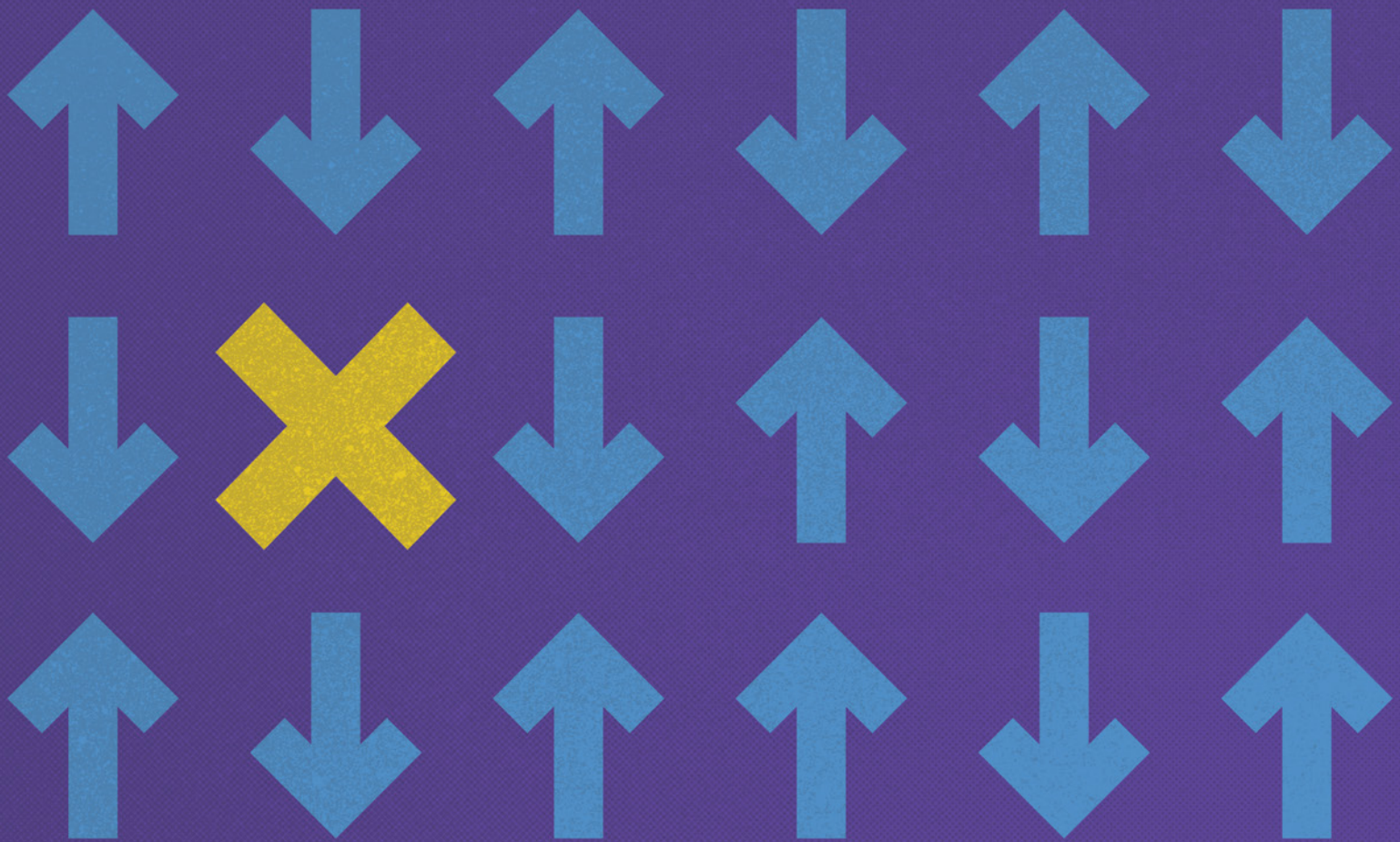


Code of Practice on **Sexual Harassment and Harassment at Work**



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The Irish Human Rights and Equality Commission was established under statute on 1 November 2014 to protect and promote human rights and equality in Ireland, to promote a culture of respect for human rights, equality and intercultural understanding, to promote understanding and awareness of the importance of human rights and equality, and to work towards the elimination of human rights abuses and discrimination.

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Code of Practice on **Sexual Harassment and Harassment at Work**



Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas
Irish Human Rights and Equality Commission

Irish Human Rights and Equality Commission

1. The Irish Human Rights and Equality Commission ('IHREC') is an independent public body mandated to protect and promote human rights and equality in Ireland. Established in 2014, IHREC has absorbed the functions of the Equality Authority and the Irish Human Rights Commission. It has extensive powers outlined in the Irish Human Rights and Equality Commission Act 2014, including the drafting of codes of practice to promote equality of opportunity in employment and to eliminate discrimination.

Status

2. The Code of Practice ('code') has been prepared by IHREC with the approval of the Minister for Children, Equality, Disability, Integration and Youth and after consultation with relevant organisations representing equality interests.
3. The code seeks to promote the development and implementation of policies and procedures that establish working environments free of harassment in which the dignity of everyone is respected.
4. The provisions of this code are admissible in evidence in proceedings before a court or in proceedings under Part VII of the Employment Equality Acts (1998-2015) ('EEA'), and in proceedings before the Workplace Relations Commission ('WRC') or the Labour Court.

