



Model Harassment Policy and Procedure

Equality Commission

FOR NORTHERN IRELAND

Model Harassment Policy

As part of its overall commitment to equality of opportunity, this organisation [specify name] aims to promote a good and harmonious working environment where every worker¹ is treated with respect and dignity and in which no worker feels threatened or intimidated because of his or her age², disability, marital or civil partnership status, political opinion, race, religious belief, sex (including gender reassignment) or sexual orientation. The aim of this policy is to prevent harassment by communicating clearly the type of behaviour that is not acceptable in our workplace and the action that will be taken should harassment occur.

Harassment at work in any form is unacceptable behaviour and will not be permitted or condoned. Sexual, sectarian and racial harassment, harassing a disabled person on account of disability or harassing someone on grounds of sexual orientation (or age) is unlawful under the sex discrimination, fair employment, race relations, disability and sexual orientation (and age) legislation. It may also be a civil offence, a criminal offence and it may contravene health and safety legislation.

Harassment detracts from a productive working environment and can affect the health, confidence, morale and performance of those affected by it, including anyone who witnesses or knows about the unwanted behaviour. This can have a direct impact on the employee relations climate and the profitability and efficiency of the organisation.

Harassment is inappropriate behaviour at work and may be unlawful conduct. It will be treated by this organisation as misconduct, up to and including gross misconduct warranting dismissal. All those who work for us must comply with this policy.

[If there is a recognised trade union or workplace representative, insert here:

This policy has been agreed with (name of trade union or workplace representative)]

¹ We have used the term worker and employee interchangeably in this document. Worker can include categories such as contract workers and agency staff who often have different workplace rights than those who meet the legal definition of employee. As a matter of good practice, the Commission recommends that employers strive to protect from harassment all those who work for them, whether those workers enjoy statutory protection or not. In the event of a complaint of harassment, however, the legal redress available to an individual may depend on their employment status.

² Please note that legislation to outlaw discrimination on grounds of age is expected to come into force in Northern Ireland in October 2006.

What is harassment?

In general terms, harassment is unwanted conduct related to a particular characteristic (age, disability, marital or civil partnership status, sex, sexual orientation, race, religious belief or political opinion) which violates the dignity of women and men at work. This can include unwelcome physical, verbal or non-verbal conduct.

Harassment in the employment context has now been defined explicitly in key pieces of anti-discrimination legislation³. Under the legislation covering religious belief and political opinion, race, disability, sex and sexual orientation, harassment is defined as unwanted conduct which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person .

Harassment as defined in the legislation will amount to unlawful discrimination. This organisation is committed, however, to discouraging all forms of harassment and discrimination, whether unlawful or not.

Many forms of behaviour can constitute harassment; these are just some examples:

- Physical conduct ranging from touching to serious assault
- Verbal and written harassment through jokes, racist, sexist or sectarian remarks, homophobic comments, comments about a person's disability, offensive language, gossip and slander, sectarian songs, mobile telephone ring tones, threats, letters, emails
- Visual displays of posters, computer screen savers, downloaded images, graffiti, obscene gestures, flags, bunting or emblems, or any other offensive material
- Isolation or non-co-operation at work, exclusion from social activities

³ See list of relevant legislation at the end of this document. It should be noted that the definitions differ slightly in some of the statutory provisions. For further information on definitions of harassment and what the law says, contact the Equality Commission. The forthcoming age legislation will include a prohibition on harassment on grounds of age.

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- Coercion, including pressure for sexual favours, pressure to participate in political or religious groups
 - Intrusion by pestering, spying, following, etc.

If any of the above behaviour is not related to an equality ground covered by anti-discrimination legislation, this could amount to bullying.

Employees' rights

All those who work for us have the right to work in an environment which is free from any form of harassment. This includes protection from harassment from work colleagues and clients/customers. This organisation [specify name] recognises fully the right of employees to complain about harassment should it occur. All complaints will be dealt with seriously, promptly and confidentially.

