of reconciliation or rehabilitative meetings, or team working session 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.

5.1 If the procedures contained in this Policy do not resolve a bullying complaint

A person may make a complaint to the HSA regarding a complaint made by them, or a complaint made against them; the HSA will instigate its own procedures in line with its statutory remit, as outlined in the next section of this Policy.

6. Role of the HSA and the WRC

6.1 Role of the HSA

6.1.1 Introduction

There is a range of state and non-state agencies that have a function in the area of workplace bullying. Different pieces of legislation also have a bearing in preventing and managing bullying cases, some before the event, others in the management of cases as they arise, and others still after the fact.

The HSA operates under the statutory powers of the 2005 Act. Its purpose is to provide protection for employees in all places of work in the Republic of Ireland. The overarching tenet of the 2005 Act is to oversee the employer's duty to ensure everyone at work is provided with a workplace and system of work which is, as far as is reasonably practicable, free from risk to health and to safety.

There are, within the 2005 Act, specific duties on employers, employees and others to uphold and promote this standard, as well as a healthy and safe culture. There are provisions within the 2005 Act which are relevant to the issue of workplace bullying, both directly and/or indirectly. Section 8 2(b) directly references 'improper conduct' and the employer's duty to ensure the workplace has an adequate system in place to prevent such conduct. Section 19 (Hazard Identification and Risk Assessment) and section 20 (Safety Statement) reference the employer's duty to have in place adequate systems of work and to record these actions in written form. Section 13 (Duties of Employee) includes the employee's duties to cooperate with such employer activities.

6.1.2 System for processing bullying complaint/cases

As well as engaging in promotion and awareness-raising activities, the HSA provides a public facing phone and email Workplace Contact Unit (WCU), where employees who consider themselves to be bullied can report their issue. Employees can either report it as a complaint or, if they are seeking information about the topic and/or are unsure as to whether or not their experience is, in fact, bullying, they can contact WCU to make an enquiry. This latter approach will be recorded as a 'Request for Information (RFI).'

The WCU responds to RFIs by providing either a verbal or written answer to the customer or, if they are not in a position to answer the query, they will forward the RFI to an appropriate person who will respond.

Where a complaint is made concerning bullying, it can be classified in several ways, depending on its content and the nature of the complaint. The first filter every complaint goes through is to assess whether or not, noting the behaviours complained of the issue falls within the definition and scope of a bullying complaint (see What is bullying at work?).

If the complaint concerns a person who feels they are being bullied, and what they describe falls within the scope of workplace bullying, and they report that the employer is not taking any action, that matter will be recorded by WCU, and the employer contacted to assess their response and follow up to the matter insofar as the employer's action is concerned.

Where the complaint is that the employer did take action, but the employee is unhappy with the action or the outcome of that action, the role of the HSA is to assess whether or not, insofar as is reasonably practicable, the employer's actions were adequate.

If the complaint is from a person accused of bullying, similarly, the HSA role is the same - to assess the employer's processing of the matter.

In each of the above scenarios, the HSA is a neutral party whose remit is to ensure the safety and health of the employee through the reasonable and practical actions provided for by employers in their systems of work generally and the management of the issue specifically.

The HSA has the statutory remit to ensure employer duties of care to all employees and

management of improper conduct at work, where the hazard of bullying exists, is upheld. The HSA can be where an employer fails to act reasonably in an existing bullying matter issue.

enforcement action in various forms, from verbal advice to written advice, an Improvement Direction or an Improvement Notice. The HSA can also, after investigation, forward a file, with recommendations, to the Director of Public Prosecution (DPP) for their decision as to the prosecution of employers where there is evidence that the employers have failed in their duty to protect an employee or employees from the harmful fallout of bullying.