Aim

5. The code aims to give practical guidance to employers, organisations, trade unions and employees on:
 - » What is meant by employment-related sexual harassment and harassment;
 - » How it can be prevented; and
 - » What steps ensure that adequate procedures are readily available to deal with the problem and to prevent its recurrence.
6. A policy on harassment at work is an integral part of equality strategies in the workplace and will be most effective when operated in conjunction with similar policies on equal opportunity and health and safety.
7. This code does not impose any legal obligations in itself, nor is it an authoritative statement of the law - that can only be provided by the

WRC, the Labour Court and the courts. It is the employer's responsibility to ensure compliance with the EEA and European equality law.

Application and adaption of the code

8. This code is intended to be applicable to all employments. Employers are encouraged to follow the recommendations in a way appropriate to the size and structure of the organisation. Small and medium sized enterprises may need to adapt some of the proposed measures. Any adaptations that are made however, should be fully consistent with the code's general intentions. The rights of complainants and alleged perpetrators must be respected at all times and all parties must be treated fairly and impartially.
9. An employer is legally responsible for harassment suffered by employees in the course of their employment unless s/he took reasonably practicable steps to prevent it, to reverse the effects of it and to prevent its recurrence. It is essential that employers have in place accessible and effective policies and procedures to deal with sexual harassment and harassment. These measures should be agreed by the employers with the relevant trade union or employee representatives where appropriate. In so far as practicable, clients, customers and business contacts should also be consulted.

Harassment and sexual harassment

10. The EEA protects employees from employment-related sexual harassment and harassment based on one or more of the other prohibited grounds (Civil Status; Family Status; Sexual Orientation; Religion; Age; Disability; Race; and Membership of the Traveller community).

European law

11. Irish courts and tribunals must interpret domestic implementing legislation in a way that is consistent with the relevant EU directives. Where there is a conflict between Irish and EU law, an Irish court and / or tribunal must disapply any contrary provision of national law if necessary to ensure the full effectiveness of EU law.

References

12. The definition of harassment and sexual harassment in the EEA mirrors the relevant directives (set out at Appendix 1).

13. In this code, references to harassment include sexual harassment unless otherwise specified. References to the relevant sections of the EEA are given in the margin.

Impact of sexual harassment and harassment

14. Sexual harassment, and harassment on the eight non-gender prohibited grounds, pollute the working environment and can have a devastating effect on the health, confidence, morale and performance of people affected by it.
15. The anxiety and stress caused by harassment may lead to victims taking time off work due to sickness and stress, being less efficient at work or leaving their jobs to seek work elsewhere.
16. In addition to the harassment itself, employees often suffer short and long-term damage to their employment prospects if they are forced to forego promotion or to change jobs. Harassment may also have a damaging impact on employees who are not themselves directly the object of harassment, but who also experience a workplace culture where harassment is normalised and undermines the dignity of workers.
17. There are also adverse consequences for employers. Harassment has a direct impact on the profitability of the enterprise where affected staff take sick leave or resign their posts. It can also have an impact on the economic efficiency of the enterprise when employees' productivity is undermined by the hostile work culture.
18. Some specific groups are particularly vulnerable to sexual harassment and harassment, such as new entrants to the labour market, those with irregular or precarious employment contracts, immigrant workers and employees in non-traditional jobs.

Sexual Harassment and Harassment on the prohibited grounds

Section 8: Scope of EEA

19. The EEA prohibits discrimination on nine specific grounds in all aspects of a person's employment, including for example access to employment, conditions of employment, training or experience, promotion or regrading, vocational training, and classification of posts. (It may also apply in certain circumstances when the relationship has ended, for example in relation to references).

Section 6(2): Prohibited grounds

20. For the purposes of the EEA, discrimination occurs where a person is treated less favourably than another 'is, has been, or would be' treated, in a comparable situation, on any of the specified grounds. Section 6(2) of the EEA defines the nine prohibited grounds. These are: gender, civil status, family status, sexual orientation, religion, age, disability, race and membership of the Traveller community.
21. 'Gender' discrimination covers men and women. Discrimination because of pregnancy or maternity leave is also defined as gender discrimination. Under EU law a transgender person who experiences discrimination arising from their gender reassignment, or transition, is protected under the gender ground.
22. 'Civil status' is defined as being single, married, separated, divorced, widowed, in a civil partnership (within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010) or being a former civil partner in a civil partnership that has ended by death or been dissolved.
23. 'Family status' means responsibility as a parent or person in *loco parentis* for a person under the age of 18 years or responsibility as a parent or resident primary carer of a person of 18 years or over with a disability requiring care or support.
24. 'Disability' is defined broadly as, for example: the total or partial absence of a person's bodily or mental functions; the presence of organisms which cause or are likely to cause disease; the malfunction, malformation or disfigurement of a part of a person's body; a condition or malfunction which results in a person learning differently from a person without the condition or malfunction; or a condition or illness which affects a person's thought processes, perceptions of reality, emotions or judgement or which results in disturbed behaviour. The definition includes a disability which exists, which previously existed, which may exist in the future or which is imputed to a person.
25. 'Sexual orientation' is defined as heterosexual, bisexual or homosexual.
26. 'Age' refers to the protection against age-related discrimination in employment and applies only to employees over the maximum age at which a person is statutorily obliged to attend school. (The minimum school leaving age is currently 16 years, or the completion of three years of post-primary education, whichever is the later.)
27. 'Race' includes race, colour, nationality or ethnic or national origins.

