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BULLYING PREVENTION POLICY - COMPLAINT PROCEDURE FOR ETB STAFF

Nationally agreed for implementation on 1 September 2013

CDETB

INTRODUCTION

The education and training board sector has revised its *Codes of Practice for Dealing with Complaints of Bullying and Harassment in ETB Workplaces* (issued 1 September 2006). This policy and procedure complies with the recommendations of the Government Task Force Report on Bullying in the Workplace and the following Codes:

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

The revision of Education and Training Board (ETB)¹ policy has been carried out on a partnership basis and has been agreed by Education and Training Boards Ireland (ETBI)² and trade unions representing staff in the education and training board sector including ASTI, IMPACT, SIPTU, TUI, UNITE and unions represented by the CDET B Trade Union Group. Previous procedures and all supporting documentation associated with the *Code of Practice for Dealing with Complaints of Bullying and Harassment in VEC Workplaces* (1 September 2006) and the *Code of Practice for Dealing with Complaints of Sexual Harassment in VEC Workplaces* (1 September 2006) are suspended except for those complaints which are already lodged within the Formal Procedure of these Codes. All new complaints whether informal or formal, should operate in accordance with the procedure contained herein.

This policy applies from 1 September 2013.

STATEMENT OF ETB POLICY

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

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

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

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

¹ Education and Training Boards (ETBs), established under the Education and Training Boards Act, 1 July 2013, replaces and reconfigures former Vocational Education Committees (VECs)

² Education and Training Boards' Ireland (ETBI), established under the Education and Training Boards Act, 1 July 2013, replaces the formally named Irish Vocational Education Association (IVEA)

PURPOSE OF THE POLICY AND COMPLAINT PROCEDURE

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

This policy is necessary to:

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

SCOPE OF THE POLICY AND COMPLAINT PROCEDURE

The policy applies to all ETB staff:

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

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

Exclusions:

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

1. Complaints of bullying made by staff against students which are appropriate to being dealt with under the school/centre's (student) Code of Behaviour/Discipline.
2. Complaints made by student(s) against a staff member which are appropriate to being dealt with under the *Code of Practice for dealing with Complaints made by Parent/s, Guardian/s of a Student or by a Student (who has reached the age of eighteen) currently enrolled in a school/centre, against a Staff Member employed by the (named) Vocational Education Committee*, nationally agreed 1 March 2011, revised 2013 to reflect name change to Education and Training Board.
3. Complaints which fall outside the definition of bullying which are appropriate to being processed through other agreed procedures e.g. the nationally agreed grievance procedure.
4. Allegations which are the subject of legal proceedings or claims for redress under statutory provisions.
5. Allegations unrelated to employment.
6. Anonymous allegations.

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

GENERAL PRINCIPLES

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

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

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

under the procedure, due to medical/certified reasons, the ETB reserves the right to refer either party to a complaint to the Occupational Health Service to establish their capacity to participate in the process.

5. **Processing of complaints under this policy/Persons having functions under the policy:** Where any person having functions under the policy is a party to a complaint, s/he shall not exercise any of his/her functions under the policy in respect of the particular complaint, and such functions will, where appropriate, be undertaken by a person of similar rank nominated by the CEO for that purpose. Where the CEO is the subject of a complaint, the complaint would normally be administered by the Head of HR or a person at senior ETB level who has had no involvement in the complaint.
6. **“Notice” of proposed meetings/hearings under this procedure:** Notice is considered to have been given as of the next working day directly after the date the notice is issued.
7. **Timeframes outlined in the procedure must be observed.** The procedure shall not operate during periods of approved leave unless by mutual agreement of the parties.
8. **Whether formal or informal, a complaint must be made within six months of the latest incident(s) of alleged bullying behaviour.** In exceptional circumstances, the six month time limit may be reviewed. The decision on whether to admit an allegation under this procedure rests with the HR Manager of the ETB.

DEFINITION OF BULLYING

Bullying at work has been defined as *“repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual’s right to dignity at work. An isolated incident of the behaviour in this definition may be an affront to dignity but as a once-off incident is not considered to be bullying³”*.