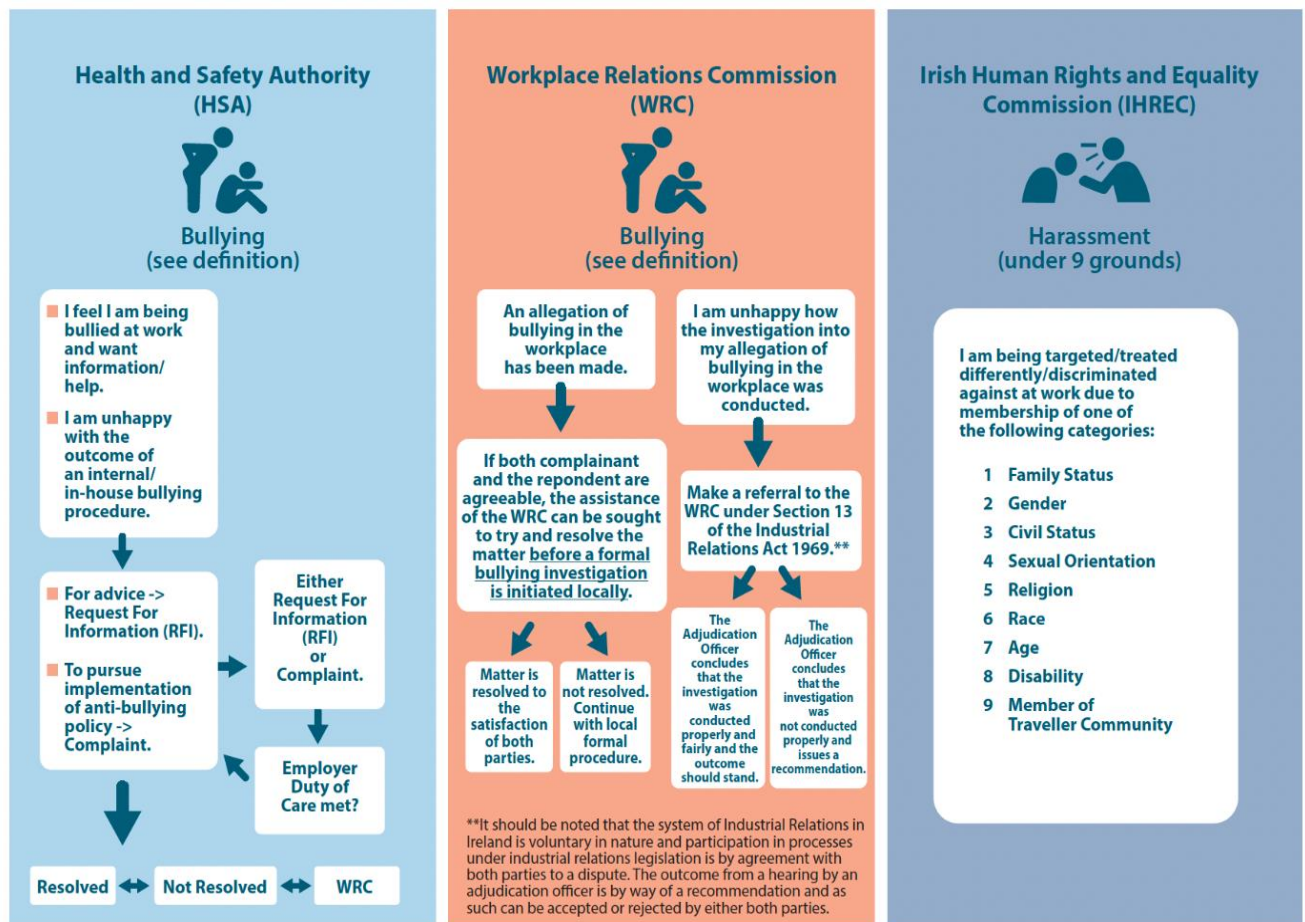
The HSA has no role in the sanction or disciplinary actions taken in these matters and does not have a role in mediation, negotiation, or conflict resolution between parties to a bullying case.

6.2 Role of the WRC

The WRC's objective at all times is to achieve harmonious working relations between employers and employees. The Commission would always encourage local discussion on, and resolution of, disputes and issues which arise in the workplace including cases of alleged bullying. The Workplace Relations Commission delivers several services which may assist.