28. 'Religious belief' includes different religious background or outlook, (including the absence of religious belief).
29. 'Membership of the Traveller community', means a member of the community of people who are commonly called Travellers and who are identified (both by themselves and others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland.

Expansive definition

30. The prohibition on discrimination extends to situations where a ground actually exists and also covers situations where a ground used to exist but no longer exists (for example a past period of illness); where a ground may exist in the future (for example, family status or pregnancy); or where a ground is imputed to a person (for example, where a person is assumed to be a member of the Traveller community or HIV positive but in fact is not). Discrimination also covers people associated with people covered ('discrimination by association', for example a person without a disability who is caring for a person with a disability).

Reasonable accommodation: Section 16

31. Employers must provide reasonable accommodation to employees with disabilities to enable their participation in employment (unless such measures would impose a disproportionate burden). This obligation should be taken account of in the format and content of any policies or procedures on harassment and in their implementation (see also para. 103).

Important aspects of harassment claims

Section 14A(1): Harassment and sexual harassment

32. Harassment that is based on any of the following grounds – civil status, family status, sexual orientation, religion, religion, age, disability, race, or the Traveller community ground – is a form of discrimination in relation to conditions of employment.
33. Sexual harassment means unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work.

What is harassment? Section 14A(7)

34. Harassment is defined in section 14A(7) of the EEA as any form of unwanted conduct related to any of the prohibited grounds which has the purpose or effect of violating a person's dignity and creating an intimidating, degrading, humiliating or offensive environment for the person. Harassment or bullying that is not linked to one or more of the discriminatory grounds is not covered by the EEA.
35. The conduct at issue may not be specifically directed at a particular employee but nevertheless has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.
36. The protection of the EEA extends to situations where the employee does not have a relevant characteristic related to a prohibited ground but the perpetrator believes that s/he has that characteristic. For example, if the perpetrator believes the employee is gay and the employee is not, or that the employee has a disability such as schizophrenia and the employee does not.
37. Many forms of behaviour, including spoken words, gestures or the display/circulation of words, pictures or other material, may constitute harassment. A single incident may constitute harassment and behaviour may constitute harassment of an employee even though it is not directed specifically at that employee.
38. The following list of examples is illustrative not exhaustive:
 - » Verbal harassment - jokes, comments, ridicule or songs;
 - » Written harassment - including graffiti, text messages, emails, social media or internet posts;
 - » Physical harassment - jostling, shoving or any form of assault;
 - » Intimidatory harassment - gestures, posturing or threatening poses;
 - » Visual displays such as posters, emblems or badges;
 - » Excessive monitoring of work;
 - » Isolation or exclusion from social activities; and
 - » Unreasonably changing a person's job content or targets.

What is sexual harassment? Section 14A(7)

39. Sexual harassment is defined in section 14A(7) of the EEA as any form of unwanted verbal, non-verbal or physical conduct of a sexual nature which has the purpose or effect of violating a person's dignity and creating an intimidating, degrading, humiliating or offensive environment for the person.
40. The conduct at issue may not be specifically directed at a particular employee but nevertheless has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.
41. Many forms of behaviour can constitute sexual harassment. A single incident may constitute sexual harassment. Sexual harassment includes behaviours like those in the following list, which is illustrative and not exhaustive:
 - » Physical conduct of a sexual nature - this may include unwanted physical contact such as unnecessary touching, patting or pinching or brushing against another employee's body, assault and coercive sexual intercourse;
 - » Verbal conduct of a sexual nature - this includes unwelcome sexual advances, propositions or pressure for sexual contact, continued suggestions for social contact outside the work place after it has been made clear that such suggestions are unwelcome, unwanted or offensive, suggestive remarks, innuendo or lewd comments, graffiti, written materials, emails, text messages or social media posts;
 - » Non-verbal conduct of a sexual nature - this may include the display of pornographic or sexually suggestive pictures or objects. It may also include stalking, indecent exposure, leering, whistling or making sexually suggestive gestures; and
 - » Gender-based conduct - this includes conduct that denigrates or is abusive of an employee for reasons related to his or her sex such as derogatory or degrading abuse or insults which are gender-based. This might include conduct that insults or degrades an employee because she is pregnant or because s/he is transgender.

Who is covered?

42. The protection against harassment afforded under the EEA covers all public and private employees, whether full-time, part-time, permanent or temporary, working under a contract of employment, or through an agency.

43. It also extends to persons providing personal services in another person's home. However, it does not extend to volunteers. Other civil law remedies may be available to volunteers in this regard.

