

**Human Resources
Office**

Protection of Staff against Workplace Bullying, Harassment & Sexual Harassment

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Maynooth University Policy & Procedures for the Protection of Staff against Workplace Bullying, Harassment & Sexual Harassment

Introduction

Workplace bullying, harassment and sexual harassment constitute real threats to the safety, health and welfare of people in the workplace. The National University of Ireland, Maynooth is committed to providing a workplace in which bullying, harassment and sexual harassment are not tolerated and in which the dignity of all staff is protected. The aim of this policy is to identify examples of unacceptable behaviour and provide a mechanism for dealing with any such issues should they arise and to facilitate the return to a positive working environment. Staff of the University must, therefore, be aware of their responsibilities not to place the safety, health and welfare of colleagues at risk by engaging in bullying, harassment or sexual harassment and, if in a position of authority, should take appropriate steps to stop such behaviour if they become aware of it.

Those who feel that they are currently being, or have been, bullied, harassed or sexually harassed or otherwise treated in breach of the policy, should use this policy and procedures for their protection. Complaints of workplace bullying, harassment and sexual harassment will be treated seriously by the University with due regard to the rights of the complainant (the person making the complaint) and of the respondent (the person against whom a complaint is made). Complaints by employees of bullying at work will be treated with fairness, sensitivity, respect and confidentiality for all parties concerned.

This policy applies to bullying, harassment and sexual harassment not only by fellow employees, but also by clients, customers or other business contacts with whom an employee might reasonably expect to come into contact in the course of his or her employment. The policy applies to employees and non-employees both in the workplace and at work associated events such as meetings, conferences and work related social events, whether on or off the campus.

All employees and non-employees will be expected to comply with this policy and the University will take appropriate measures to ensure that, insofar as practicable, workplace bullying, harassment and sexual harassment do not occur. Appropriate disciplinary action, including dismissal for serious offences or gross misconduct, will be taken against any employee who violates the terms of this policy.

Workplace bullying, harassment and sexual harassment are defined differently. To ensure that staff can use this policy appropriately, definitions and examples of each type of behaviour are given below. This is followed by an outline of the procedures put in place by the University for examining and resolving complaints of workplace bullying, harassment and sexual harassment. The procedures are similar whether the complaint is one of workplace bullying, harassment or sexual harassment.

As regards "bullying", "harassment", "sexual harassment" and "lack of respect", the intention of the respondent is irrelevant. The fact that he/she had no intention of bullying, harassing, sexually harassing, or showing a lack of respect, does not excuse the behaviour.

Definition of Bullying

Workplace bullying is 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 described in this definition may be an affront to dignity at work but as a once off incident is not considered to be bullying (Report of the Task Force on the Prevention of Workplace Bullying, Stationery Office, March, 2001).

Workplace bullying occurs in many guises and reveals itself through obvious and direct methods as well as in less direct and subtle forms. Examples of workplace bullying may include, but are not limited to:

- Victimisation;
- Implying threats;
- Exclusion/isolation with negative consequences;
- Verbal abuse/insults, or written bullying, for example, through jokes, offensive language, gossip, or unwarranted complaints;
- Belittling or embarrassing a colleague;
- Treating colleagues less favourably;
- Intrusion/pestering, spying or stalking;
- Menacing behaviour;
- Intimidation;
- Aggression;
- Undermining behaviour;
- Excessive monitoring of work;
- Humiliation;
- Unreasonably withholding work related information;
- Repeatedly manipulating a person's job content and targets;
- Blame for something beyond a person's control;
- Staring, leering or aggressive gestures;
- Abuse of position of power by undermining a person's work or performance and/or placing unreasonable demands on a person.

These types of inappropriate behaviour undermine an individual's right to dignity at work and can constitute bullying when such behaviour is targeted at one person or a group, as outlined in the definition outlined above (Code of Practice on the Prevention of Workplace Bullying, 2007, p.5).

As referred to above, please note that the intention of the wrongdoer is irrelevant.

Definition of Harassment

Harassment on the grounds of gender, marital status, family status, race, age, religious belief, sexual orientation, disability or membership of the traveller community is defined under the Employment Equality Acts 1998 to 2007 as:

any unwanted conduct which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. The unwanted conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.

Examples of harassment on any one of the nine grounds set out above, may include, but are not limited to:

- Treating people less favourably, or subjecting them to ridicule;
- Undermining behaviour;
- Demeaning and derogatory remarks, name-calling;
- Isolation, non-cooperation or exclusion within the University;
- Production, display or circulation of offensive material;
- Written harassment – e.g. faxes, text messages, emails or notices;
- Intimidatory harassment – e.g. gestures, posturing or threatening poses.