- Individual and collective workplace mediation focuses on seeking to resolve the matter at an early stage locally before a formal process is initiated. This is dependent on the agreement of the parties concerned to participate and is provided by the WRC on an ad hoc basis.
- Workplace mediation provides a confidential, professional, efficient and effective process to assist all parties in reaching a mutually acceptable agreement or outcome to a dispute or claim. This approach often helps to avoid more formal processes.
- It is particularly suited to disputes involving individuals or small groups of workers who find themselves dealing with situations which may involve the following: interpersonal differences, conflicts, difficulties in working together, breakdown in a working relationship.
- Reviewing overall workplace relations generally in organisations and assisting with the implementation of positive engagement measures.
- The provision of Adjudication services under Section 13 of the Industrial Relations Act 1969 following the exhaustion of internal procedures (note: the grounds of a referral to an Adjudication Officer are around the conduct of an investigation in terms of fairness and adherence to fair process and procedure).
- The Industrial Relations (Amendment) Act 2015 amended the definition of worker in the Industrial Relations Act 1990 to the effect that it excludes "teacher employed by an ETB". For this reason, appeals from teachers are to an Independent Officer nominated by the Conciliation, Advisory and Mediation Services division of the WRC (note: the grounds of a referral to an Adjudication Officer are around the conduct of an investigation in terms of fairness and adherence to fair process and procedure).

6.3 Role of the HSA and the WRC in the Prevention of Workplace Bullying



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 to 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 jobs and their working environment and any rules and regulations that apply.

ETBs to insert where the Anti Bullying Policy is available to staff.

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

Communication to non-employees

A summary of the **Anti-Bullying Policy** should be prominently displayed where appropriate and as identified in the risk assessment, such as at places where members of the public and stakeholders attend.

7.2 Monitoring by the ETB

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

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

7.3 Training and Supervision

Employees should be provided with information, training, development, and supervision as necessary to ensure the prevention of bullying and fulfil their responsibilities under this policy. This should include:

making employees aware of the **Anti-Bullying Policy**;

- information on the appropriate behavior 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 bullying incident, as well as adequate and informed supervision of the work environment.

This policy includes a commitment to staff training and supervision as identified in the risk assessment on issues related to bullying at work, including the provision of training for managers, supervisors, and all staff at induction or through appropriate awareness-raising initiatives. Such training will identify the factors which contribute to a working environment free of bullying 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.

The best practice would be to ensure that records of all such training are kept by the employer.

7.4 Reviews

This policy will be reviewed by the parties to this agreement at a 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 bullying 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 bullying.**
 - **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 *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 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 investigation.
- At the meeting or during 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 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 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 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 bullying 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 bullying.
 - 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: Extracts from the safety, health and welfare at work act 2005

8. General duties of employer

- (8) Every employer shall ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees.

- (9) Without prejudice to the generality of *subsection (1)*, the employer's duty extends, in particular, to the following:

- a) managing and conducting work activities in such a way as to ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees;
- b) managing and conducting work activities in such a way as to prevent, so far as is reasonably practicable, any improper conduct or behaviour likely to put the safety, health or welfare at work of his or her employees at risk;
- c) as regards the place of work concerned, ensuring, so far as is reasonably practicable:
 - i. the design, provision and maintenance of it in a condition that is safe and without risk to health;
 - ii. the design, provision and maintenance of safe means of access to and egress from it; and
 - iii. the design, provision and maintenance of plant and machinery or any other articles that are safe and without risk to health;
- d) ensuring, as far as it is reasonably practicable, the safety and the prevention of risk to health at work of his or her employees relating to the use of any article or substance or the exposure to noise, vibration or ionising or other radiations or any other physical agent;
- e) providing systems of work that are planned, organised, performed, maintained and revised as appropriate to be, as far as is reasonably practicable, safe and without risk to health;
- f) providing and maintaining facilities and arrangements for the welfare of his or her employees at work;
- g) providing the information, instruction, training and supervision necessary to ensure, so far as is reasonably practicable, the safety, health, and welfare at work of his or her employees;
- h) determining and implementing the safety, health and welfare measures necessary for the protection of the safety, health and welfare of his or her employees when identifying hazards and carrying out a risk assessment under *section 19* or when preparing a safety statement under *section 20* and ensuring that the measures take account of changing circumstances and the general principles of prevention specified in Schedule 3;
- i) having regard to the general principles of prevention in Schedule 3, where risks cannot be eliminated or adequately controlled or in such circumstances as may be prescribed, providing and maintaining such suitable protective clothing and equipment as is necessary to ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees;