Essential elements of harassment and sexual harassment

Unwelcome conduct

44. The EEA does not prohibit all relations of a sexual or social nature at work. To constitute sexual harassment or harassment the behaviour complained of must firstly be unwelcome. It is up to each employee to decide irrespective of the attitudes of others (a) what behaviour is unwelcome and (b) from whom, if anybody, such behaviour is welcome or unwelcome. The fact that an individual has previously acceded to the behaviour does not stop him/her from deciding that it has become unwelcome. It is the unwanted nature of the conduct which distinguishes sexual harassment and harassment from behaviour which is welcome and mutual.

Violation of dignity

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

Intention

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

Harassment by employers, employees and non-employees: Ss. 14A(1) and 14A(4)

47. The EEA protects employees from sexual harassment and harassment perpetrated by:

- » the employer;
- » fellow employees;
- » clients;
- » customers and service users; and/or
- » other business contacts including any person with whom the employer might reasonably expect the employee to come into contact in the course of employment. This may include those who supply or deliver goods/services to the employer, cleaners, maintenance workers and other types of professional contractors, students and volunteers.

Non-workplace harassment: Section 14A(1)

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

Different treatment: Ss. 14A(1) and 14A(3)

49. The protection of the EEA extends to circumstances in which, because s/he has rejected or accepted harassment, an employee is treated differently in the workplace, for example in relation to training, promotion or salary.

Agencies and training: Section 14A(5)

50. The provisions on harassment also apply to employment agencies and vocational training.

Duty of employer

Obligations on employers: Section 14A(2)

51. The EEA requires employers to act in a preventative and remedial way. The employer has a duty to protect employees from harassment and sexual harassment.

Defence of reasonably practicable steps: Section 14A(2)

52. Employers are legally responsible for the sexual harassment and harassment of employees by co-employees, clients, customers or other business contacts of the employer. However, it is a defence for the employer to prove that s/he took reasonably practicable steps to prevent the harassment, to prevent the victim from being treated differently in the workplace or in the course of employment, and to reverse any effects of the harassment.
53. In order to rely on this defence, employers must have comprehensive, accessible, effective policies that focus on prevention, best practice and remedial action. They must also have accessible complaints procedures. It should be noted that an employer may become aware of harassment or sexual harassment without a complaint being made (for example by way of exit interviews) and will therefore have a duty to act in the absence of a complaint. The measures taken to ensure effective implementation will be taken into account by courts and the WRC: employers will not be able to rely on an excellent policy if it is not implemented. The core elements of a policy and complaints procedure are outlined below.

Resolution of Complaints

Informal/ formal

54. If an individual considers that s/he has experienced harassment s/he should raise the matter informally with management (see paras. 91-95 regarding informal procedure). If not resolved by the informal process (which should include the option of mediation), the complaint should then be pursued formally. Should the individual not be satisfied with the outcome of this procedure s/he has the option of lodging a claim with the WRC (or the Circuit Court in a gender claim) under the EEA. A complainant should be aware that strict time limits apply to making a complaint under the EEA, and a complaint must be referred to the WRC within 6 months from the last act of discrimination (see para. 69 below).

Forum for redress: Section 77(1)

55. The WRC is now the main forum for dealing with employment complaints. Established under the Workplace Relations Act 2015, it has absorbed the functions previously carried out by the Equality Tribunal, the Labour Relations Commission and the Employment Appeals Tribunal. Harassment complaints on both gender and non-gender grounds, including dismissal, are investigated at first instance by the WRC and

by the Labour Court on appeal. Both the WRC and the Labour Court operate as quasi-judicial bodies when dealing with equality claims. In sexual harassment complaints (and all gender-based complaints) the employee may bypass the WRC and refer the matter to the Circuit Court.

56. Information and guidance is available on the WRC website; relevant forms and equality decisions since 1996 are also available. The WRC provides a complaint form for referral of complaints on its website. The form is available on the WRC website, referred to at Appendix 2. Complaints can be lodged online. It is essential that a complainant use the employer's correct legal title, or it may be impossible to establish liability.
57. A party to proceedings before the WRC (or the Labour Court) may be represented by themselves or by any individual or body authorised by that party if the Labour Court so permits.

Mediation

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

Investigation by the WRC

59. A complaint which is not considered appropriate for mediation, or is not resolved at mediation, is investigated by an adjudication officer of the WRC. The complaint may be determined on the basis of written submissions unless one, or more, of the parties objects. Investigations are held in private. At the conclusion of an investigation the WRC issues a decision in writing.

Powers of investigation

60. Both the WRC and the Labour Court have extensive powers on foot of a search warrant to enter an employer's premises, to require the production of records, documents, etc., which are considered material information relevant to an investigation, or to inspect any work in progress on the premises. Both the WRC and the Labour Court may require a person to produce information relevant to an investigation or to attend before the WRC or the Labour Court and give evidence before them. A

disclosure of information to the WRC or Labour Court in the course of an investigation (or during mediation) does not give rise to any liability.

