

JOINT NEGOTIATING COUNCIL FOR THE EDUCATION AND LIBRARY BOARDS

30 March 2007

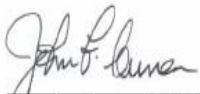
**To: Chief Executives
Council Members
MSO/TUSO**

Joint Negotiating Council Circular No. 78 (Third Revision)

A Statement of Policy and Code of Practice on Measures to Combat Harassment in the Workplace for Staff in Board Locations other than Schools

The Joint Secretaries of the Joint Negotiating Council have agreed a revised Statement of Policy and Code of Practice on Measures to Combat Harassment for Staff in Board locations other than schools. This revision takes account of recent legislative developments, namely the Employment Equality (Age Regulations) (Northern Ireland) 2006.

A copy of the Statement of Policy and Code of Practice is attached as an appendix to this circular.



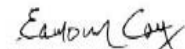
Management Side Secretary
J Curran



Trade Union Side Secretary
A Millar



Trade Union Side Secretary
L Kerr



Trade Union Side Secretary
E Coy



Trade Union Side Secretary
A Mills

THE _____ EDUCATION AND LIBRARY BOARD

**A POLICY STATEMENT AND CODE OF PRACTICE
ON MEASURES TO COMBAT HARASSMENT FOR
STAFF IN BOARD LOCATIONS OTHER THAN SCHOOLS**

STATEMENT OF POLICY

[1] GENERAL PRINCIPLES

- 1.1 The -----Education and Library Board recognises that its staff are its most valuable asset and as such have a right to be treated with dignity and respect. The board is committed to providing a safe and harmonious working environment for its staff through pro-active and sensitive management.
- 1.2 Staff are required to undertake their duties in a professional manner, to comply with all reasonable instructions and to co-operate in the promotion of harmonious working relationships.
- 1.3 The board acknowledges that harassment can adversely affect a member of staff's confidence and job performance and that it creates an intimidating and uncomfortable working environment.
- 1.4 Furthermore, harassment can constitute a threat to a member of staff's health, safety and welfare. Harassment at work may contravene the law and will not be permitted or condoned. Should harassment occur, staff affected have a right to complain about it and should not feel or be made to feel guilty or embarrassed about exercising that right.
- 1.5 The board is committed, through the dissemination and explanation of this policy document to all staff, to ensuring that harassment does not occur at work and undertakes to deal with allegations of harassment seriously, sensitively and in confidence.
- 1.6 Staff who bring a complaint of harassment will be protected against victimisation or retaliation and staff who are guilty of harassment or victimisation will be subject to appropriate action in accordance with the agreed disciplinary procedures.
- 1.7 In order to effectively implement its policy on harassment, the board has adopted a Code of Practice on Measures to Combat Harassment. The Code of Practice is designed to deal with circumstances where the complainant and person against whom the allegation is made are both members of staff.
- 1.8 The Policy and Code of Practice applies to staff employed at all board locations other than schools.
- 1.9 The Policy and Code of Practice took effect from 1 June 2002 and has been formally adopted by the board.

CODE OF PRACTICE TO COMBAT HARASSMENT

[2] BACKGROUND INFORMATION

2.1 PURPOSE OF THE CODE OF PRACTICE

- [i] to raise awareness among staff as to what constitutes harassment in the workplace;
- [ii] to define the duties and responsibilities of the employing authority and staff in implementing the policy;
- [iii] to emphasise that unacceptable conduct on any of the grounds outlined in the policy will not be tolerated and will be dealt with promptly and fairly;
- [iv] to raise awareness of the advice and support which is available;
- [v] to establish procedures to be followed in relation to complaints of harassment.