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

WHAT BULLYING IS NOT

The following does not constitute bullying:

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

³ Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work, Health & Safety Authority, March 2007

EXAMPLES OF BULLYING

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

Verbal forms of bullying include:

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

The list is not exhaustive

Non-verbal forms of bullying include:

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

The list is not exhaustive

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

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

THE COMPLAINT PROCEDURE

INFORMAL PROCEDURE

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

However, in circumstances where a staff member who believes s/he is being bullied may:

1. Discuss the matter on a confidential basis with the ETB's Contact Person in the Human Resources Department.

The role of the Contact Person⁴ is to:

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

2. Approach the alleged bully to explain clearly that the behaviour is unacceptable. In circumstances where the staff member finds it difficult to approach the alleged bully directly, s/he may request a colleague or trade union representative to do so on his/her behalf.

⁴ The role of the ETB Contact Person does not extend to intervening or approaching any person on behalf of the staff member. An *Aide-mémoire for ETB Contact Persons* is available in the *Guidance Notes* and supporting Manual for ETB HR Departments, refer template A.

MEDIATION⁵

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

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

(Source: Mediators' Institute of Ireland)

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

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

- The LRC Workplace Mediation Service
- The Mediators' Institute of Ireland (MII)
- Mediation Forum Ireland (MFI)

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

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

⁵ Templates are available in the accompanying *Guidance Notes* and also in the *Manual for HR Departments*. Refer templates B and C.

FORMAL PROCEDURE

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

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

Stage 1 - Investigation

1. The complainant writes in confidence to the Head of Human Resources (HR) to request that an investigation under the Formal Procedure be undertaken. This letter shall include the written statement of complaint which must be signed and dated by the complainant.
A formal complaint should *inter alia* contain:
 - Clear specific allegations against named individual(s)
 - Dates and times of incident(s)
 - Names of witness(s), if any;
 - Factual descriptions of incident(s);
 - Direct quotes, if they can be recalled;
 - A brief description of the context of each incident;
 - Any other relevant documentary evidence;
 - Except for mediation, details of previous approaches made to the alleged bully (if any) and the outcome of same.
2. Upon receipt of a written complaint, the Head of HR or his/her nominee will formally acknowledge, **within 5 working days**, receipt of the complaint and advise of the right of representation⁶.
3. The respondent to the complaint will be furnished with a copy of the complaint and all accompanying documentation **within the same 5 working days**, and informed of his or her right to representation⁷.
4. The respondent to the complaint will be given an **additional 10 working days** (from the date of issue by the ETB of the complaint details and documentation) to respond in writing to the complaint details. The response should be sent to the Head of HR. 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.
5. **Within these same additional 10 working days:**
The Head of HR shall source an investigation team comprising two persons. A panel of approved organisations which can be drawn upon to undertake the investigation (under a contract for service) is provided in appendix 1.

⁶ Refer *Manual for HR Departments, Template letter D*.

⁷ Refer *Manual for HR Departments, Template letter E*

The names of these investigators will be communicated to the parties. A copy of the terms of reference for the conduct of the investigation is available herein in appendix 1. There is **no provision** for either party to a complaint, to reject a nominated investigator save in the very exceptional circumstance where an investigator so nominated is related to, or a personal friend of, either the complainant or alleged respondent to the complaint. In such circumstances it is the responsibility of the complainant or respondent concerned to disclose such interests by contacting the ETB HR Department by phone/email/in writing, **within 2 working days** of the date of notification of the names of the investigators proposed so as to facilitate the selection of an alternative investigator/s. A recording secretary will be appointed by the Head of HR for the purposes of the investigation.