- j) preparing and revising, as appropriate, adequate plans and procedures to be followed and measures to be taken in the case of an emergency or serious and imminent danger;
 - k) reporting accidents and dangerous occurrences, as may be prescribed, to the Authority or to a person prescribed under *section 33*, as appropriate; and
 - l) obtaining, where necessary, the services of a competent person (whether under a contract of employment or otherwise) for the purpose of ensuring, as far as is reasonably practicable, the safety, health and welfare at work of his or her employees.
- (10) Any duty imposed on an employer under the relevant statutory provisions in respect of any of his or her employees shall also apply in respect of the use by him or her of the services of a fixed-term employee or a temporary employee.
- (11) For the duration of the assignment of any fixed-term employee or temporary employee working in his or her undertaking, it shall be the duty of every employer to ensure that working conditions are such as will protect the safety, health and welfare at work of such an employee.
- (12) Every employer shall ensure that any measures taken by him or her relating to safety, health and welfare at work do not involve financial cost to his or her employees.

Section 9: Information for employees

9. (1) Without prejudice to the generality of *section 8*, every employer shall, when providing information to his or her employees under that section on matters relating to their safety, health and welfare at work ensure that the information:
- a. is given in a form, manner and, as appropriate, language that is reasonably likely to be understood by the employees concerned, and
 - b. includes the following information:
 - I. the hazards to safety, health and welfare at work and the risks identified by the risk assessment;
 - II. the protective and preventive measures to be taken concerning safety, health and welfare at work under the relevant statutory provisions in respect of the place of work and each specific task to be performed at the place of work; and
 - III. the names of persons designated under *section 11* and of safety representatives selected under *section 25*, if any.
- (2) Where an employee of another undertaking is engaged in work activities in an employer's undertaking, that employer shall take measures to ensure that the

- employee's employer receives adequate information concerning the matters referred to in *subsection (1)*.
- (3) Every employer shall ensure that employees appointed under *section 18* and safety representatives, if any, have access, for the purposes of performing their functions relating to the safety, health and welfare of employees, to:
- a. the risk assessment carried out under *section 19*;
 - a. information relating to accidents and dangerous occurrences required to be reported to the Authority or a person prescribed under *section 33* under the relevant statutory provisions; and
 - b. any information arising from protective and preventive measures taken under the relevant statutory provisions or provided by the Authority, a person prescribed under *section 33*, or a person referred to in *section 34(2)*.
- (4) (a) Where an employer proposes to use the services of a fixed-term employee or a temporary employee, the employer shall, prior to commencement of employment, give information to the employee relating to:
- i. any potential risks to the safety, health and welfare of the employee at work;
 - ii. health surveillance;
 - iii. any special occupational qualifications or skills required in the place of work; and any increased specific risks which the work may involve.
- (b) Where an employer proposes to use the services of a temporary employee, the employer shall:
- i. specify to the temporary employment business concerned the occupational qualifications necessary for and the specific features of the work for which such an employee is required; and
 - ii. ensure that the temporary employment business gives the information referred to in paragraph (a) to the employee.
- (5) The temporary employment business referred to in *subsection (4)(b)* shall give to the employee the information referred to in *subsection (4)(b)(i)*.

Section 10: Instruction, training and supervision of employees

10. (1) Without prejudice to the generality of *section 8* and having regard to *sections 25 and 26*, every employer shall, when providing instruction, training and supervision to his or her employees in relation to their safety, health and welfare at work, ensure that:
- (a) instruction, training and supervision is provided in a form, manner and, as appropriate, language that is reasonably likely to be understood by the employee concerned;

