



Garda Representative Association

Preparing for Change

**DIGNITY AT WORK
POLICY AND PROCEDURE TO DEAL WITH
BULLYING, HARASSMENT AND SEXUAL
HARASSMENT IN THE WORKPLACE**

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PREFACE

The Garda Representative Association is committed to establishing and maintaining a workplace environment that encourages and supports the right to dignity at work. The Association considers bullying, harassment (incl. sexual harassment) to be unacceptable and in breach of this policy. All who work for the Association, together with customers/clients and business contacts, are expected to implement this policy and to respect the rights of each individual, treating all parties equally and with respect for their individuality and diversity.

In the course of the Garda Representative Association's 2018 Annual Conference, delegates were advised that *'Dignity in the Workplace'* is an area where the Association has relatively little policy or procedure in place and that we need to develop an appropriate policy and associated procedures in this all-important area without further delay. Thereafter, every effort shall be made to fully implement the policy and associated procedures with immediate effect. This matter has been progressed and we now have a relatively comprehensive and fit for purpose *'Dignity in the Workplace'* policy and associated procedures document that is applicable to the Association.

This policy and procedure initiative will serve to meet the Association's legislative and best practice requirements in respect of this subject matter (incl. bullying, harassment and sexual harassment) and it also details how the Association shall deal with complaints and allegations relating to Officers, Central Executive Committee members, Divisional and District Representatives (referred to as "representatives" hereunder), employees, customers/clients and business contacts in the future.

The new policy and associated procedures will underpin the principles and objectives associated with dignity at work and all individuals interacting with the Association have a duty and responsibility to uphold these principles and objectives.



Pat Ennis
General Secretary

Date: 18.07.2019

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Section 1: Introduction: The Legal Context

There is now a range of statutory and common law legislation in place that deals with ensuring the right to dignity in one's working life. This legislation and the associated codes of practice are of direct relevance to the Garda Representative Association. Accordingly, this policy and its associated procedures have been drawn up for the purpose of ensuring that the Association and its Officers, Central Executive Committee members, Divisional and District Representatives, employees, customers/clients and business contacts are legally compliant and enjoy dignity at work.

Dignity is about a sense of self-worth, about the quality of being worthy of respect and about celebrating the individual differences and similarities that each person brings to the workplace.

The Garda Representative Association ("GRA") is committed to protecting the dignity of all its employees/representatives by implementing and promoting measures to create a safe and respectful work environment, free from discrimination, harassment, racism and disrespectful behaviour, by dealing professionally and efficiently with any complaints of such conduct. All Employees/representatives also have an obligation to ensure they create and maintain an environment free from bullying or harassment.

This policy is designed to protect all employees and representatives from all untoward actions by their colleagues, contractors, customers, suppliers, visitors to the workplace or any person with whom they may have contact during the course of their working life.

This policy applies not only during normal working hours on the organisation's premises but also at all work-related social events, activities, business trips or training courses, regardless of location or whether or not they take place during normal working hours.

As an employer the GRA has a duty to fulfil statutory obligations pursuant to the Employment Equality Acts 1998-2008, the Equal Status Acts 2000-2004 and the Safety Health and Welfare at Work Act 2005. The objective of this policy is to meet and fulfil the GRA's obligations.

1.1 What Is Bullying?

In 2002 a statutory code of practice on workplace bullying, entitled '*Code of Practice detailing Procedures for Addressing Bullying in the Workplace*' (Statutory Instrument) No. 17 of 2002, was prepared by the Labour (now Workplace) Relations Commission, as provided for under the Industrial Relations Act 1990. It sets out, for the guidance of employers, employees and their representatives, procedures for addressing allegations of workplace bullying. Paragraph 5 of the Code defines bullying as:

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

Accordingly, it is apparent that such *'inappropriate behaviour'* can be verbal, physical and even take the form of cyber bullying, which is carried out on the internet or via mobile phones, through social networking sites, email and texts. Indeed such *'inappropriate behaviour'* can take many different forms, such as:

- Social exclusion and isolation
- Damaging someone's reputation by gossip or rumours
- Intimidation
- Aggressive or obscene language
- Repeated requests with impossible tasks or targets

In practice, this *'inappropriate behaviour'* or bullying can be perpetrated by a person in authority, a colleague, a group of colleagues, a junior member of staff or representative, a (sub) committee member, a client, a contractor or any other business contact of the GRA's. It is the responsibility of all covered by this policy to bring any incident of bullying to the attention of the appropriate party, who should ensure that the issue is dealt with satisfactorily, as set out within this policy.