6. Within a **further 3 working days of the expiry of the 10 working day period** (at item 5 above), the Head of HR will forward all documentation to the investigation team.
7. Within the same timeframe (*at 6 above*), the response of the respondent if any, will be forwarded to the complainant.
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 investigation team etc.
9. The investigation team shall conduct the investigation in accordance with the specified terms of reference (and protocol therein) available in *Appendix 2*. The investigation shall commence no later than the expiration of **30 working days** from the date of receipt by the Head of HR of the written complaint details.
10. The official investigation report must issue to the Head of HR no later than **40 working days** from the date of receipt by the investigators of the complaint documentation originally supplied by the Head of HR. The investigation report shall provide a rationale for the finding in respect of each element of the complaint and determine whether each element of the complaint is **upheld, not upheld or ruled out**. In addition, an overall finding will be provided and a finding in respect of the extent to which, if any, bullying occurred. The investigation report may, where appropriate, determine that a complaint was vexatious/malicious in intent.
This will conclude the investigation.
11. The time limits advised with respect to the 40 working days may be extended only in very extenuating circumstances subject to the discretion of the ETB HR Manager.
12. It will be the responsibility of the Head of HR to forward on copies of the final investigation report to the parties to the complaint and the CEO of the ETB within a **further 3 working days**. 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 to the CEO of the ETB⁸ for consideration and a determination.

⁸ Where the CEO is a party to a complaint, s/he will nominate an official from the ETB to undertake this function.

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

- 2.1 The CEO, having undertaken an evaluation of the report will decide as to whether or not the investigation report should be adopted. The decision of the CEO will be communicated to the parties to the complaint within a total of **15 working days** of the date of issue by the Head of HR, of the final investigation report to the parties to the complaint. Such covering correspondence⁹ will advise a right of appeal to an independent third party (*refer Appendix 3*).
- 2.2 Importantly, in arriving at a decision, the CEO:
- (a) Is not to be regarded as making any assessment as to the merits or otherwise of the complaint/s made by the complainant against the respondent.
 - (b) Shall meet with the investigation team by way of informing/satisfying his/herself that the terms of reference for the investigation have been adhered to.
- 2.3 In circumstances where the CEO decides to **adopt** the findings of the investigation report, s/he shall have due regard to the procedures undertaken over the course of the investigation and, the discharge of the terms of reference by the investigation team. Where the CEO elects to adopt the report, particular regard should be had to being able to respond to the potential for a procedural appeal under the specified appeal grounds (*noted in Appendix 3*).
- 2.4 Circumstances where the CEO decides to **reject** the findings of the Investigation Report.

The following are grounds for rejection of the Investigation Report and/or the process that has led to the emergence of the Investigation Report i.e.

That the terms of reference for the conduct of the investigation as attested to by the investigation team, have not been adequately adhered to - the ETB shall reject the findings of the Investigation Report in such circumstances.

- 2.5 Where the CEO decides to reject the Investigation Report, s/he will have recourse to the following options:
- (a) Determine that the matter be investigated *ab initio* from Formal Stage investigation and appoint a new investigation team to undertake such charge *de nova*. In such circumstances, the HR Manager should contact the parties concerned, by phone/email/letter, advising that a new investigation will be undertaken within the terms of reference for investigation.

No provision can be made for the investigation, in such circumstances, to exceed the 40 working days' timeframe for conclusion of the investigation process and report outcome. The provision to run an *ab initio* investigation extends only to a single attempt and cannot be relied upon as a method of failing to conclude the process.
 - (b) Determine that the parties engage in an alternative third party dispute resolution facility. The agreement of both parties is required in such circumstances and this would in no way

⁹ Refer *Manual for HR Departments* – Template J

prejudice the right of either party, if unsuccessful, to have the process re-commenced formally *ab initio* pursuant to the agreed Policy.

- 2.6 The decision of the CEO shall complete the internal process.

Stage 3 – Provision for appeal

- 3.1 It is open to either party to a complaint of bullying to appeal the decision of the CEO of the ETB¹⁰ (acting on behalf of the ETB) to the agreed Appeal Officer nominated by the LRC and nationally agreed between the ETBI/Unions Consultative Forum.
- 3.2 Where **no appeal is lodged** and following the expiration of the appeal period, the CEO of the ETB will take appropriate action based on the finding/s of the report and such action may include initiating the appropriate disciplinary procedure for the staff member/s concerned.
- 3.3 Where **an appeal is lodged under the specified appeal grounds only**, by either party to the complaint arising from the decision to adopt the investigation report, s/he must do so in writing, within **15 working days**. Terms of reference for the appeal are supplied in Appendix 3. [Refer to appeal forms in the supporting *Guidance Notes*].
- 3.4 This concludes the provision for external referral provided for under the procedure.
- 3.5 Matters arising from the decision of the Appeal Officer shall be referred to the CEO of the ETB. The CEO of the ETB will take appropriate action based on the appeal outcome and such action may include initiating the appropriate disciplinary procedure for the staff member/s concerned.