- (b) employees receive, during time off from their work, where appropriate, and without loss of remuneration, adequate safety, health and welfare training, including, in particular, information and instructions relating to the specific task to be performed by the employee and the measures to be taken in an emergency;
 - (c) in relation to any specific task assigned to an employee, that his or her capabilities in relation to safety, health and welfare are taken into account; and
 - (d) in the case of:
 - (i) a class or classes of particularly sensitive employees to whom any of the relevant statutory provisions apply; or
 - (ii) any employee or group of employees exposed to risks expressly provided for under the relevant statutory provisions, the employees concerned are protected against the dangers that specifically affect them.
- (2) Training under this section shall be adapted to take account of new or changed risks to safety, health and welfare at work and shall, as appropriate, be repeated periodically.
- (3) Training under this section shall be provided to employees:
- (a) on recruitment;
 - (b) in the event of the transfer of an employee or change of task assigned to an employee;
 - (c) on the introduction of new work equipment, systems of work or changes in existing work equipment or systems of work; and
 - (d) on the introduction of new technology
- (4) Where, in respect of any particular work, competency requirements are prescribed, the employer shall provide for the release of employees, during working hours, where appropriate, and without loss of remuneration, for the purpose of attending training in matters relating to safety, health and welfare at work as regards the particular work.
- (5) Every employer shall ensure that persons at work in the place of work concerned who are employees of another employer receive instructions relating to any risks to their safety, health and welfare in that place of work as necessary or appropriate.
- (6) Every employer who uses the services of a fixed-term employee or a temporary employee shall ensure that the employee receives the training appropriate to the work which he or she is required to carry out having regard to his or her qualifications and experience.

Section 13: Duties of employee

(1) An employee shall, while at work:

- a. comply with the relevant statutory provisions, as appropriate, and take reasonable care to protect his or her safety, health and welfare and the safety, health and welfare of any other person who may be affected by the employee's acts or omissions at work;
- b. ensure that he or she is not under the influence of an intoxicant to the extent that he or she is in such a state as to endanger his or her own safety, health or welfare at work or that of any other person;
- c. if reasonably required by his or her employer, submit to any appropriate, reasonable and proportionate tests for intoxicants by, or under the supervision of, a registered medical practitioner who is a competent person, as may be prescribed;
- d. co-operate with his or her employer or any other person as far as is necessary to enable his or her employer or the other person to comply with the relevant statutory provisions, as appropriate;
- e. not engage in improper conduct or other behaviour that is likely to endanger his or her own safety, health and welfare at work or that of any other person;
- f. attend such training and, as appropriate, undergo such assessment as may reasonably be required by his or her employer or as may be prescribed relating to safety, health and welfare at work or relating to the work carried out by the employee;
- g. having regard to his or her training and the instructions given by his or her employer, make correct use of any article or substance provided for use by the employee at work or for the protection of his or her safety, health and welfare at work, including protective clothing or equipment;
- h. report to his or her employer or to any other appropriate person, as soon as practicable:
 - i. any work being carried on, or likely to be carried on, in a manner which may endanger the safety, health or welfare at work of the employee or that of any other person;
 - j. any defect in the place of work, the systems of work, any article or substance which might endanger the safety, health or welfare at work of the employee or that of any other person; or
 - k. any contravention of the relevant statutory provisions which may endanger the safety, health and welfare at work of the employee or that of any other person, of which he or she is aware.

(2) An employee shall not, on entering into a contract of employment, misrepresent himself or herself to an employer with regard to the level of training as may be prescribed under *subsection (1)(f)*.

Section 14: Interference, misuse or risk

14. A person shall not intentionally, recklessly or without reasonable cause:

- (a) interfere with, misuse or damage anything provided under the relevant statutory provisions or otherwise for securing the safety, health and welfare of persons at work; or
- (b) place at risk the safety, health or welfare of persons in connection with work activities.

Section 19: Hazard identification and risk assessment

- (19) (1) Every employer shall identify the hazards in the place of work under his or her control, assess the risks presented by those hazards and be in possession of a written assessment (to be known and referred to in this Act as a “risk assessment”) of the risks to the safety, health and welfare at work of his or her employees, including the safety, health and welfare of any single employee or group or groups of employees who may be exposed to any unusual or other risks under the relevant statutory provisions.
- (20) For the purposes of carrying out a risk assessment under *subsection (1)*, the employer shall, taking account of the work being carried on at the place of work, have regard to the duties imposed by the relevant statutory provisions.
- (21) The risk assessment shall be reviewed by the employer where –
- (a) There has been a significant change in the matters to which it relates; or
 - (b) There is another reason to believe that it is no longer valid, and, following the review, the employer shall amend the risk assessment as appropriate.
- (22) In relation to the most recent risk assessment carried out by an employer, he or she shall take steps to implement any improvement considered necessary relating to the safety, health and welfare at work of employees and to ensure that any such improvement is implemented in respect of all activities and levels of the place of work.
- (23) Every person to whom *Sections 12 or 15* applies shall carry out a risk assessment in accordance with this section to the extent that his or her duties under those sections may apply to persons other than his or her employees.