2.2 WHAT IS HARASSMENT?

Harassment takes many forms, occurs on a variety of grounds and may be directed at an individual or group of individuals. It is not the intention of the perpetrator but the deed itself, and the impact on the recipient, which determine what constitutes harassment. Harassment can be seen as any unwanted conduct which adversely affects the dignity of women and men at work. Such behaviour is unacceptable where, for example:

- it is unwanted, offensive to the recipient and unreasonable
- it is used as the basis for an employment decision
- it creates a hostile working environment

2.3 GROUNDS ON WHICH HARASSMENT CAN OCCUR

For the purposes of this policy harassment can be defined as:

Any derogatory or discriminating behaviour which is offensive to others which causes them to feel threatened, humiliated, patronised or harassed, or which interferes with their work performance, undermines job security or creates a threatening or intimidating working environment.

It is important to realise that harassment can arise on grounds other than those addressed by equal opportunities legislation.

For example, workplace bullying is a form of harassment which can take place for many reasons and can take many forms, both obvious and more subtle, on grounds which are not specifically covered by legislation. Bullying can be defined as :

“Offensive, intimidating, malicious, insulting or humiliating behaviour, abuse of power or authority which attempts to undermine an employee or group of employees and which may cause them to suffer stress”

Harassment on grounds other than those addressed by equal opportunities legislation is no less distressing for individuals and no less detrimental to working relationships within a school. This policy and code of practice aim to provide staff with protection from harassment on any grounds.

2.4 FORMS OF HARASSMENT

Harassment can take many forms, for example:-

- inappropriate physical contact ranging from unnecessary touching to physical assault or the threat of physical assault;
- bullying, overt abuse of power;
- inappropriate and baseless use of disciplinary or grievance procedures against a member of staff;
- constant negative and unwarranted criticism or undermining of a member of staff in front of others or in private;
- coercion, requests for sexual favours;
- implying that someone has Aids because they are gay;
- verbal or written harassment through insensitive or embarrassing remarks, offensive language, gossip and slander, jokes, signals or gestures, racist comments, threats, sectarian songs, letters including electronic communications etc.”
- unwelcome comments about dress or appearance, unrelated to the promotion of dress codes or standards within the workplace;
- offensive visual material e.g. pin-ups, pornographic pictures or literature, graffiti, etc;
- isolation or non co-operation at work, exclusion from social activities;
- intrusion by pestering, spying, stalking;
- threatening to “out”¹ a person;
- inappropriate age based comments e.g. suggesting someone is too old (over the hill) etc.

2.5 THE EFFECTS OF HARASSMENT

Harassment exacts a high price from staff and management alike. Staff can be subject to fear, stress, and anxiety, which can put great strains on personal and family life. It can lead to illness, increased absenteeism, an apparent lack of commitment, poor performance and even resignation. All these have a direct impact on staff effectiveness.

A distinguishing characteristic of harassment is that staff subjected to it may be very vulnerable and are often reluctant to complain. They may be too embarrassed or

¹ Outing a person is when someone discloses to others a person’s sexual orientation against his/her wishes

unsure as to how to make a complaint or concerned that it will be trivialised. They may fear reprisals. Staff suffering from harassment may not want attention focused on the situation. They just want the unwanted behaviour to stop, so they suffer in silence.

2.6 HARASSMENT AND THE LAW

Failure to deal with allegations or incidents of harassment at work may expose the Employing Authority to a number of legal consequences. These are outlined briefly below.

Harassment has been held to constitute discrimination under the Sex Discrimination (NI) Order 1976 (as amended), the Fair Employment and Treatment (NI) Order 1998 (as amended), the Race Relations (NI) Order 1997 (as amended), the Employment Equality (Sexual Orientation) Regulations (NI) 2003 and the Disability Discrimination Act (Amendment) Regulations (NI) 2004.

The Disability Discrimination Act (Amendment) Regulations (NI) 2004 have introduced a free-standing definition of harassment which removes the need for a comparator.

The Regulations state:

'A person subjects a disabled person to harassment where, for a reason which relates to the disabled person's disability, he engages in unwanted conduct which has the purpose or effect of:

- *violating the disabled person's dignity, or*
- *creating an intimidating, hostile, degrading, humiliating or offensive environment for him.'*

The Protection from Harassment (NI) Order 1997 makes harassment on two or more occasions potentially a criminal offence.