DISCIPLINARY ACTION ARISING

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

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

Records of the outcome of all or any investigations undertaken will remain on staff members' personnel files in accordance with the ETB's data protection policy and retention of records schedule/policy.

¹⁰ Where the CEO is a party to a complaint, s/he will nominate an official from the ETB to undertake this function.

PROTECTION AND SUPPORT

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

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

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

COMMUNICATING THE POLICY

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

ETB ADOPTION AND REVIEW

ETB ADOPTION DATE:

This policy has been formally adopted by *City of Dublin Education and Training Board* on *19th September 2013*.

REVIEW:

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

APPENDIX 1

APPROVED PANEL FOR THE CONDUCT OF INVESTIGATIONS

A panel of approved organisations which can be drawn upon to undertake the investigation (under a contract for service) is provided as follows. HR staff should contact Education and Training Boards Ireland (ETBI) (tel.: 045 901070) for a nomination from the panel **and** refer to the supporting *Manual for HR Departments*.

	Company Name	Contact Landline	Email Contact
1.	McGuinness Killen Partnership Ltd.	014773410	tommcg@mkp.ie
2.	Baker Tilly Ryan Glennon	014995276/ 014965388	grooney@bakertillyrg.ie
3.	Ann Harnett O'Connor B.L <i>(Lead contact person for the group)</i> Michael MacNamee B.L Dominic Wilkinson B.L Oliver Mahon B.L	018175267	ahoc@lawlibrary.ie mmacnamee@eircom.net dominic@dmw.ie omahon@iol.ie
4.	Conflict Management Services	09343520	info@conflictmanagement.ie
5.	Graphite HRM Ltd	018860350	anne.ocallaghan@graphitehrm.com

APPENDIX 2

TERMS OF REFERENCE FOR THE CONDUCT OF A FORMAL INVESTIGATION

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

Terms of Reference for investigation of complaints – Formal Stage 1

1. Investigate the complaint.
2. Conduct the investigation in accordance with the protocol.
3. Afford fair procedure and natural justice to both the complainant and respondent.
4. Issue a report of the findings based on the evidence presented:
 - Provide a rationale, related to the evidence presented, for the finding/s in respect of each element of the complaint.
 - Determine whether each element of the complaint is **upheld, not upheld or ruled out.**
 - Provide an overall finding concluding whether or not bullying occurred and the extent, if any, to which it occurred.
5. Adhere to the timeframes for expediting the investigation as advised in the *Bullying Prevention Policy – Complaint Procedure for ETB staff.*
6. Operate within the agreed budget for the discharging of the investigation under the contract for service with the named ETB.

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 investigation team but the sequencing of interviewing a complainants, complainant's witnesses, respondent, respondent's witnesses should be followed.

The investigation will cover the specific complaint/s made against the named respondent/s and will also address any further information/evidence which arises during the course of the investigation but only in respect of the complaint.

A recording secretary shall accompany the investigation team at all investigation meetings.

Interviewing a complainant

- Interview complainant
- Advise that the investigation will be conducted with due regard to confidentiality
- Where parties to the investigation are being interviewed, their representative may accompany them at all meetings with the investigation team.
- Ask complainant to identify the name/s and contact details of any witness who has relevant information in relation to their specific complaint/s.
- Forward 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 investigation team.

- Forward the final minute of the meeting to the complainant, setting out the basis on which any amendments proposed were rejected.