Section 20: Safety statement

20. (1) Every employer shall prepare, or ask to be prepared, a written statement (to be known and referred to in this Act as a “safety statement”), based on the identification of the hazards and the risk assessment carried out under *section 19*, specifying the manner in which the safety, health and welfare at work of his or her employees shall be secured and managed.

- (2) Without prejudice to the generality of *subsection (1)*, every employer shall ensure that the safety statement specifies:

- a. the hazards identified and the risks assessed;
 - b. the protective and preventive measures taken, and the resources provided for protecting safety, health and welfare at the place of work to which the safety statement relates;
 - c. the plans and procedures to be followed and the measures to be taken in the event of an emergency or serious and imminent danger, in compliance with *sections 8 and 11*;
 - d. the duties of his or her employees regarding safety, health and welfare at work, including co-operation with the employer and any persons who have responsibility under the relevant statutory provisions in matters relating to safety, health and welfare at work;
 - e. the names and, where applicable, the job title or position held of each person responsible for performing tasks assigned to him or her pursuant to the safety statement; and
 - f. the arrangements made regarding the appointment of safety representatives and consultation with, and participation by, employees and safety representatives, in compliance with *sections 25 and 26*, including the names of the safety representative and the members of the safety committee, if appointed.
- (3) Every employer shall bring the safety statement, in a form, manner and, as appropriate, language that is reasonably likely to be understood, to the attention of:
- a. his or her employees, at least annually and, at any other time, following its amendment in accordance with this section;
 - b. newly recruited employees upon commencement of employment; and
 - c. other persons at the place of work who may be exposed to any specific risk to which the safety statement applies.
- (4) Where there are specific tasks being performed at the place of work that pose a serious risk to safety, health or welfare, an employer shall bring to the attention of those affected by that risk relevant extracts of the safety statement setting out:
- a. the risk identified;
 - b. the risk assessment; and
 - c. the protective and preventive measures taken in accordance with the relevant statutory provisions in relation to that risk.
- (5) Every employer shall, taking into account the risk assessment carried out under *section 19*, review the safety statement where:
- a. there has been a significant change in the matters to which it refers;
 - b. there is another reason to believe that the safety statement is no longer valid; or
 - c. an inspector in the course of an inspection, investigation, examination, inquiry under *section 64* or otherwise directs that the safety statement be amended within 30 days of the giving of that direction; and, following the

review, the employer shall amend the safety statement as appropriate to co-operate.

- (6) Every employer who is conducting activities, as may be prescribed in accordance with this subsection, who contracts with another employer for that employer to provide services to him or her shall require that that employer is in possession of an up-to-date safety statement as required under this section.
- (7) A copy of a safety statement, or relevant extract of it, shall be kept available for inspection at or near every place of work to which it relates while work is being carried out there.
- (8) It shall be sufficient compliance with this section by an employer employing three or less employees to observe the terms of a code of practice, if any, relating to safety statements which applies to the class of employment covering the type of work activity carried on by the employer.
- (9) Every person to whom *section 12 or 15* applies shall prepare a safety statement in accordance with this section to the extent that his or her duties under those sections may apply to persons other than his or her employees.

Section 60: Codes of practice

- (60) (1) For the purpose of providing practical guidance to employers, employees and any other persons to whom this Act applies with respect to safety, health and welfare at work, or the requirements or prohibitions of any of the relevant statutory provisions, the Authority:
 - (a) may, and shall if so, requested by the Minister, prepare and publish codes of practice; and
 - (b) may approve of a code of practice or any part of a code of practice made or published by any other body.
- (61) Before publishing or approving of a code of practice or any part of a code of practice under this section, the Authority:
 - (a) shall obtain the consent of the Minister;

may publish in such manner as the Authority considers appropriate a draft of the code of practice or sections of a draft code of practice and shall give persons one month from the date of publication of the draft code or sections within which to make written representations to the Authority in relation to the draft code or sections of the draft code, or such further period, not exceeding 28 days, as the Authority in its absolute discretion thinks fit; and