Harassment may also lead to prosecution under the Health and Safety at Work (NI) Order 1978 if the employer is found to be negligent in his/her duty of care to employees.

The European Commission has adopted a recommendation on the protection of the dignity of women and men at work and a Code of Practice on measures to combat sexual harassment, which recognises that sexual harassment is sex discrimination.

In addition to discrimination claims, harassment may lead to criminal claims for assault or civil claims for negligence or breach of contract. For example, harassment may lead to a member of staff resigning and claiming constructive dismissal. There are also specific statutory provisions which allow staff to claim if they are harassed because of their trade union membership or activities, or because of their non-membership of a trade union.

[3] ROLES AND RESPONSIBILITIES

3.1 SENIOR MANAGEMENT

Senior Management has the overall responsibility for overseeing the implementation of this policy on a Departmental basis.

- [a] The Chief Executive and Senior Management are responsible for the overall implementation of the Employing Authority's policy on harassment.
- [b] Line Managers are responsible for communicating the policy to staff and taking appropriate steps to promote the policy, (e.g. by including the issue as an agenda item for discussion at a staff meeting).
- [c] Managers have a responsibility to strive to ensure that harassment does not occur amongst staff. Any indication of this type of behaviour must be dealt with immediately.
- [d] The Employing Authority must take all reasonable action practicable to ensure that potentially offensive material is not displayed or circulated.
- [e] Managers must ensure that any complaint of harassment is treated seriously, sensitively and in confidence. Advice on the handling of complaints will be available from the Human Resources Branch.

3.2 STAFF

All staff are expected to promote a harmonious working environment in which the dignity of colleagues is respected.

Staff are expected to maintain professional standards of work and conduct and to comply with the board's policy on harassment.

Staff are also expected to promote and maintain harmonious working relationships within the workplace.

Staff should not make frivolous, spurious or vexatious allegations for complaints against others, nor divert attention from or action in the application of other procedures.

3.3 ROLE OF HUMAN RESOURCES

It is the responsibility of the Human Resources Branch to advise, assist and support Managers in dealing with harassment. The Human Resources Branch will identify trends and patterns which will help inform decision making and future policy.

PROCEDURES

[4] PROCEDURE FOR DEALING WITH COMPLAINTS OF HARASSMENT

The procedures outlined below indicate the action to be taken if a member of staff feels he/she is being harassed. The primary objective of these procedures is to resolve the issue/s and to restore effective working relations between the parties concerned as quickly as possible. It must be stressed that in most cases this is best achieved by use of informal methods. It is expected therefore that staff will make genuine efforts at informal resolution before invoking formal procedures but staff have the right to proceed directly to the formal complaints process.

4.1 INFORMAL PROCEDURE

- 4.1.1 A member of staff who feels that he/she is subject to unacceptable behaviour may attempt to resolve the problem informally in the first instance. This stage is appropriate where the member of staff simply wants the behaviour to stop, where the harassment is not serious and where it has not been repeated.
- 4.1.2 In some cases it may be possible and sufficient for the member of staff to specify to the person concerned the behaviour which has caused offence and that the behaviour in question is not welcome.
- 4.1.3 It should be emphasised however that the complainant is not required to approach the alleged harasser and is entitled to report the matter immediately if they so wish.
- 4.1.4 In any attempt to solve the problem without recourse to formal procedures a member of staff may wish to seek the confidential advice, assistance or support of a work colleague, their Line Manager, a Trade Union representative, an Officer from the Employing Authority's Human Resources Branch or other appropriate officer.
- 4.1.5 Where staff prefer those providing advice and support to be of their own gender, religion or race or someone who is aware of disability issues, then this should be accommodated where possible.
- 4.1.6 The intention of the informal process is to resolve the situation satisfactorily without recourse to formal procedure. However, if the harassment continues, if it is of a serious nature, if it is repeated or if the complainant prefers to do so, it should be raised through the formal complaints procedure.