Interviewing a complainant's witness :

- Invite the nominated witness to a meeting
- Advise the witness that s/he is entitled to be represented at the investigation interview/s by a work colleague or trade union representative but it would not be appropriate for such an accompanying person to be a party to the investigation or another witness who will also be interviewed or making a statement during the course of the investigation.
- At the meeting, 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 complaint investigation or other related matters to the complaint with any other party.
 - In setting the background to the complaint, witnesses should only be given sufficient information to allow the investigating team determine what occurred in relation to the allegation.
 - Witnesses should be asked:
 - What precisely occurred?
 - Who was involved?
 - When the incident/s occurred?
 - Where the incident/s occurred?
 - Whether there were any other witnesses to the event/s?
- Forward minute of the investigation interview to the witness 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 investigation team.
- Forward, to the witness, the final minute of the witness' interview, setting out the basis on which any amendments proposed were rejected.
- **Witness Conflicting Accounts:** Where the investigation team is faced with two conflicting accounts of the alleged incident and where no witnesses are available or where their evidence is not persuasive, the case rests upon which version of events the investigation team considers the more credible but a rationale must be provided.
- Should the investigation team become aware that any attempt has been made to persuade any witness to change his/her testimony, the matter should be reported immediately to the HR Manager of the ETB. Any such interference will be regarded as a serious breach of discipline and will be subject to disciplinary action.

Interviewing a respondent:

- Interview respondent
- Advise that the investigation will be conducted with due regard to confidentiality
- Where parties to the investigation are being interviewed, their representative may accompany them at all meetings with the investigation team.
- Ask respondent to identify the name/s and contact details of any witness who has relevant information in relation to their specific complaint/s.

- Forward 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 investigation team.
- Forward the final minute of the meeting to the respondent, setting out the basis on which any amendments proposed were rejected.

Interviewing a respondent's witness:

- Invite the nominated witness to a meeting
- Advise the witness that s/he is entitled to be represented at the investigation interview/s by a work colleague or trade union representative but it would not be appropriate for such an accompanying person to be a party to the investigation or another witness who will also be interviewed or making a statement during the course of the investigation.
- At the meeting, 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 complaint investigation or other related matters to the complaint with any other party.
 - In setting the background to the complaint, witnesses should only be given sufficient information to allow the investigating team determine what occurred in relation to the allegation.
 - Witnesses should be asked:
 - What precisely occurred?
 - Who was involved?
 - When the incident/s occurred?
 - Where the incident/s occurred?
 - Whether there were any other witnesses to the event/s?
- Forward minute of the investigation interview to the witness 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 investigation team.
- Forward, to the witness, the final minute of the witness' interview, setting out the basis on which any amendments proposed were rejected.
- **Witness Conflicting Accounts:** Where the investigation team is faced with two conflicting accounts of the alleged incident and where no witnesses are available or where their 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 investigation team become aware that any attempt has been made to persuade any witness to change his/her testimony, the matter should be reported immediately to the HR Manager of the ETB. Any such interference will be regarded as a serious breach of discipline and will be subject to disciplinary action.

Further Action:

- Only documentation and statements gathered during the course of the investigation which are relevant to the complaint shall be taken into consideration.

- On completion of all interviews, each party to the complaint will be provided with a copy of the minutes of all interviews conducted (including interviews with witnesses)
- As appropriate to determining the facts of the allegation, the investigation team may need to interview other persons named in statements referenced during the course of investigation meetings or indeed re-interview anyone previously interviewed (over the course of investigation meeting/s) with a view to determining a finding on the validity or not, of the allegation of bullying.
- If deemed appropriate by the investigation team, meet the complainant in relation to matters arising which require further clarification.
- If deemed appropriate by the investigation team, meet the respondent in relation to matters arising which require further clarification
- If, during the course of the investigation, the investigation team is presented with additional matters relating to the original complaint, the investigation team should notify the parties to the complaint of any such information or evidence and provide an opportunity for the parties to the complaint to respond. No new complaints may be entered into this investigation.
- It is essential that detailed accurate minutes are taken at all investigation interviews conducted over the course of the investigation.
- Close investigation.
- Prepare final investigation report.
- The official investigation report must issue to the Head of HR no later than **40 working days** from the date of receipt by the investigators of the complaint documentation originally supplied by the Head of HR. The investigation report shall provide a rationale for the finding in respect of each element of the complaint and determine whether each element of the complaint is **upheld, not upheld or ruled out.** In addition, an overall finding will be provided and a finding in respect of the extent to which, if any, bullying occurred. The investigation report may, where appropriate, determine that a complaint was vexatious/malicious in intent.
- This will conclude the investigation.
- The time limits advised with respect to the 40 working days may be extended only in very extenuating circumstances subject to the discretion of the ETB HR Manager. In the situation of an *ab initio* investigation, the time limit of 40 days shall not be extended.
- It will be the responsibility of the Head of HR to forward on copies of the final investigation report to the parties to the complaint and the CEO of the ETB within a **further 3 working days.**