Of course, bullying must be distinguished from the proper use of authority, which is necessary to achieve the Association's objectives. That is, all serving in a supervisory capacity with the Association are required to manage and monitor staff and in this context it is their duty to be open and honest with individuals about performance, attendance and general behavioural issues. From time to time this may involve fair comments to individuals about issues affecting their work. It is important that these comments are not personalised, but rather address the behaviours that need to be improved. Bullying does not arise where managers make comments or give advice and feedback in an honest and constructive manner, supported by clear facts and communicated in a reasonable manner.

1.2 What Is Harassment?

In 2012 a code of practice on harassment and sexual harassment in the workplace was introduced, giving practical guidance to employers and employees on what is meant by harassment, sexual harassment, how it may be prevented, and the steps to take if it occurs (ie the Employment Equality Act 1998 (Code of Practice) (Harassment) Order Statutory Instrument No. 208 of 2012). The code is enabled by the Employment Equality Acts 1998-2015, placing an obligation on employers to prevent workplace harassment by reason of:

- Gender
- Civil status
- Family status, for example, as a parent of a child
- Sexual orientation
- Age
- Disability
- Race
- Religious belief
- Membership of the Traveller community

Harassment based on any of the above grounds is a form of discrimination in relation to conditions of employment. The Employment Equality Acts 1998-2015 define harassment as *'unwanted conduct'* which is related to any of the 9 discriminatory grounds listed above. Sexual harassment is any form of *'unwanted verbal, non-verbal or physical conduct of a sexual nature'*. In both cases 'harassment' is defined as 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'* and is prohibited under the Acts. Like 'bullying' behaviour, it may be targeted at one individual or a group. However, unlike 'bullying' behaviour, it may be a single incident (or repeated inappropriate behaviour).

The *'unwanted conduct'* referred to above includes spoken words, gestures or the production and display of written words, pictures and other material. It also extends to offensive gestures or facial expressions, unwelcome and offensive calendars, screen-savers, e-mails and any other offensive material. Harassment can be given effect by a fellow worker, one's supervisor or someone in a superior position, a client/customer or any other business contact and it can take place at work or on a training course, on a work trip, at a work social event or any other occasion connected with one's work. The fact that an individual previously agreed to the behaviour does not stop them from deciding that it has now become unwelcome. It is the unwelcome nature of the conduct which distinguishes harassment from friendly behaviour, which is welcome and mutual. Where a person finds any behaviour unwelcome they should point this out to the perpetrator, if at all possible. The intention of the perpetrator is irrelevant. The fact that the perpetrator has no intention of harassing (sexually or otherwise) is no defence. The effect of the behaviour on the individual is what is important. In any case, a member, or any party interacting with the Association, should desist immediately when it is conveyed to them that such behaviour is unacceptable.

1.3 Related Legal Dimensions

In addition to the legal dimensions associated with 'dignity at work' as outlined above, it is also relevant that the Health and Safety Authority endeavours to ensure that workplace bullying is not tolerated and that employers have procedures for dealing with bullying at work. In 2007 the Health and Safety Authority produced a code of practice entitled *'Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work'* (under the Safety, Health and Welfare at Work Act 2005), providing practical guidance to help identify instances of bullying in the workplace. The code also advises on ways to put in place preventative measures to stop bullying from occurring and how to deal with cases when they arise. Bullying and harassment in the workplace can affect both the safety and the health of employees. Hence, under the Safety, Health and Welfare at Work Act 2005 employers have a duty to ensure the health and safety of their employees in the workplace. Under section 8 of the Act, the employer is required to *'prevent any improper conduct or behaviour likely to put the safety, health and welfare of employees at risk'*.

The aforementioned Act also refers to the employer's responsibility to ensure that in as far as is reasonably practicable, the working environment is free from danger to the health, safety and welfare of employees. There are also duties conferred on employees to protect their own health, safety and welfare and that of their co-workers or those who

might be affected by another's actions, or omissions, while at work. That is, it is one's duty as an employee not to engage in improper behaviour which would endanger the health, safety and welfare of oneself or other employees.