4.2 FORMAL PROCEDURE

- 4.2.1 It is recognised that there may be situations where it may be impractical to implement the informal stage and/or that the nature of the alleged harassment requires a more formal approach. It is not necessary to have gone through the informal procedure in order to make a formal complaint.

4.2.2 Complaints should be raised as soon as possible following an act of alleged harassment so that the matter can be dealt with swiftly and decisively.

4.2.3 Making a complaint is likely to be a distressing experience both for the complainant and for the person against whom the allegation is made. It is vital that such cases are handled seriously, sensitively and with the highest degree of confidentiality and that a full and fair investigation is carried out.

4.2.4 Throughout the formal procedure the complainant and the person against whom the allegation is made have the right to be represented by a Trade Union Representative or work colleague. It is important that the same individual does not represent both parties.

4.2.5 A member of staff wishing to make a formal complaint should make the complaint in writing to:

- [a] their Line Manager or, where appropriate, the Head of Department; or
- [b] a Senior Officer in the Human Resources Branch.

Alternatively, a complainant may make the complaint to either of the above through:

- [c] a Trade Union representative.

In such circumstances the Trade Union representative may assist in making the complaint on behalf of the complainant.

4.2.6 In circumstances where harassment is suspected or known to be occurring the procedures may be initiated by the relevant Manager.

4.3 ACTION TO BE TAKEN ON RECEIPT OF FORMAL COMPLAINT

4.3.1 On receipt of a formal complaint acknowledgement will be made in writing and, within ten working days of receipt, the Head of Department shall nominate an officer who, together with an officer from the Human Resources Branch, shall investigate the issues raised.

4.3.2 The complainant should be advised that their allegations will be made known to the person against whom the allegation is made in the course of subsequent investigations.

4.3.3 The person against whom the allegation is made should be advised that a complaint has been made as soon as possible after receipt of the complaint and that he/she will be informed in writing of any allegations following the investigatory meeting with the complainant.

4.3.4 The Head of Department/Branch Head should, in consultation with the Human Resources Manager, consider whether there exists the need for precautionary suspension as a means of avoiding contact between the complainant and person against whom the allegation is made.

4.3.5 Where such precautionary measures are considered necessary, staff may be suspended on full pay pending the outcome of a formal investigation.

4.4 INVESTIGATORY PANEL

- 4.4.1 It is important that investigations of any complaints are handled with sensitivity and due respect for the rights of both the complainant and the person against whom the allegation is made. The investigation should be seen to be independent and objective.
- 4.4.2 The Members of the investigatory panel carrying out the investigation must not be connected with the allegation, nor should they be members of any disciplinary committee which may be established to deal with any issues arising from the investigation.
- 4.4.3 The remit of the panel will be to:
- (i) investigate the complaint
 - (ii) establish if there is or is not substance to the complaint
 - (iii) attempt with the prior approval of the parties to resolve the issues between them in an agreed way.
 - (iv) provide a factual report of their investigation to the Head of Department

In order to provide flexibility to investigate each case according to its individual circumstances and to ensure an effective outcome, it is anticipated that the panel shall be free to determine the manner in which it undertakes the investigation, subject to any advice received from the Employing Authority.

- 4.4.4 The investigatory panel responsible for investigation of a complaint should deal with it promptly and discreetly. Any investigatory meetings should normally commence within ten working days of receipt of the written complaint.

4.5 FORMAL INVESTIGATION

Initial meeting with the Complainant

- 4.5.1 The investigatory panel shall advise the complainant in writing:

That a meeting has been arranged to enable him/her to discuss his/her complaint with the panel.

That he/she has the right to be accompanied and/or represented at all stages of the procedure by a Trade Union Representative or a work colleague.

- 4.5.2 The investigatory panel shall meet with the complainant, who may be accompanied by a Trade Union representative or a work colleague, to:
- Clarify and formally record the nature of the complaint and that it is being handled under the formal procedure.
 - Establish the facts and issues relevant to the complaint.
 - Ensure that the complainant is aware of the next stage of the procedure.