Definition of Sexual Harassment

Sexual Harassment is defined as any form of 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, hostile, degrading, humiliating or offensive environment for the person. The unwanted conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.

Examples of sexual harassment may include, but are not limited to:

- Sexual gestures;
- Displaying sexually suggestive objects such as pictures and calendars;
- Sending sexually suggestive and/or pornographic correspondence including faxes, text messages or e-mails;
- Unwanted sexual comments and jokes;
- Unwanted physical conduct such as pinching or unnecessary touching.

Lack of Respect

Lack of respect can be shown, for example, by direct comments, sarcasm, 'snide' remarks, or inappropriate jokes or banter directed towards another person in the course of employment. It can also arise where persons are ignored, overlooked, avoided or shunned without good reason and in a manner likely to be hurtful or disrespectful. Jokes or comments directed at or referring to a person could be thought amusing by others but may be unpleasant, uncomfortable or hurtful to that person. Respect should be shown to all individuals. Respect is also earned. By showing respect to others and honouring their personal dignity, you will earn their respect.

Any other conduct which denigrates, ridicules, threatens, or intimidates an individual or group, or conduct which may lead to undue influence is also unacceptable behaviour.

These examples are not exhaustive. Some of the behaviour outlined above could be considered to be gross misconduct. However, none of the above types of behaviour will be tolerated.

Infringement of provisions of policy

Sexual harassment, harassment, bullying and disrespectful behaviour infringe the provisions of this policy and are forms of misconduct which undermine the integrity of the employment relationship. The University will not tolerate such conduct by an employee or other individual in connection with work or the workplace.

NUIM procedures for examining and resolving complaints of workplace bullying, harassment and sexual harassment

Introduction

If an employee of the University is currently, or has been, experiencing workplace bullying, harassment or sexual harassment, he or she may employ these procedures to have the complaint examined and resolved by the University. All complaints will be treated seriously by the University and will be dealt with as quickly as possible in accordance with these procedures. Confidentiality will be maintained to the greatest extent consistent with the requirements of a full, fair and comprehensive investigation.

There are three types of procedure that can be used. These are: informal procedures, mediation and formal procedures. Usually the process will begin with informal procedures and, if resolved using the informal procedures, will end there. If the complaint has not been resolved using the informal procedures, the University will offer mediation, if appropriate, as a means of examining and resolving the complaint. If mediation is used and is successful in resolving the complaint, the process ends there. If the complaint has not been resolved to the satisfaction of the complainant using informal procedures or mediation, or both, or if the complainant does not wish to use these procedures, the University will, at the request of the complainant, use the formal procedures set out below.

Informal procedures

If an employee of the University is currently, or has been, experiencing workplace bullying, harassment or sexual harassment, he or she should, in the first instance, ask the person(s) to stop the offensive behaviour and make it clear that such behaviour is offensive and unacceptable. The employee should keep a record of incidents so that he or she can be specific about the behaviour or actions that have caused offence.

If the complainant feels unable, or considers it inappropriate, to approach the respondent directly, he or she may seek help and advice on options available on a confidential basis from his or her Head of Department/ Centre/ Section, from a contact person, or from the Human Resources Office.

Contact persons include male and female members of staff, who have been appointed by the President to work on a voluntary basis with complainants. Contact persons have received training that enables them to act as sources of peer support for those experiencing workplace bullying, harassment or sexual harassment. The names and contact details of the contact persons are available on the University website and in the Campus Telephone Directory.

Having sought advice from the Head of Department/ Centre/ Section, a contact person or from a staff member in the Human Resources Office, the complainant may request that person (with the exception of the relevant contract person) to raise the issue with the respondent. If such an approach is considered appropriate, it will be made in a non-confrontational, confidential manner with a view to resolving the complaint in an informal way. If this approach is successful in resolving the complaint the process will end there.

If the complainant has not used the informal procedures on the grounds of inappropriateness or impracticality, or, having used them, found them unsatisfactory for the resolution of his or her complaint, the complainant should contact the Human Resources Office with a view to having the complaint examined and resolved using mediation or the formal procedures. Choosing to bypass the informal procedures will not reflect negatively on a complainant when the complaint is being examined using mediation or the formal procedures.

Mediation Process

In situations where the University is of the view that the complaint is appropriate to mediation, the complainant and the respondent will be offered this option.

Mediation is a means of handling conflict in which the parties in dispute meet with a neutral third party - the Mediator - in a genuine effort to resolve their differences. The Mediator facilitates an exchange in which the parties systematically isolate the issues in dispute in order to:

1. Develop options for settling the dispute;
2. Consider the alternative options and endeavour to reach a consensual agreement that will accommodate their needs.