Another legal dimension of relevance to this policy is that if the bullying and/or harassment become unbearable and an employee is forced to leave the job, he/she may be entitled to claim constructive dismissal under the Unfair Dismissals Acts 1977-2015. Furthermore, if one brings a claim under the unfair dismissals, employment equality and/or health and safety legislation, one cannot then be subjected to victimisation at work. The term 'victimisation' is used to describe unfair treatment of a worker by an employer because of some action the worker has taken. That is, if one brings a claim or gives evidence in proceedings against an employer under the Employment Equality Acts 1998-2015, the Safety, Health and Welfare at Work Act 2005 and/or the Unfair Dismissals Act 1977-2015, one should not be penalised for exercising one's rights under these enactments. It is also pertinent that if the bullying or harassment at work is so great that it causes one's health (physical or psychological) to suffer or be affected, one may also be entitled to bring a claim for compensation for personal injury via the civil courts.

Accordingly, this policy and its associated procedures are designed to commit this Association to the establishment and maintenance of a workplace environment that encourages and supports the right to dignity at work and enables all issues pertaining thereto to be dealt with in an appropriate manner.

Bullying and Harassment Policies

Statement of Policy

It is the policy of the Garda Representative Association to have in place agreed definitions of bullying and harassment that are clearly stated and available to all employees/representatives and representatives. Further, the policy is to have procedures, both informal and formal, in place that will apply when incidents of any of these unacceptable behaviours are alleged.

The Garda Representative Association acknowledges the innocence of any individual accused of bullying behaviour until proven otherwise, through the course of an internal investigation. All employees and representatives will be protected from intimidation, victimisation or discrimination for filing a complaint or assisting in an investigation. Retaliating against an employee for complaining about harassment is a disciplinary offence.

While this procedure is designed to assist genuine victims of harassment, you should be aware that if you raise complaints that are proven to be deliberately vexatious, you will become subject to disciplinary proceedings.

Definitions

The definition of bullying in the workplace is defined as follows: A person may be subject to bullying by a manager, colleague or employee under their supervision. Bullying or harassment can be perpetrated against an individual or group of employees and can take many forms, both obvious and more subtle or insidious.

Examples include:

- **Open aggression, threats, shouting, abuse and use of obscenities by a supervisor or work colleague(s).**
- **Social exclusion and isolation.**
- **Damaging someone's reputation by engaging in gossip or rumours**
- **Humiliating and ridiculing a person in front of others.**
- **Physical abuse.**
- **Intimidation.**
- **Picking on one individual as a butt for all jokes.**
- **Showing constant hostility through sustained exclusion of their company.**
- **Backbiting and sustained unfounded rumours about another.**
- **Always allocating the most unpleasant tasks to one person.**
- **The use of songs, poems and snide laughter as a form of ridicule about an individual.**
- **Undermining somebody's authority in the workplace.**
- **Setting impossible deadlines**
- **Persistently finding fault with a person's work and using this as an excuse to humiliate the person rather than trying to improve their performance.**
- **Excessive supervision and checking a person's work.**
- **Constantly taking the credit for another person's work but never the blame if things go wrong.**

This list gives an indication of what is meant by bullying and harassment. It is neither exhaustive nor prescriptive.

Bullying or harassment is not:

- **Legitimate management responses to pressurised situations that require immediate action or which arise from staff shortages, increased workload etc.**
- **Constructive and fair criticism of an employee's work or performance.**

Sexual Harassment

For the purposes of this policy the definition of sexual harassment is defined as follows:

- a) **Non-Verbal/Visual Harassment**
 - **Sexually suggestive or pornographic pictures or calendars, leering, offensive gestures or wolf whistling.**
- b) **Verbal Harassment**
 - **Unwelcome sexual advances.**

- Unwelcome pressure for social contact.
- Sexually suggestive jokes, remarks or innuendo.

c) Physical Harassment

- Unwelcome physical contact such as groping, pinching, patting or general unnecessary touching.
- Unwelcome fondling or kissing.
- Sexual assault or intercourse without consent (rape).

Examples of sexual harassment include:

- Sexually suggestive jokes or comments.
- Lewd comments about one's private life or physical appearance.
- Display of offensive materials.
- Groping or any unnecessary touching.

It is up to each individual to decide what behaviour is unacceptable, irrespective of the attitudes of others.