Right to information

61. The complainant has a right to seek 'material information' from an employer about alleged acts of sexual harassment or harassment, the employer's failure to deal with them or about relevant procedures. There is no obligation on the employer to provide the information, but the Circuit Court, the WRC or the Labour Court, in subsequent proceedings, may draw such inferences as seem appropriate from the failure to supply the information. If requesting information from an employer, the complainant can use Form EE2, which is available on the WRC website, referred to at Appendix 2.
62. An employee has separate statutory rights to access personal information held by his or her employer, as provided for under the Freedom of Information Act 2014 and/or the relevant data protection legislation.

Redress

63. The maximum that can be awarded to complainants who were in receipt of pay at the time of the referral of the claim (or at the time of dismissal) by the WRC, and the Labour Court on appeal, is 104 weeks of pay (or €40,000, if greater); for other complainants the maximum award is €13,000 (for example, complaints concerning access to employment).
64. There is no limit on the amount of compensation which may be awarded by the Circuit Court in gender-based harassment complaints.
65. An order for equal treatment or for a specified course of action may also be made. In complaints involving dismissal, the WRC, Labour Court or the Circuit Court may also order re-instatement or re-engagement.

Right of appeal

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

Enforcement

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

Duplication

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

Time limit: Section 77(5)

69. A complaint of harassment or sexual harassment must be made within 6 months of the alleged occurrence, or most recent occurrence, of such harassment. The time limit of six months may be extended by up to a maximum period of 12 months for reasonable cause.

Victimisation and section 98 offence

70. Victimisation occurs under the EEA where an employee is dismissed, or subjected to other adverse treatment by her/his employer for any of the following reasons:
- » making a complaint of sexual harassment or harassment;
 - » issuing proceedings;
 - » having represented or supported a complainant;
 - » being a witness;
 - » having opposed an act which is unlawful under the EEA; or
 - » having given notice of an intention to do any of the above.
71. Victimisation complaints may be referred to the WRC. Dismissal in this context is an offence which may be prosecuted. An employer may be required to re-instate or re-engage the employee upon conviction, or to pay both a fine and/or compensation.

The Policy

72. Prevention by means of a comprehensive, effective and accessible policy, and a strong commitment to implementing it, is the best way to minimise sexual harassment and harassment in the workplace. The purpose of a policy is not simply to prevent unlawful behaviour but to encourage best practice and a safe and harmonious workplace where such behaviour is unlikely to occur. A policy is likely to be more effective if linked to a broader equality policy.

Co-operation

73. Strategies to create and maintain a working environment in which the dignity of employees is respected are most effective when jointly agreed. Employers, employees and other interested parties, such as clients and suppliers of goods and services, can work together to create a culture of respect in the workplace. The policy and complaints procedure should be implemented, in so far as is practicable, with clients, customers and other business contacts, after consultation with trade union or employee representatives where appropriate.
74. The policy should be communicated to all employees and to all levels of management. Simple direct language should be used in the policy. It should be accessible to those with literacy problems and those who may not speak fluent English.

Commitment

75. The policy should state:
- » the organisation's commitment to ensuring that the workplace is free from sexual harassment and harassment;
 - » that all employees have the right to be treated with dignity and respect;
 - » that complaints by employees will be treated with fairness and sensitivity and in as confidential a manner as possible; and
 - » that sexual harassment and harassment by employers, employees and non-employees such as clients, customers, students, and business contacts will not be tolerated and could lead to disciplinary action (in the case of employees) and other sanctions, for example the suspension of contracts or services, or exclusion from premises (in the case of non-employees).

Definitions and scope

76. The policy should include the following:

- » definitions of sexual harassment and harassment which are simple, clear and practical;
- » an illustrative list of examples;
- » a statement that protection extends to:
 - » sexual harassment and harassment by co-workers, clients, customers and other business contacts;
 - » beyond the workplace to work-related conferences and training and may extend to work-related social events and social media sites;
 - » different treatment of an employee because s/he has rejected or accepted the sexual harassment or harassment; and
 - » employment agencies and vocational training;
- » a statement that it is for an employee to decide what behaviour is unwelcome irrespective of the attitude of others;
- » a statement encouraging employees to challenge harassment and sexual harassment in the workplace; and
- » a statement that employees who, for example, make a complaint, support a complainant, or who give evidence in proceedings, will not be victimised.

Allocation of responsibilities

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

- » provide good example by treating all in the workplace with courtesy and respect;
- » promote awareness of the organisation's policy and complaints procedures;

- » be vigilant for signs of harassment and take action before a problem escalates;
- » respond sensitively to an employee who makes a complaint of harassment;
- » explain the procedures to be followed if a complaint of sexual harassment or harassment is made;
- » ensure that an alleged perpetrator is treated fairly;
- » ensure that an employee making a complaint is not victimised for doing so; and
- » monitor the situation after a complaint is made to prevent recurrence.

Trade unions

78. The policy should address the contribution to be made by trade unions, where appropriate. Trade unions can play an important role in creating a culture free of harassment by contributing to the development and implementation of policies and procedures, through their information and training services, and through the collective bargaining process. Trade unions may also play a role in providing information, advice and representation to employees who have been harassed, and to employees against whom allegations of harassment have been made.