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- Identify what the complainant would regard as a satisfactory resolution.
 - Make the complainant aware of the Staff Care/Welfare Service.

4.5.3 Precautionary suspension may be considered again in light of information gained at this meeting regarding the allegations. This suspension should be undertaken in accordance with the guidance at paragraph 4.3.5.

4.6 *INFORMING THE PERSON AGAINST WHOM THE ALLEGATION IS MADE*

4.6.1 The investigatory panel shall advise, in writing, the person against whom the allegation is made:

- Of the allegations that have been made.
- That a meeting has been arranged to investigate the allegations under the formal procedure.
- That he/she has the right to be accompanied by a Trade Union representative or a work colleague at all stages of the procedure.

4.6.2 The investigatory panel shall meet separately with the person against whom the allegation is made and who may be accompanied by a trade union representative or a work colleague, to:

- Listen to what the person against whom the allegation is made has to say about the alleged incidents and any other related matter.
- Establish the facts and issues relevant to the complaint.
- Ensure that the individual is aware of the next stages of the procedure.
- Make the person against whom the allegation is made aware of the Staff Care/Welfare Service.

4.7 *INFORMATION FROM OTHERS WHO MAY ASSIST THE INVESTIGATION*

4.7.1 The investigatory panel, as part of its investigation, may wish to meet with and/or consider relevant information from other persons, e.g. witnesses to the alleged incident/s.

4.7.2 All those giving information to the investigatory panel should do so privately and not in the presence of any other person involved in or present during the alleged incident. A record of all meetings will be kept. All evidence provided to assist with the investigation will be treated as confidential by all parties to the investigation subject to any further proceedings or statutory requirements.

4.8 INVESTIGATORY PANEL REPORT

4.8.1 Following its investigation the panel will consider all the evidence presented, determine if there is substance to the complaint and whether there is a case to be answered.

4.8.2 The investigatory panel should advise in writing both parties to the complaint of its findings. This should normally be actioned within ten working days of completion of the investigation. If the complainant is not satisfied with the findings of the investigation they may appeal this decision to an Independent Appeal Panel (see section 5 below). If no appeal is received paragraph 4.8.1 should be implemented as appropriate. There is no facility for appeal after the 5 working days detailed in paragraph 5.2 has passed or once disciplinary proceedings (if appropriate) have commenced against the alleged harasser.

4.8.3 The investigatory panel should maintain a written record of its findings. These may be made available to any sub-committee convened under the Disciplinary Procedure and to the person subject to the Disciplinary Procedures and his or her trade union representative with that person's consent. The outcome of any report arising from an investigatory panel may include:

(a) *Disciplinary Action Inappropriate*

The investigation may establish that the allegations are unsubstantiated or of a nature where disciplinary action is not appropriate. The investigation may have resolved the issues or may indicate other appropriate management action to meet the desired outcomes e.g. the provision of counselling, training or the drawing up of agreed action plans.

(b) *Disciplinary Action to be taken*

If the investigation establishes that there may be a case to answer, the matter should be referred for consideration under the Disciplinary Procedure. Where an investigation has been conducted under the Harassment Policy, this can be substituted for a disciplinary investigation as provided for in the appropriate Disciplinary Procedure.

4.8.4 Copies of the decision and letters sent to the members of staff concerned should be forwarded to the Employing Authority.

4.9 RECORDS

4.9.1 A complete record of all meetings, investigations and findings shall be made and retained by the Employing Authority for not less than 3 years.

4.10 ABUSE OF FORMAL PROCEDURE

4.10.1 It should be noted that, while a member of staff has the right to invoke the formal procedure without first exhausting informal procedures, use of formal procedures to make spurious or malicious allegations may in itself constitute harassment and be subject to investigation and disciplinary action.