Our Policy

- a) Freedom from Sexual Harassment is a condition of work to which all our staff are entitled.
- b) We as Employers have a legal duty to see that this condition is adhered to and to deal with the perpetrator.
- c) Every complaint of sexual harassment will be investigated promptly by Management or a third party if deemed necessary.
- d) Employees/representatives guilty of sexual harassment must face the consequences through the Disciplinary Procedure up to and including dismissal.
- e) All complaints will initially be treated in the strictest confidence and with sensitivity on a formal or informal basis.
- f) Outside counselling/support will be provided where required.
- g) The alleged perpetrator will have the right of appeal.

Section 2: Policy and Responsibility

All complaints of bullying and harassment will be taken very seriously and will be followed through to resolution.

2.1 The Policy

It is the policy of the Garda Representative Association that all parties, incl. employees, the Association's Officers, Central Executive Committee members, Divisional and District Representatives, customers/clients and business contacts have the right to be treated with dignity and respect and to carry out their duties in an environment that is free from harassment, sexual harassment and bullying. Sexual harassment, harassment and bullying will not be tolerated within the Garda Representative Association and can lead to disciplinary action. Workplace bullying, harassment and sexual harassment

undermine professional working relations and adversely affect the service that the Garda Representative Association provides to its members, as it can lower morale and result in stress and absenteeism. It also has a negative effect on others, who may not have been directly subjected to bullying, harassment or sexual harassment, but who may have observed it or have been made aware of it.

The Garda Representative Association is committed to the development and maintenance of a positive working environment. An essential component of such an environment is treating colleagues with the respect and dignity that they deserve. A positive working environment places obligations on management, but it also places responsibilities on all parties involved with our Association to refrain from engaging in unacceptable behaviour and where it occurs to challenge and expose it. A positive working environment is not created merely through the introduction of policies on harassment, sexual harassment and bullying. Each individual has a responsibility to ensure that such policies have real effect in our workplace.

This policy is designed to protect all parties from harassment, sexual harassment and bullying perpetrated in the course of the Association's work, whether it is carried out by a manager or a work colleague, a service or goods provider, maintenance workers, professional contractors, customers/clients, a representative/volunteer, an executive or committee/sub-committee member or other business contact. Any such behaviour is totally unacceptable, and is – as outlined at Section 1 above - in many instances unlawful, and will not be tolerated in or by the Association. Sanctions associated with such inappropriate or unwanted behaviour may include termination, suspension, non-renewal of contracts or other sanctions as considered appropriate.

This policy is underpinned by the following rights and responsibilities of all:

- The right of all parties to work in an environment that is free from harassment, sexual harassment and bullying;**
- The right to fair and prompt procedures in dealing with allegations of harassment, sexual harassment and bullying and for allegations to be dealt with in as confidential a manner as is possible;**
- The responsibility of each individual to treat colleagues/associates with dignity and respect and to refrain from harassment, sexual harassment and bullying;**
- The responsibility of each individual to support this policy on harassment, sexual harassment and bullying, by bringing instances where such behaviour has occurred to attention at an early stage, not making spurious or frivolous complaints and co-operating with an investigation, whether as the aggrieved person, a witness or a person against whom a complaint has been made;**
- The responsibility of management to create a culture in the workplace that is based on dignity and respect for all, including acknowledging and valuing the diversity of employees/representatives across the aforementioned nine grounds as covered by the equality legislation.**

2.2 The Responsibility

All those with a relationship with the Garda Representative Association have a personal responsibility to help maintain a working environment that is free from harassment, sexual harassment, bullying and victimisation and in which the dignity and diversity of all individuals is respected. It is the responsibility of each employee and member of the Association to support this policy by assisting and empowering individuals who are (bona fide) affected, by bringing instances of such behaviour to attention at an early stage and by not making spurious, frivolous or vexatious complaints. All covered by this policy must comply with it by co-operating with the procedures set out, whether as a complainant, the person complained of or a witness. It is also incumbent on each person to examine their own behaviour to ensure that they are not offending colleagues, co-workers or any person with whom they have dealings in the course of their work.