Individuals have the right to complain through our ... procedure. [specify here whether complaints of harassment will be dealt with under a specific harassment complaints procedure, the organisation's general grievance procedures or some other procedure. A copy of the relevant procedure may be attached to the policy or reference made to where it can be found, eg, in staff handbook, on intranet, etc. Any procedure for dealing with complaints must comply fully with the statutory grievance and disciplinary procedures - for further information see contact details at the end of this document.]

Our internal procedure does not prevent employees from pursuing a complaint of harassment under the sex/race relations/disability/sexual orientation legislation to an industrial tribunal and, under the fair employment legislation, for example, to the Fair Employment Tribunal, in the case of sectarian harassment. However, there are strict time limits for making complaints to a tribunal and complainants **normally**⁴ will be expected to have raised their complaint under an employer's grievance procedures first. [Employers may wish to include contact details for further information at the end of this document.]

⁴ Normally an individual will be expected to have lodged a complaint with their employer and have waited 28 days before the tribunal will accept their complaint. However, there are some important exceptions to this rule. Further information may be obtained from the sources quoted at the end of this document.

Every effort will be made to ensure that employees making complaints of harassment, and others who give evidence or information in connection with a complaint, will not be victimised. Victimisation is discrimination contrary to the anti-discrimination legislation. Any complaint of victimisation will be dealt with seriously, promptly and confidentially. Victimisation will result in disciplinary action and may warrant dismissal.

Employees' responsibilities

All those who work for this organisation have a responsibility to help ensure a working environment in which the dignity of all employees, clients and customers is respected. Everyone must comply with this policy and employees should ensure that their behaviour to colleagues, clients and customers does not cause offence and could not in any way be considered to be harassment.

Employees should discourage harassment by making it clear that they find such behaviour unacceptable and by supporting colleagues who suffer such treatment and are considering making a complaint. Any employee who is aware of any incident of harassment should alert a manager (or supervisor) to enable the organisation to deal with it.

Management's responsibilities

Managers (and supervisors, if relevant) have a duty to implement this policy and to make every effort to ensure that harassment does not occur, particularly in work areas for which they are responsible.

Managers (and supervisors, if relevant) have responsibility for dealing appropriately with any incidents of harassment which they are aware of, or ought to be aware of. If harassment does occur, they must deal effectively with the situation.

Managers (and supervisors, if relevant) should:

- Explain the organisation's policy to staff and take steps to promote awareness of the procedures for dealing with complaints. Ensure that each member of staff has been given a copy of the policy.
- Be responsive and supportive to any member of staff who makes an allegation of harassment, provide clear advice on the procedure to be adopted, maintain confidentiality and seek to ensure that there is no further problem of harassment or victimisation while a complaint is being dealt with or after it has been resolved
- Set a good example by treating all staff, clients and customers with dignity and respect
- Be alert and proactive to unacceptable behaviour and take appropriate action in accordance with our policy and procedures
- Ensure that staff know how to raise harassment problems.

The organisation's responsibilities

This organisation [specify name] will ensure that adequate resources are made available to promote respect and dignity in the workplace and to deal effectively with complaints of harassment. This policy and our procedures for dealing with complaints will be communicated effectively to all employees and others who work for us. We will ensure that all employees and managers/supervisors are aware of their responsibilities. Harassment awareness training will be provided for all employees and specific training will be provided for those who have responsibility for implementing this policy and associated procedures.

All complaints of harassment will be dealt with promptly, seriously and confidentially.

[NOTE Some organisations, for example larger organisations, may wish to consider adding the following to their harassment policy:

- The appointment of designated individuals who can provide advice and assistance to employees who are subjected to harassment. The policy should explain clearly the role of such advisers (including the limitations of that role) and include a commitment to providing appropriate training for them.
- The option, where possible, for individuals to raise complaints of harassment with someone of their own identity or who is sensitive to issues relating to that identity.
- The option to avail of a confidential counselling service.]