In dealing with a complaint of workplace bullying, harassment or sexual harassment, the Mediator, who may be a person external to the University, will meet with the complainant and the respondent on an individual, and on a joint basis, with a view to resolving the complaint.

There are a number of principles underlying the mediation process including the following:

1. The voluntary nature of the process

This reflects the right of either party not to participate in mediation and the right to withdraw from the mediation at any time prior to a formal agreement being reached. Should mediation not be successful, the complainant may seek to have the matter resolved through formal investigation.

2. Confidentiality

The process and any agreement reached in the process are confidential to the parties. However, in order to allow any agreement reached to be monitored, a copy of the agreement will be provided to the Director of Human Resources.

Confidentiality is important because it allows the parties to speak freely and to make offers and concessions in a safe environment. If the mediation is not successful, neither the mediator nor the parties involved may disclose what has transpired in the process.

Mediation is particularly suited to workplace disputes where frequently the parties will continue to work together into the future.

Formal procedures

If a complaint of workplace bullying, harassment or sexual harassment has not been resolved to the satisfaction of the complainant using informal procedures or mediation, or both, or if the complainant has not availed of these procedures, the University will, at the request of the complainant, use the formal procedures set out below to address the complaint. These procedures are designed to address a complaint in a fast, fair, and effective manner.

When formal procedures are used to address a complaint of workplace bullying, harassment or sexual harassment, an investigation of the complaint will be undertaken. The investigation will be conducted thoroughly, objectively, with sensitivity and with due respect for the rights of both the complainant and the respondent(s). Confidentiality will be maintained to the greatest extent consistent with the requirements of a full, fair and comprehensive investigation.

The purpose of an investigation is to determine the facts and the credibility, or otherwise, of a complaint and to ascertain whether or not, on the balance of probabilities, the behaviour complained of occurred. Evidence and witness statements are relied on for this purpose.

The complainant should advise the Director of Human Resources of the nature of the complaint and should set out the complaint in writing and submit that to the Director of Human Resources. The principles of natural justice require that a person accused of bullying, harassment or sexual harassment should be given sufficient details of the allegations so as to be in a position to adequately address the allegations.

On receipt of a written complaint of workplace bullying, harassment or sexual harassment, the Director of Human Resources will provide the respondent with a copy of the written complaint and will provide an opportunity to the respondent to respond in writing to the allegations within 10 working days. A copy of any response received from the respondent will be provided to the complainant. Other than in a situation where the complainant formally withdraws the complaint from the Formal Procedures, the Director of Human Resources will, not later than 10 working days from the final date for receipt of a written response from the respondent, appoint a committee to investigate the complaint and will advise the complainant and the respondent:

1. That an investigation of the complaint will begin within 20 working days, or as soon as practicable thereafter, and
2. Of the procedures which will be followed in conducting the investigation.

The Committee will usually comprise a member of the management team of the University, an independent person with experience of investigating complaints of workplace bullying, harassment or sexual harassment (who may be from outside the University) and a senior staff member from an appropriate department/ centre/ section in the University. The Committee membership will be finalized in consultation with the complainant and the respondent. All internal members of the Committee will normally have received appropriate training in the investigation of complaints of this nature. The Committee will be gender balanced.

Alternatively, the University may appoint an external investigator or investigators if it deems it appropriate in the particular circumstances.

The Committee will endeavour to complete the investigation of the complaint within 20 working days of the appointment of the Committee, or as soon as practicable thereafter having regard to the nature of the complaint subject to any legal requirements. The Committee will treat information supplied to it in investigating the complaint as confidential, and will not discuss or share information about the complaint or the investigation with any person other than those directly involved in the investigation. The Committee will conduct the investigation thoroughly, objectively, with sensitivity, and will, during all stages of the investigation, pay due regard to the rights of the complainant, the respondent and any witnesses.

If inappropriate attempts are made by any person to persuade the complainant to drop the complaint or any witness to change his or her evidence, or if the complainant or a witness is victimized by another person/persons, such behaviour may be regarded as serious misconduct and may be dealt with as such by the University.

The Committee will decide the specific format of the investigation. Since the purpose of the investigation is to determine the facts and the credibility, or otherwise, of the complaint of workplace bullying, harassment or sexual harassment, all investigations will include interviews with the complainant, the respondent, and witnesses (if any). Interviews with the complainant, the respondent and any witnesses may be conducted with the individuals separately and/ or jointly, as appropriate.

Interview with the complainant

To assist in establishing the facts, the Committee will interview the complainant. The interview will normally be concerned with establishing such matters as: the nature of the incident or incidents; who was involved; what, where and when the incident or incidents occurred; and whether there were any witnesses. The complainant has a right to be appropriately accompanied while being interviewed. An appropriate accompanying person may be a union representative, or an employee of the University of the complainant's choice. The accompanying person may not also be a witness to the investigation.