Managers and those in positions of responsibility (e.g. Central Executive Committee members) have a particular responsibility for implementing this policy and for taking all necessary steps to ensure that harassment, sexual harassment and bullying do not occur. This can be done by:

- promoting a culture of respect for diversity across the aforementioned nine grounds in the workplace;**
- ensuring that this policy is clearly communicated to all affected, with particular emphasis on the responsibilities of all personnel in creating a harassment, sexual harassment and bullying free work environment;**
- explaining how the complaints procedure operates and directing parties to this policy;**
- explaining the policy and procedures to new members of staff and those coming into contact with the Association for the first time;**
- communicating the policy to non-employees such as representatives/volunteers, (sub) committee members, clients/customers and business contacts, by directing such parties to this policy;**
- leading by good example, by treating all staff, representatives/volunteers, service providers etc. with courtesy and respect;**
- being vigilant for signs of harassment and bullying, and taking action before a problem escalates;**
- responding sensitively to anyone who makes a complaint of harassment, sexual harassment and bullying and taking appropriate action;**
- explaining the procedures to be followed on receipt of a complaint and making every effort to have the complaint resolved informally where appropriate;**
- ensuring that anyone who makes a complaint is not victimised for doing so;**

- **keeping a record of all interviews and meetings regarding complaints;**
- **avoiding discussion of a case with anyone inside or outside of the Association, other than those to whom one must speak directly (incl. an investigator);**
- **maintaining confidences unless the interests/principles of natural justice require disclosure;**
- **monitoring and following up the situation after a complaint is made, so that the harassment, sexual harassment, bullying or victimisation do not recur.**

2.3 The Support Contact Person

Two Support Contact Persons will be appointed by the Association (from the staff and/or representative/volunteer cohort) to provide confidential information and support to staff, representative/volunteer members etc. who feel that they are being subjected to bullying, sexual harassment or harassment. One who feels that he/she is being bullied, sexually harassed or harassed may wish to avail of the assistance of a Support Contact Person, whose function is to listen, be supportive and to outline the options open to the individual. The Support Contact Person will explain the definitions of bullying/sexual harassment/harassment and the various elements of the procedure, to assist the individual to make an informed choice about what action, if any, he/she may wish to take. The Support Contact Person cannot act as an advocate or representative for the individual and may not approach the alleged perpetrator on his/her behalf.

If a person believes that they have been or are being bullied or harassed the contact person should be contacted as soon as possible, and in any case no later than six (6) months after the occurrence of the first incident or behaviour. This time frame applies under both the formal and informal procedure. Best practice suggests that where possible a complaint should be resolved through the informal procedure if this is acceptable to both parties. The objective of the informal procedure is to allow for problems to be resolved quickly with minimum stress and conflict.

The person must initially indicate to the contact person whether they want their complaint to be resolved through the informal or formal procedure, outlined below.

Section 3: Procedures for Making and Dealing with Complaints of Unacceptable Behaviour

Complaints of harassment, sexual harassment or bullying must be treated seriously by all and dealt with sympathetically and promptly. In as far as possible all complaints of discrimination and in particular complaints of harassment, sexual harassment or bullying will be handled in confidence. However, it is not possible to promise complete anonymity to persons who participate in an investigation, as the principles of natural justice require that a person who is alleged to have engaged in harassment, sexual harassment or bullying be given sufficient details of the allegations to adequately defend themselves.

3.1 Make Your Position Clear

Anyone covered by this policy who feels that they are being or have been subjected to harassment, sexual harassment or bullying should - where possible - let their objections be known to the person engaging in the unwelcome behaviour, as that person may be unaware of the effects of their actions. One may either approach the alleged perpetrator directly to make that person aware that the offensive behaviour is unwelcome or one may request a trusted colleague to approach the person on their behalf. Sometimes the alleged perpetrator is genuinely unaware that their behaviour is unwelcome and causing distress. An informal discussion will often be sufficient to alert the person concerned of the effects of their behaviour and can lead to a greater understanding and an agreement that the behaviour will discontinue. Before deciding what course of action, if any, to take, one may wish to discuss the matter on a confidential basis with a third party such as the Association's Support Contact Person, a supervisor or manager or a trusted colleague. An effective third party can help clarify if a complaint is warranted, and give advice on the options to be considered.

The informal procedure is based on the recognition that often, persons engaged in bullying or harassment (or sexual harassment) may stop when they realise their victim is no longer prepared to tolerate the situation. Other persons may respond to an allegation of bullying by trivialising the complaint in order to make it appear that the victim is overreacting. The bully may joke about the behaviour complained of and insist other people don't find such behaviour offensive.

In such cases it should be pointed out that nobody is obliged to tolerate behaviour simply because other people do not find the behaviour objectionable and that one has the option of making a formal complaint.