Employees

79. The policy should state that employees must respect the dignity of others in the workplace. It should make clear that employees contribute to a harassment-free work culture by co-operating with management and trade union strategies to eliminate harassment from the workplace, and that harassment by employees constitutes misconduct and may lead to disciplinary action.

Non-Employees

80. The policy should state that harassment by non-employees such as service users, including clients and customers, students and business contacts will not be tolerated and may lead, for example, to termination of contracts, suspension of services, exclusion from a premises or the imposition of other sanctions.

Senior level 'champion'

81. It may be practicable for organisations, depending on size and other factors, to designate a 'champion' (or more than one) at senior level. The 'champion' would be outside the HR structure, an independent voice advocating for a diverse workplace culture free of harassment where all employees feel respected. It is a matter for each particular organisation to determine what is feasible given size and resources.

Communication of policy

82. The policy and all updates should be communicated effectively to all those potentially affected by it including management, employees, customers, clients and other business contacts, including those who supply and receive goods and services. Effective means of communicating a policy could include, for example, newsletters, training manuals, induction and training courses, leaflets, websites, emails and notice boards.

To Employees:

Employees, including those in management and all other positions of responsibility, should be made aware of the policy as part of any formal induction process whereby new employees become familiar with their job and their working environment and the rules and regulations that apply such as health and safety.

Employers should consider a staff handbook where practicable to be distributed to all employees as part of the induction process. This handbook will need to be updated regularly to reflect relevant changes.

To Non-Employees:

There may be some practical difficulties in ensuring that the policy is effectively communicated to all relevant people, particularly where there is no on-going relationship. Summaries of policies should be prominently displayed. If this is not feasible for retail outlets or pubs, a short statement should be prominently displayed confirming the policy's existence, the organisation's commitment to it, and stating that the complete policy is available.

The effective communication of the policy is easier where there is an on-going relationship with clients and customers. This can be achieved by way of a combination of measures such as:

- » leaflets summarising the policy being prominently displayed where members of the public, clients, and customers attend, such as receptions and waiting rooms;

- » including a leaflet or short written statement summarising the policy in any of the organisation's written material such as appropriate brochures and manuals; or it may be appropriate for the contracts of the employer with clients, customers and other business contacts to provide that harassment of employees of the employer will constitute a repudiation of the contract and may be a ground for the employer to treat the contract as at an end.

Monitoring

83. The effectiveness of policies should be regularly monitored, for example, by staff surveys, anonymised questionnaires, discussion at training courses, etc. An organisation should track all complaints of harassment and how they are resolved; this information should be used to evaluate and update the policy and procedures at regular intervals. The relevant data protection legislation must be adhered to.

Training

84. The policy should include a commitment to training managers, supervisors and all staff on strategies to prevent harassment. This should happen for staff at induction or through appropriate awareness-raising initiatives. Such training should aim to identify the factors which contribute to a working environment free of harassment and to familiarise participants with their responsibilities and problems they are likely to encounter. This is especially important for those members of staff primarily responsible for implementing the policy and processing complaints.

The Complaints Procedure

Complaints procedure

85. It is essential for employers to attach to their policy a detailed complaints procedure that will be accessible to employees. Clients, customers and others who interact regularly with the organisation should be made aware of the employees' right to make a complaint and that they may be requested to participate in the process.

Reviews

86. The policy should include a commitment to regular review of the policy and procedures and also a commitment to update the policy as appropriate to take account of changes in the law, relevant case law or other developments.
87. A competent person with the appropriate qualifications, training and experience should be designated to ensure that monitoring, training and reviews occur. Support for this role could be provided by a competent person outside the relevant organisation.

Core elements of the procedure

88. A clear and precise complaints procedure should ensure the resolution of problems in an effective and timely manner and it should provide for both an informal and formal process to achieve this. Practical comprehensive guidance for employees on how to deal with harassment will make it more likely that these problems will be addressed and resolved at an early stage. Most of those who experience harassment simply want the harassment to stop.
89. The procedure should be written in plain language (and, where appropriate, in relevant languages and formats); it should set out clearly, step by step, what a person should do if s/he experiences or observes harassment and whom to approach.
90. The following are core elements which are relevant to any complaints procedure. They will need to be adapted as appropriate to reflect the size and complexity of the organisation. The procedure should include the following:
 - » **A timely investigation with express time limits:** there should not be an inordinate delay in the conduct of the investigation;
 - » **Statutory rights:** The procedure should state that using the complaints procedure will not affect the employee's right to make a complaint under the EEA and should state the statutory time limits. It should clearly state that statutory time limits will not be paused pending the outcome of the investigation and shall continue to run;
 - » **Victimisation:** The procedure should state that an employee will not be victimised or subject to sanction, for example, for making a complaint in good faith, supporting a complainant, giving evidence in proceedings, or by giving notice of an intention to do any of the foregoing;