- (b) following consultation and, where relevant, having considered the representations, if any, made, shall submit the draft code to the Minister for his or her consent to its publication or approval under this section, with or without modification.
- (62) Where the Authority publishes or approves of a code of practice or approves

of any part of a code of practice, it shall publish a notice of such publication or approval in *Iris Oifigiuil* and that notice shall:

- (a) identify the code;
- (b) specify the matters relating to safety, health and welfare at work or the relevant statutory provisions in respect of which the code is published or approved of; and
- (c) specify the date on which the code shall come into operation.

(63) The Authority may with the consent of the Minister and following consultation with any other person or body that the Authority considers appropriate or as the Minister directs:

- (a) amend or revoke any code of practice or part of any code of practice prepared and published by it under this section; or
- (b) withdraw its approval of any code of practice or part of any code of practice approved by it under this section.

(64) Where the Authority amends or revokes or withdraws its approval of a code of practice or any part of a code of practice published or approved under this section, it shall publish notice of the amendment, revocation or withdrawal, as the case may be, in *Iris Oifigiuil*.

(65) The Authority shall make available for public inspection without charge at its principal office during normal working hours:

- (a) a copy of each code of practice published or approved by it; and
- (b) where a code of practice has been amended, a copy of the code as so amended.

(66) Notwithstanding the repeal of the Act of 1989 by *section 4*, a code of practice in operation immediately before the commencement of that section continues to be a code of practice as if prepared and published under this section.

Section 61: Use of codes of practice in criminal proceedings

61. (1) Where in proceedings for an offence under this Act relating to an alleged contravention of any requirement or prohibition imposed by or under a relevant statutory provision being a provision for which a code of practice had been published or approved by the Authority under section 60 at the time of the alleged contravention, *subsection (2)* shall have effect with respect to that code of practice in relation to those proceedings.

(2) (a) Where a code of practice referred to in *subsection (1)* appears to the court to give practical guidance as to the observance of the requirement or prohibition alleged to have been contravened, the code of practice shall be admissible in evidence.

(b) Where it is proved that any act or omission of the defendant alleged to constitute the contravention:

- (i) is a failure to observe a code of practice referred to in *subsection (1)*; or
- (ii) is a compliance with that code of practice, then such a failure or compliance is admissible in evidence.

(3) A document bearing the seal of the Authority and purporting to be a code of practice or part of a code of practice published or approved of by the Authority under this section

shall be admissible as evidence in any proceedings under this Act.

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SCHEDULE 3

Section 8

General Principles of Prevention

1. The avoidance of risks.
2. The evaluation of unavoidable risks.
3. The combating of risks at source.
4. The adaptation of work to the individual, especially as regards the design of places of work, the choice of work equipment and the choice of systems of work, with a view, in particular, to alleviating monotonous work and work at a predetermined work rate and to reducing the effect of this work on health.
5. The adaptation of the place of work to technical progress.
6. The replacement of dangerous articles, substances or systems of work by safe or less dangerous articles, substances or systems of work.
7. The giving of priority to collective protective measures over individual protective measures.
8. The development of an adequate prevention policy in relation to safety, health and welfare at work, which takes account of technology, organisation of work, working conditions, social factors and the influence of factors related to the working environment.
9. The giving of appropriate training and instructions to employees.

Appendix 3: Some Relevant Organisations and Publications

Health and Safety Authority

www.hsa.ie

Guidelines on Risk Assessment and Safety Statements

Workplace Safety and Health Management

Workplace Relations Commission

(www.workplacerelations.ie)

Procedures for Addressing Bullying in the Workplace

Grievance and Disciplinary Procedures

Voluntary Dispute Resolution SI 76 of 2004

Irish Human Rights and Equality Commission (IHRC)

(www.ihrec.ie)

Code of Practice on Sexual Harassment and Harassment at Work

Department of Enterprise Trade and Employment

Bullying in the Workplace, Survey Reports, 2007

(Website: <https://enterprise.gov.ie/en/Publications/Bullying-in-the-Workplace-Survey-Reports-2007.html>)