Any staff member or representative who feels that s/he is being bullied, harassed or sexually harassed should keep detailed notes of each incident, including dates, times and their feelings at the time, as they will need to refer to specific incidents in the context of these procedures.

The object of this informal approach is to minimise the conflict and stress for the individuals involved. If the complainant indicates their intention to refer their complaint via the informal procedure, the formal procedure will always remain open to them if they are not satisfied with the outcome of the informal procedure.

- Any employee or representative who believes s/he is being bullied should explain clearly to the alleged perpetrator(s) that the behaviour in question is unacceptable.
- If the employee has a problem with a direct approach, s/he should seek help through 'A CONTACT PERSON' on a confidential basis e.g. Manager, Personnel Officer, Supervisor. The contact person will outline the options open to the employee concerned (mediation/informal meeting).
- The contact person may be required by the complainant to be present when facing the alleged perpetrator(s) and such a meeting should be confidential, non-confrontational and set out to resolve the issue in a low-key manner if possible, via mediation style meeting.

- However, the complainant may decide to take a ‘formal’ approach from the outset, bypassing the informal procedure.
- If the alleged perpetrator is your Supervisor, Manager or the ‘Contact Person’ named below, you should direct your complaint to Senior Management or the Owners.

Formal Procedure

If, after the informal stage, the bullying, harassment or sexual harassment persists or if it is not appropriate to resolve the problem informally due to the severity of the bullying or harassment, the following procedure must be invoked.

- The complaint should be clearly set down in writing, giving details of actual incidents rather than attacking the character of the person against whom the complaint is being made.
- The written complaint should be signed and submitted to the Assistant General Secretary. Both the complainant and the alleged perpetrator will then be formally advised of the steps involved in the formal procedure.

The complaint may be made directly to the Assistant General Secretary verbally or in writing. Where it is done verbally, a subsequent written complaint must be supplied before the initiation of any investigation. Written complaints should contain:

- details of the person or people against whom the complaint is being made;
- full details of the alleged act or acts constituting the behaviour complained of including dates, times and places;
- a list of witnesses (if any);
- details of whether the complainant let their objections be known and whether an informal resolution was invoked in the past;
- an indication of what would satisfactorily resolve the complaint, if the complainant wishes to offer such an indication.

On receipt of the written complaint, the Assistant General Secretary shall undertake a preliminary screening, to decide if the alleged behaviour, which is the subject of the complaint, falls within the definition of bullying, harassment or sexual harassment as outlined in this policy. The rationale for this provision is that some complaints referred under the policy may not fall within the definition of bullying, harassment or sexual harassment and may be more appropriately dealt with under the Grievance Procedure. The Assistant General Secretary shall acknowledge the complaint within ten working days and notify the person complained of within the same timeframe. This correspondence will state that there are two options available in attempting to resolve the complaint, either mediation or investigation (see ‘Sample Correspondence’ at the

Appendix). Both parties to the complaint must respond to the Assistant General Secretary's correspondence, stating their preferred method of resolution, within ten working days.

- **The alleged perpetrator will be notified in writing that an allegation has been made against them. They will be given a copy of the statement of complaint and advised that they will be given a fair opportunity to respond to the allegations.**
- **The complaint should then be examined by a designated impartial person with a view to determining the appropriate course of action.**
- **Arrangements will be made to carry out an investigation as soon as possible. For the duration of the investigation Management may, if appropriate, adjust the working arrangements of the parties involved, if possible. Such adjustment will carry no inference as to the eventual outcome of the procedure.**

The investigation will be undertaken impartially as thoroughly, sensitively and as confidentially as possible with regards to the rights of both parties. The investigation will be governed by terms of reference, which will be set out before the investigation starts.

All parties may provide the names of witnesses, and these witnesses will be expected to participate in the investigation if requested to do so. It is up to the investigator to decide if any of the named witnesses will participate in the investigation. Any person that does participate in the investigation will at all times have the right to be accompanied by a colleague at any meeting held during this formal procedure.

The contact person or investigator may not be called as a witness at any point during any investigation.