Review

We will monitor all incidents of harassment and will review the effectiveness of this policy and associated procedures annually.

Date:

Signed:
(on behalf of the organisation)

Signed:
(recognised trade union or workplace representative)

Model procedure for dealing with complaints of Harassment

Explanatory note

These suggested procedures are intended to complement the Commission's model harassment policy. They are a guide to the critical elements that must be addressed in dealing effectively with complaints of harassment. Organisations need to implement procedures that are appropriate to their size, structure and resources. The most important thing is that the risk of incidents of harassment is minimised, complaints are investigated and dealt with appropriately, in the best interests of all concerned, and that all statutory requirements in relation to grievance and disciplinary procedures are complied with fully. We recognise that harassment may occur between employees and customers but these model procedures are intended to deal only with complaints against other workers.

Harassment is a complex subject. Some forms of harassment will constitute unlawful discrimination under the anti-discrimination legislation relating to sex (including gender reassignment), married or civil partnership status, sexual orientation, race, fair employment and treatment and disability⁵. If an individual is subjected to harassment that is defined as unlawful in the legislation, that person will have particular rights. There are many other forms of behaviour that may be perceived as harassment which will not necessarily constitute unlawful harassment, as defined in the law. Bullying is a good example of behaviour which does not always come under the legal definition of harassment.

Behaviour which is unreasonable and undesirable and which undermines a person's dignity at work but which is not based on a particular characteristic such as sex, sexual orientation, race, religious belief, political opinion or disability will not always offer the same rights of redress for the individual. Nevertheless, it is in an employer's interests to minimise the risk of such undesirable behaviour as it can have also have a negative effect on individuals and ultimately on the organisation's culture, productivity and reputation.

⁵ Please note that legislation to prohibit discrimination, including harassment, on grounds of age is expected in October 2006.

The Equality Commission has a responsibility to help employers comply fully with equality and anti-discrimination law. We are therefore keen to provide guidance for employers which will ensure that they take effective steps to minimise the risk of harassment and deal with any complaints effectively should harassment occur. We are aware that employers may wish to develop procedures which cover a comprehensive range of areas including all the equality grounds, bullying and diversity. Our model procedure, however, is designed to cover our legislative remit which is harassment as defined in the anti-discrimination legislation.

The task of providing simple guidelines for dealing with harassment that are easy to understand and implement is made more difficult by the complexity of the subject. Recent legislative changes that have defined harassment explicitly are helpful in that they clarify the type of actions or behaviour that could automatically give rise to a complaint of harassment. It is much easier for employers to see exactly what their legal responsibilities are and what legal rights their employees have. Case law has also developed which is helpful in letting employers see the kind of steps they are expected to take to prevent harassment. It has become well established, for example, that employers are vicariously liable for the discriminatory acts, including harassment, of their employees if the discriminatory act or harassment is closely connected to the employment. An employer may be able to defend themselves if they can prove that they took such steps as were reasonably practicable to anticipate and avoid the harassment.

Statutory dispute resolution procedures

The introduction in April 2005 of new dispute resolution legislation (the Employment (NI) Order 2003 (Dispute Resolution) Regulations 2004) requires all employers to put in place systems and, at least minimum, procedures to deal with workplace grievance and disciplinary matters. These procedures must be set out in writing. The Regulations do not tell employers how they must act in every circumstance but they do set down a general framework as a minimum standard. Employers are free to adopt procedures which are more comprehensive so long as the minimum requirements are complied with. In dealing with complaints of harassment or bullying, employers (and employees alike) must ensure that they comply fully with the provisions of the statutory procedures. If

particular procedures are already in place for dealing with complaints of harassment, these should be reviewed to ensure compliance with the statutory procedures.

For further information on the statutory disciplinary and grievance procedures, see the Labour Relations Agency's Code of Practice on Disciplinary and Grievance Procedures, available at www.lra.org.uk and the Department for Employment and Learning's guidance, Resolving Disputes at Work, available at www.delni.gov.uk.