The Committee will explain that the investigation must follow fair procedures, ensuring that the rights of the complainant, and the respondent, are protected. The complainant will be informed that the investigation is confidential to the greatest extent consistent with the requirements of a full, fair and comprehensive investigation, and that this should be respected. In this regard the person will be informed that he or she should not discuss the case with any other party to the investigation, or otherwise share any information in relation to the case.

Interview with the respondent

To assist in establishing the facts, the Committee will interview the respondent. The interview will normally be concerned with establishing such matters as: the nature of the incident or incidents; who was involved; what, where and when the incident or incidents occurred; and whether there were any witnesses. The respondent will be given every reasonable opportunity to respond to the allegations. He or she has a right to be appropriately accompanied while being interviewed. An appropriate accompanying person may be a union representative, or an employee of the University of the respondent's choice. The accompanying person may not also be a witness to the investigation.

The Committee will explain that the investigation must follow fair procedures, ensuring that the rights of the complainant and the respondent are protected. The respondent will be informed that the investigation is confidential to the greatest extent consistent with the requirements of a full, fair and comprehensive investigation, and that this should be respected. In this regard the person will be informed that he or she should not discuss the case with any other party to the investigation, or otherwise share any information in relation to the case.

Witnesses

Witnesses named by either party in the case, who in the opinion of the Committee may be in a position to give material evidence, may be interviewed.

Witnesses may be appropriately accompanied at interviews which form part of the investigation. An appropriate accompanying person may be a union representative or an employee of the University of the witness's choice. The accompanying person may not also be a party to the investigation or a witness to the investigation.

Witnesses will be informed that the investigation is confidential and that this should be respected. They will be informed that they should not discuss the case with any other party to the investigation, or otherwise share any information in relation to the case.

Right to question witnesses

The complainant and the respondent will be given an opportunity to comment, if appropriate, on any statements made by witnesses and to question such witnesses if appropriate.

On completion of the investigation

The Committee should furnish a report of the investigation to the Director of Human Resources within 15 working days of completion of the investigation or as soon as reasonably practicable thereafter. This report will include the conclusions of the Committee as to the credibility or otherwise of the complainant. Within 5 working days of receiving the Committee's report, the Director of Human Resources will inform both parties of the outcome of the investigation, will provide them with a copy of the report, and will invite their comments on the report before deciding on any action to be taken. Their replies must be received by the Director of Human Resources within 10 working days. On receipt of their replies, or at the end of the 10 working days if there is no reply, the Director of Human Resources will take appropriate steps for disciplinary action, or other appropriate action, if the complaint has been upheld. The Director of Human Resources will take this action within the following 15 working days.

Malicious or vexatious complaints

If it is established that a complaint of workplace bullying, harassment or sexual harassment was malicious or vexatious, the University may take appropriate disciplinary action against the complainant. This may occur whether or not one or more of the above procedures have been utilized.

Protection against victimisation

Victimization by other staff members of those involved in a case of workplace bullying, harassment or sexual harassment will not be tolerated by the University. Those who victimize complainants, respondents or witnesses will be subject to disciplinary action by the University. The Human Resources Office will make follow-up calls, for two years at least, and for a longer period of time if necessary, to the relevant Departments/ Centres/ Sections of those involved in a workplace bullying, harassment or sexual harassment case, to ensure that victimization of any of the parties does not occur, and will take appropriate disciplinary action if it does occur.

Timeframe

It is highly desirable that the suggested timeframes be adhered to; however there may be circumstances where the timeframe may need to be altered. This will be done in consultation with the parties concerned in the investigation.

Codes of practice

This Policy may be adapted, as appropriate, to conform to any relevant code of practice, or legal requirement.

Persons having functions under this Policy

Where any person having functions under this Policy is himself/herself the subject of an allegation of harassment in the University, he/she shall not exercise any of his/her functions under this Policy in respect of the particular allegation, and such functions will, where appropriate, be undertaken by a person or persons nominated by the University for that purpose.

Appeal

If the complainant or the respondent is unhappy with the outcome of the procedure, either party can appeal to the Secretary of the Human Resources Committee not later than two weeks after the receipt of the decision of the Investigation Committee. The person appealing the outcome of the procedure shall set out the reason for the appeal in writing. The Secretary of the Human Resources Committee, having received proper notification of appeal shall refer the matter to the President who will appoint an Officer of the University who has not been involved in the process to date to hear the appeal. Such Officer will make a recommendation on the appeal to the President whose decision on the matter will be final.