As detailed below the rules of natural justice will underpin any investigative procedure:

- a) **the right to be heard**
 - **Details of the complaint or allegations will be outlined.**
 - **Details of supporting information or documentation will be outlined.**
 - **All parties will have the right to respond to the decision maker in their own defence prior to a decision being made.**
- b) **a person should not be a judge in their own cause – the rule against bias**
 - **The decision maker will have an open mind with no pre-judgement.**
 - **Nothing will prejudice the view of the decision maker.**
 - **The decision maker will not have a personal interest in the decision they are making – they will be impartial.**

3.2 Complaints: Informal to Formal

Complaints under this policy and procedure can be dealt with via the informal and/or formal route. An informal approach is usually where a complainant brings the matter to the attention of a supervisor or trusted colleague and with their assistance the matter is resolved. A formal approach is where the complainant makes a written complaint to the

Association's Assistant General Secretary (Note 1) and the matter is dealt with either through mediation or investigation.

The key steps or features of the Association's policy and procedures in this area are that:

- **One who considers that they are being harassed, sexually harassed or bullied should, where possible, make it clear to the offending person or people that the behaviour is offensive. The objective of this approach is to resolve the difficulty with the minimum of conflict and stress for the individuals involved.**
- **The complainant may seek the advice or support of a third party (e.g. Support Contact Person, trusted colleague).**
- **The complainant should keep a record of each incident as it occurs and request witnesses, if any, to note the details.**
- **The complainant may report the matter to any supervisor or to the Assistant General Secretary (Note 1) and may give an indication to that party of what would satisfactorily resolve the complaint after the party approached has outlined the range of options available.**
- **If requested by the complainant, availing of the informal route, one should approach the person complained of by way of a confidential, non-confrontational, non-judgemental discussion, with a view to resolving the issue in an informal low-key manner.**
- **Complaints which do not amount to a disciplinary or criminal offence may be resolved informally and amicably with the consent of the complainant and the person complained of as soon as possible.**
- **The person complained of should be prepared to listen to the complaint in full and be given an opportunity to respond.**
- **The person complained of may seek the advice or support of a third party (i.e. Support Contact Person, trusted colleague).**
- **In all cases where complaints of this nature are brought to one's attention, a note of same should be made for one's own records, as these notes may be required in subsequent investigations of the complaint.**
- **The complainant may decide, for whatever reason, to bypass the informal procedure. Choosing not to use the informal procedure will not reflect negatively on a complainant in the formal procedure. Related thereto, should one find that the informal route has failed to progress matters, the formal route may then be taken.**

3.3 The Formal Process

If a complainant opts to take the formal route they should report the matter to the Assistant General Secretary (Note 1). The complaint may be made directly to the Assistant General Secretary verbally or in writing. Where it is done verbally, a subsequent written complaint must be supplied before the initiation of any investigation. Written complaints should contain:

- details of the person or people against whom the complaint is being made;
- full details of the alleged act or acts constituting the behaviour complained of including dates, times and places;
- a list of witnesses (if any);
- details of whether the complainant let their objections be known and whether an informal resolution was invoked in the past;
- an indication of what would satisfactorily resolve the complaint, if the complainant wishes to offer such an indication.

On receipt of the written complaint, the Assistant General Secretary shall undertake a preliminary screening, to decide if the alleged behaviour, which is the subject of the complaint, falls within the definition of bullying, harassment or sexual harassment as outlined in this policy. The rationale for this provision is that some complaints referred under the policy may not fall within the definition of bullying, harassment or sexual harassment and may be more appropriately dealt with under the Grievance Procedure. The Assistant General Secretary shall acknowledge the complaint within ten working days and notify the person complained of within the same timeframe. This correspondence will state that there are two options available in attempting to resolve the complaint, either mediation or investigation (see ‘Sample Correspondence’ at the Appendix). Both parties to the complaint must respond to the Assistant General Secretary’s correspondence, stating their preferred method of resolution, within ten working days.

3.4 The Mediation Option

When mediation is chosen by both parties, an external professional mediation service will be made available (by the Association) for this purpose. Mediation is a voluntary process that can only be undertaken if both parties agree. It can also end at any stage if either party decides to do so. Where both parties voluntarily agree to mediation then the Assistant General Secretary will organise an external professional mediation service to contact both parties directly and will inform both parties that mediation is being pursued and that they will be contacted directly by the appointed mediator. The only information that will be passed to the mediation service is the name and contact details of the parties involved. The conduct of the mediation process will be a matter for the mediator and the parties concerned. When the matter has been resolved through mediation no further action will be taken.