[5] APPEALING THE DECISION OF THE INVESTIGATORY PANEL

5.1 The appeal process will only be invoked following completion of the formal procedure (paragraph 4.5 to 4.8).

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- 5.2 If the complainant is not satisfied with the decision of the investigatory team they may make a written request to the Human Resources Manager to have their grievance referred to an Independent Appeal Committee. Such a request must be made within 5 working days.
 - 5.3 The Human Resources Manager will refer the grievance to the Labour Relations Agency within 5 working days of receipt.
 - 5.4 The Appeals Committee shall consist of an Independent Chairperson appointed by the Labour Relations Agency and two panel members, one drawn from a list supplied by recognised unions and the other drawn from a list supplied by the Management. The management member shall not be from the board which is a party to the appeal. The trade union member may be from the union representing the appellant provided he/she is not an employee of or a trade union representative for, the Education and Library Service.
 - 5.5 The Agency shall appoint a Secretary to the Appeals Committee who shall be responsible for the setting up of the Committee and for the provision of administration services.
 - 5.6 The Secretary in conjunction with the Chairperson, shall fix a date for the Committee's hearing of the grievance and shall advise the parties accordingly, and shall invite nomination to the committee.
 - 5.7 The Secretary shall also invite the complainant to outline the grounds for their dissatisfaction with the decision not later than 10 days before the hearing. The investigation panel report and any other relevant papers will also be provided to the secretary by the Human Resources Manager at the same time. The Secretary will distribute all the information to the Committee members and to the other party not later than 5 days before the date of the hearing.
 - 5.8 The committee shall meet the parties to hear the grievance within 20 working days of the matter being referred to the LRA. The complainant will present the grounds for their dissatisfaction with the decision of the investigatory panel and then management side will be provided with an opportunity to respond.
 - 5.9 The decision of the Appeals Committee shall not be invalidated by the absence of one or other of the parties. The decision of the Appeals Committee will be final and binding on both parties.
 - 5.10 The decision of the Appeals Committee shall be given in writing to both parties within 10 working days of the hearing.
 - 5.11 The decision of the Independent Appeal Committee should be provided to the Human Resources Manager for action as appropriate under paragraph 4.8 of the harassment procedure.

[6] VICTIMISATION OR RETALIATION

- 6.1 The Employing Authority considers that a member of staff who makes a complaint in good faith should be protected from victimisation or retaliation. Any complaint of victimisation will be dealt with quickly, seriously and in confidence and may result in the disciplinary procedures being invoked. Furthermore victimisation may constitute

discrimination contrary to the Sex Discrimination [NI] Order 1976, (as amended), the Fair Employment and Treatment (NI) Order 1998 (as amended), the Race Relations (NI) Order 1997 (as amended), the Disability Discrimination Act 1995 (as amended) and the Employment Equality (Sexual Orientation) Regulations (NI) 2003.

- 6.2 Nothing in this Code of Practice should be construed as seeking to remove any person's legal rights. Furthermore a member of staff has the right to seek advice from any appropriate statutory body.

[The time limit within which a complaint must be lodged with an Industrial Tribunal is currently three months from the date of the alleged incident].

[7] FURTHER ACTION

The Head of Department or his/her nominee will meet the members of staff concerned within three months to monitor the situation and assess the effectiveness of any action taken. The Human Resources Branch may be contacted for advice or assistance.

The board will include in such reports the number and type of complaint together with other material circumstances, for example, gender, religious belief, political opinion, **sexual orientation** etc., together with a note of outcomes.

[8] TRAINING

It is recommended that, in order to effectively implement this Policy, appropriate training should be provided by the Employing Authority.

Further information and advice is available from the Human Resources Branch of the appropriate Education and Library Board.

*Belfast Education and Library Board
40 Academy Street
Belfast BT1 2NQ*

*North Eastern Education and Library Board
County Hall
182 Galgorm Road
BALLYMENA BT42 1HN*

*Southern Education and Library Board
3 Charlemont Place
The Mall
ARMAGH BT61 9AX.*

*South Eastern Education and Library Board
Grahamsbridge Road
DUNDONALD
Belfast BT16 2HS*

*Western Education and Library Board
1 Hospital Road
OMAGH BT79 0AW*

15 May 2002
Amended March 2005
Second Revision January 2006
Third Revision March 2007