Dealing with complaints of harassment in small organisations

We accept that in very small organisations it may not be appropriate to have separate procedures for dealing with different kinds of workplace complaints or disputes. For these employers, the same procedure may be able to deal with a complaint about harassment or discrimination, a complaint about a bullying colleague or boss, and a complaint about working hours or access to overtime. However, the small organisation needs to be alert to the particular sensitivity of complaints of harassment, the potential impact on the individual concerned, the potential for legal redress for the person complaining, the implications of having to defend a complaint and the implications for other staff/employees if a complaint arises.

Dealing with complaints in larger organisations

Medium sized and larger organisations should find it helpful to have separate procedures for dealing with complaints of harassment. The precise steps will vary according to the nature and resources of the organisation. For example, very large organisations may have individuals who are specially trained to deal with harassment complaints or who can act as confidential advisers to staff who experience problems. They should also provide training in harassment awareness and in the organisation's procedures. The larger organisation is more likely to have dedicated human resources staff who may play a key role in investigating complaints, etc. Again, the most important thing is to ensure that policies and training are in place to minimise the risk of incidents in the first place, that appropriate action is taken should an incident occur and that all statutory requirements are complied with fully.

Our model procedure should be used as a guide that can be adapted and applied as appropriate.

Model procedure for dealing with complaints of harassment

Scope

Any employee who believes that s/he has suffered or is suffering any form of harassment is entitled to raise the matter through the following procedure. This internal procedure does not prevent an individual from exercising their statutory right to pursue a complaint of harassment to an industrial tribunal or fair employment tribunal if the issue complained of is related to one of the grounds⁶ covered by legislation — race, disability, sex (including gender reassignment), married or civil partnership status, sexual orientation, religious belief or political opinion. However, employees should be aware that they will normally be expected to have raised their complaint under the employer's grievance procedures before it can be lodged with the industrial tribunal. [For further information on this issue and time limits for pursuing complaints to a tribunal, see contact details at the end of this document.]

Employers may become aware of an alleged incident of harassment from a third party. Inquiries should be made, respecting the rights of all involved, to ascertain whether the victim wishes to make a formal or informal complaint. If the victim does not wish to make a complaint, the employer still has an obligation to consider whether an investigation could be initiated without the co-operation of the victim or whether other forms of management action are required to ensure a good, harmonious working environment.

Dealing with complaints informally

While it is often desirable to attempt to deal with workplace situations informally in order to maintain good working relationships, harassment complaints need to be treated with caution. It is only appropriate to

⁶ It is expected that the legislation to prohibit discrimination and harassment on grounds of age will be implemented in Northern Ireland in October 2006.

attempt to deal with a harassment situation informally, for example, where the harassing behaviour is not so serious (although its continuation presents a risk), there has only been a one-off incident which is not considered serious, or where the individual simply wants undesirable behaviour to stop. There may be occasions when an employee would prefer to deal with the situation informally but managers feel it would be more appropriate to deal with it formally. If there is a risk that the matter complained of will give rise to any kind of disciplinary response, then formal procedures (taking account of the statutory disciplinary and grievance requirements) should always be used and the employee should be made aware of this. Employees should also be made aware that, in most instances, they will be expected to have raised their complaint through their internal grievance procedure before a complaint is lodged with a tribunal.

Employees can seek to resolve matters informally by:

- Approaching the alleged harasser directly making it clear that the behaviour in question is offensive, is not welcome and should be stopped
- Approaching the alleged harasser with the support of a colleague, trade union representative or manager
- Asking a manager or supervisor (or designated harassment adviser if the organisation has appointed advisers) to approach the alleged harasser on his/her behalf.

Where an employee seeks the support of a supervisor or manager, he/she will be informed sensitively that their role in the informal process can only be one of support and assistance. The employee must be clear about the limitations of the manager's involvement in any informal intervention.

The employee will be advised that:

- (i) A formal investigation and possible disciplinary action can normally only take place if the complaint is investigated under the formal procedure