- » **Fairness:** The investigation must ensure procedural fairness throughout. For example, the complainant and alleged perpetrator should be provided with the appropriate notice of the investigation, and be furnished with all relevant disclosure in advance. Also, both parties should be afforded an opportunity to comment on assertions and responses made. The procedure should state that no assumptions will be made about the culpability of the alleged perpetrator during the course of any investigation. Further procedural accommodations may be required if either party has for example, a disability or, is a non-Irish national with limited English. For example, a person with an intellectual disability may require to have an advocate appointed from the outset and engaged throughout the process. Further, an employee who is a non-Irish national and who has limited English may require interpretative support to engage effectively in the investigation;
- » **Arrangements pending outcome of investigation:** The procedure should set out that appropriate interim arrangements can be made to facilitate all concerned parties, where possible, pending the outcome of the investigation. Depending on the circumstances of the case, this might include for example, alternative line management structure, change of work stations, or requesting the complainant and/or alleged perpetrator to stay at home on fully paid leave. An employer should emphasise that any such measure does not amount to a penalisation or sanction on any of the parties concerned;
- » **Sanctions:** The sanctions imposed should adequately reflect the gravity and seriousness of the findings. The procedure should state that, if the investigation concludes that the accused employee has a case to answer, then the report will recommend whether the organisation's disciplinary procedure should be invoked, and this may lead to disciplinary sanctions up to and including dismissal. Non-employees should be informed that, if the investigation concludes that there is a case to answer, then the report will recommend whether appropriate sanctions may be imposed such as the termination of contracts, suspension of service, or exclusion from premises;
- » **Confidentiality:** The procedure should state that confidentiality will be maintained throughout any investigation to the greatest extent consistent with the requirements of a fair investigation; and
- » **Appeals process:** The procedure should allow for a right of appeal of the initial decision, to be made within a specified timeframe. The right to appeal the initial decision should be clearly communicated to the relevant parties. The appeal should be considered by a person other than the person(s) involved in the initial decision. The appeal process should also incorporate the above core principles of the initial investigation.

Resolving the problem informally

91. The complaints procedure should provide for both informal and formal methods of resolving problems.
92. The informal procedure should provide for a competent named person to be available to provide information to both employees and non-employees on the procedure and on the policy in general, and to assist in the resolution of any problems informally.
93. The employee who is being harassed should object to the conduct where this is practicable. In some cases, it may be possible and sufficient for the employee to explain clearly to the person engaging in the unwanted conduct that the behaviour in question is not welcome, that it offends them or makes them uncomfortable.
94. In circumstances where it is too difficult for an individual to do this alone, an alternative approach would be to seek support from, or for an initial approach to be made by, a sympathetic friend, designated person or trade union representative.
95. The informal process should provide for the option of mediation.

Formal complaints procedure

96. The complaints procedure should provide for a formal procedure where:
 - » the employee making the complaint wishes it to be treated formally;
 - » the alleged sexual harassment or harassment is too serious to be treated under the informal procedure;
 - » informal attempts at resolution have failed; or
 - » the sexual harassment or harassment continues after the informal procedure has been followed.

Investigation of the complaint

97. The procedure should provide that investigation of any complaint will be handled with fairness, sensitivity and with due respect for the rights of both the complainant and the alleged perpetrator. The investigation should be, and be perceived as, independent and objective: to this end it is essential that the principles of natural justice be adhered to. Moreover, the relevant data protection legislation must be adhered to.

98. Those carrying out the investigation should not be connected with the allegation in any way. It is preferable that at least two people should investigate a complaint but it is acknowledged that this may not always be practicable. Such an investigation team should, as far as practicable, have gender balance and ideally should seek to ensure diversity. All of those on the investigation team should have received appropriate training. Every effort should be made to resolve the complaint promptly. External assistance may be necessary in some circumstances to ensure impartiality, objectivity and fairness. Where the accused person objects to the person(s) appointed to investigate the complaint, such objection should be given proper consideration.
99. To ensure procedural fairness both the complainant and alleged perpetrator should be informed of the following:
- » what the formal procedure entails and the relevant timeframe;
 - » that both parties have the right to be accompanied and/or represented by a friend or colleague, a representative, or trade union representative;
 - » that the complaint should be in writing and that the alleged perpetrator will be given full details in writing of the nature of the complaint, including written statements and any other documentation or evidence including social media communications, CCTV footage, witness statements, interview notes and records of meetings held with the witnesses;
 - » that the alleged perpetrator will be given time to consider the documentation and an opportunity to respond;
 - » that confidentiality will be maintained throughout an investigation to the greatest extent consistent with the requirements of fairness;
 - » that a written record will be kept of all meetings and inquiries;
 - » that the investigation, having considered all of the evidence before it and the representations made to it, will produce a written report to both parties outlining its findings and the reasons for its final decision;
 - » that if the investigation concludes that the accused employee has a case to answer, then the report will recommend whether the organisation's disciplinary procedure should be invoked;
 - » that if the investigation concludes that the accused non-employee has a case to answer, then the report will recommend whether sanctions against the non-employee or her/his employer are appropriate which could include:

- » exclusion of the individual from the premises;
 - » suspension or termination of service; or
 - » suspension or termination of a supply service or other contract.
- » that the report may also recommend other actions such as further training or more effective promotion of the organisation's policy on harassment; and
 - » that a right of appeal exists for both parties and the time limits and procedures involved.