APPENDIX 3

TERMS OF REFERENCE FOR APPEAL

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

1. Whom is the appeal made to?

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

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

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

*Ms Mairead Daly
Industrial Relations Officer
Conciliation Service, Labour Relations Commission, Tom Johnson House, Haddington
Road, Dublin 4*

*Phone: 6136700/6136728
Fax: 6136742
Email: mairiad.daly@deti.ie*

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

2. What constitutes grounds for an appeal?

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

3. Who can appeal?

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

4. The Appeal Procedure

4.1 Lodging an appeal

An appeal must be lodged using the prescribed appeal form (refer BPP Appeal Form¹¹). The appeal ground should be clearly stated and be specific and completed on the prescribed appeal form. An appeal statement should not exceed the maximum threshold of words provided for in the appeal form. Supporting examples, where appropriate and drawn from the investigation and or investigation report, should be clearly referenced in line with the investigation report. Where supporting documentation is provided it must be attached in line with the particular appeal reference number on the appeal form.

The appeal form and any supporting documentation should be marked “**Private and Confidential, for the attention of the addressee only**” and forwarded to the HR Manager of the ETB (by registered post).

It will be the responsibility of the HR Manager of the ETB to forward the appeal (and supporting documentation) to the Independent Appeal Officer and to the other party to the complaint for his/her reference, in line with natural justice. This should be undertaken within **3 working days** and remitted by registered post to the parties.

4.2 ETB Response to appeal

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

- (1) Submit, by registered post, its response to the appeal under the stated grounds using the **ETB Appeal Response Form (BPP ETBARF¹²)** and any supporting documentation (which should be clearly referenced to correspond with the appeal response elements), to the Independent Appeal Officer.
- (2) A copy should simultaneously be sent to the appellant by registered post.
- (3) A copy should simultaneously be sent by registered post to the other original party to the complaint for his/her reference.

All correspondence should be marked “*Private and Confidential*” and in the name of the addressee concerned.

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

4.3 Initial Paper Review by Appeal Officer

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

- If s/he determines that the appeal is valid to move to an oral hearing, s/he will advise the appellant, the ETB and the other complainant party by phone/email or letter of the intention to move to an oral hearing.

¹¹ Refer *template L, Guidance Notes and/or Manual for HR Departments*

¹² Refer *template N, Guidance Notes and/or Manual for HR Departments*

- If s/he determines that the appeal is not valid to be moved to an oral hearing, s/he will so advise the appellant, the ETB and the other complainant party by phone/email or letter.
- In either case, the decision of the Appeal Officer is final.

Where an appeal is determined as not valid/ruled out:

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

Where an appeal is determined as valid:

- Following the initial paper review of appeal forms, the Independent Appeal Officer may determine that an appeal hearing is warranted. If so, an appeal hearing date will be arranged and the parties to the appeal will be so advised by the Independent Appeal Officer. The appellant (and his/her representatives), the ETB (and its representatives), and others as may be determined by the Appeal Officer, will be requested to attend this appeal hearing.
- In such circumstance, the Independent Appeal Officer will deal directly with a nominated person in the administrative offices of the ETB (e.g. the HR Manager/senior ETB management official) to arrange a date, time and venue for the appeal hearing¹³. It will be the responsibility of this nominated person (in the ETB) having consulted with the Appeal Officer, to make all necessary practical arrangements for the hearing on the specified date including advising the parties to the appeal (in writing and/or by phone) of the details of the date, time and venue arranged.

5. How an appeal hearing generally operates

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

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

¹³ Refer *Manual for HR Departments* – Template O

6. Appeal Outcome

The Appeal Officer shall deliver his/her finding/s/decision in writing to the parties to the appeal **within 20 working days** of the date of the appeal hearing.

This concludes the provision for external referral provided under the procedure.

The decision of the Appeal Officer shall be formally referred to the CEO of the ETB, the appellant and the other party/parties to the original complaint.

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