100. Both parties to a complaint should be given appropriate support and follow-up following the investigation as the process is likely to result in tension and disharmony between the parties, co-employees, work teams and others, at least in the short-term.

101. It is the responsibility of the employer to provide for proper notifications regarding the investigation process and for a fair determination of the complaint. What is required in any particular instance will depend on the circumstances and/or complexity of the case and may require adaptation of the procedures.

Non-Employees

102. It is possible that if the person accused of harassment is not an employee, s/he will not wish to participate in the formal procedure, and it will not be possible to secure their participation. Nonetheless a non-employee must be kept informed of all developments and given an opportunity to respond to them. The outcome of the investigation and any potential sanctions must also be explained to the non-employee and/or any person or organisation for whom s/he works.

Reasonable accommodation

103. The policy and procedures should be accessible to all with steps taken to ensure accessibility in particular for people with disabilities. Examples would include the translation of policies and procedures into Braille or large print formats or the availability of signers.

Accessibility

104. Certain measures may be necessary to ensure the accessibility of policies and procedures, for example, translation into languages other than English or the provision of interpreters.

Review of this code

105. The EEA has been in operation since October 1999. As case law and other developments occur in the area of sexual harassment and harassment, it will be necessary to further review and amend this code to reflect these changes.

Sources of Other Information and Advice

Irish Equality and Human Rights Commission (IHREC),

16-22 Green Street, Rotunda, Dublin 7, D07 CR20

Phone: (01) 858 9601

Website: www.ihrec.ie

Irish Congress of Trade Unions (ICTU),

31/32 Parnell Square W, Rotunda, Dublin 1, D01 X682

Phone: (01) 8897777

Website: www.ictu.ie

Irish Business and Employers Confederation (IBEC),

86 Baggot Street Lower, Grand Canal Dock, Dublin, D02 H720

Phone: (01) 605 1500

Website: www.ibec.ie

Workplace Relations Commission (WRC),

Lansdowne House, Lansdowne Road, Ballsbridge, Dublin 4, D04 A3A8

Phone: (01) 613 6700

Website: www.workplacerelations.ie

Dublin Rape Crisis Centre,

70 Lower Leeson Street, Dublin 2, D02 VW13

Phone: 1800 77 88 88 (national 24-hour helpline)

Website: www.drcc.ie

(Rape Crisis Centres in Athlone, Carlow, Cork, Donegal, Galway, Kerry, Kilkenny, Mayo, Limerick, Nenagh, Louth, Leitrim & West Cavan, Tipperary, Tullamore, Waterford, and Wexford can be contacted through the above helpline.)

Health and Safety Authority,

Metropolitan Building, James Joyce Street, Mountjoy, Dublin 1, D01 K0Y8

Phone: (01) 6147000

Website: www.hsa.ie

National Disability Authority,

25 Clyde Road, Dublin 4, D04 E409

Phone: (01) 608 0400

Website: www.nda.ie

Codes of practice

The following codes of practice may also be of assistance:

- » Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work, 2007, prepared by the Health and Safety Authority;
- » Code of Practice on Victimisation (S.I. No. 463 of 2015) prepared by the WRC;
- » Code of Practice on Procedures for Addressing Bullying in the Workplace (S.I. No. 17 of 2002) prepared by the former Labour Relations Commission; and
- » Code of Practice on Grievance and Disciplinary Procedures (S.I. No. 146 of 2000) prepared by the former Labour Relations Commission.

Appendix 1

- Relevant EU legislation on harassment

European Commission Recommendation: definition of sexual harassment:

The European Commission's code of practice annexed to its Recommendation of 27th November, 1991 on the protection of the dignity of women and men at work (92/131/EEC) provides the following definition:

'Sexual harassment means unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work'.

Framework and Race Directives: definitions of harassment:

Council Directive 2000/78/EC of 27th November, 2000 establishing a general framework for equal treatment in employment and occupation and Council Directive 2000/43/EC of 29th June, 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, contain definitions of harassment referable to religion or belief, disability, age or sexual orientation ('Framework Directive') and racial or ethnic origin ('Race Directive').

These Directives¹ define harassment as unwanted conduct related to a protected ground with 'the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment'.

Directive on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast):

Directive 2006/54/EC of 5th July 2006 recast in a single text (the 'Recast Directive') the main provisions regarding gender discrimination and took account of certain developments in the case law of the Court of

1 Article 2.3 of Council Directive 2000/78/EC of 27th November, 2000 and Article 2.3 of Council Directive 2000/43/EC of 29th June, 2000

Justice of the European Communities. Article 2(1)(c) and (d) respectively define gender-based harassment and sexual harassment:

'(c) "harassment": where unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment;

(d) "sexual harassment": where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.'

Appendix 2

Please see <https://www.workplacerelations.ie/en/> for current forms.



An Choimisiún na hÉireann um Chearta
an Duine agus Comhionannas
Irish Human Rights and Equality Commission

The Irish Human Rights and
Equality Commission
**16 – 22 Sráid na Faiche,
Baile Átha Cliath, D07 CR20**
16 – 22 Green Street,
Dublin, D07 CR20

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