There are three possible outcomes to the mediation process:

- 1. resolution has been reached and no further action is required;**
- 2. resolution cannot be reached in this instance. It is not a matter for the mediator to recommend that the matter be investigated;**
- 3. resolution may be reached if certain actions are carried out in this instance.**

With reference to the third outcome, the mediator may, with the consent of both parties, advise the Assistant General Secretary of the nature of what is being sought.

3.5 The Investigator

If the matter proceeds to investigation, the Assistant General Secretary will select a suitable external investigator that should ideally be agreeable to both parties. The person selected should have appropriate training and experience and be familiar with the relevant legislative framework and the organisation's policy and procedures. The investigation should be conducted thoroughly, objectively, with sensitivity, utmost confidentiality and with due respect for the rights of both the complainant and the person complained of. The investigator will report their findings within 42 days of formally undertaking the assignment. The investigator may appoint people to assist in the investigation. Neither the investigator nor his/her assistants should be connected with either party to the process in a personal way. When an investigation has concluded the Assistant General Secretary furnish both parties with the investigator's report and inform both parties in writing of the findings of the investigation. Extensions to the time limits outlined are acceptable once there is clear justification and both the complainant and the person complained of have been advised accordingly. The investigator shall clearly indicate to both parties that the investigation must follow fair procedures and be mindful of the rights of both the complainant and the person against whom the complaint has been made. During the course of the investigation the investigator will be impartial and will not indicate their views with regard to the credibility or otherwise of the complaint itself, or the evidence given by the complainant, the person against whom the complaint is made or any witnesses. The investigator will refuse to be drawn into speculation with any party as to the likely outcome of the investigation and will maintain a record of all interviews or meetings held during the investigation.

3.6 The Investigation

Where the matter is to be dealt with by an investigation, the investigation will be conducted as expeditiously as practicable and without inordinate delay; and may facilitate referral to mediation if requested by both parties. If agreement is not reached and the mediator considers that the matter cannot be resolved by mediation, the mediator shall write to the parties and to the Assistant General Secretary to that effect. The matter may then be referred to an investigator to commence or resume an investigation. An investigation will establish the facts or credibility of the complaint (within the parameters of best practice and associated legal considerations), for the purpose of determining whether there is a case to answer. The investigation is a fact-gathering preliminary step

in the process, as opposed to one that results in a final decision in respect of the allegation(s). The investigation's only conclusion can be whether there is a case that requires the disciplinary process to be invoked. The investigative report will include a summary of the facts and an explanation as to why the investigator feels that there is sufficient evidence to warrant the matter being referred to a disciplinary hearing. Where the case to be answered or the allegations are serious (e.g. there is a possibility that the employee will be dismissed), this will be made clear to the employee or relevant party in writing at the outset of the disciplinary process.

Whilst formal findings or conclusions on the subject matter under investigation shall be presented (to the Assistant General Secretary) by the investigator – if required, they may be challenged at a subsequent (disciplinary) hearing - when the full suite of the principles of natural justice and fair procedures shall apply. Subject to the rules of natural justice, all reports and correspondence pertaining to the matter must be treated with the utmost confidentiality and will not be available to any person who does not have direct involvement in the case. The complainant and person complained of will be asked not to discuss the case with any other party, though this does not preclude discussing the case with one's medical practitioner or any other professional or family member or nominated friend or colleague.

The person complained of will:

- be advised in sufficient detail of the allegations made against them and be given a copy of the complainant's written statement in advance of meeting the investigator;**
- be given a reasonable period of time to consider the allegations which may vary, depending on the nature and type of incident(s);**
- be given an opportunity to comment on the alleged incident(s) from their perspective and to comment on the statement of the complainant;**
- be given an opportunity to answer the allegations in writing; and**
- be asked whether there were any witnesses or evidence available in relation to the alleged events.**

The complainant will be provided with a copy of the statement of the person against whom a complaint has been made. The complainant will be given an opportunity to comment on the statement(s). Both parties will be given an opportunity to comment on the content of witness statements (if any). On completion of the investigation, the investigator shall submit their report to the Assistant General Secretary. The report shall include a conclusion, with clear justifications for the selected option, indicating that:

- (i) there is a case to be answered;**
- (ii) there is no case to be answered**

Where there is ‘no case to be answered’, what are termed ‘bona fide’ complaints will not be viewed as malicious. A malicious complaint will generally be treated as serious misconduct under the Association’s disciplinary procedure. If a complainant withdraws a complaint during the investigation or refuses to co-operate in the investigation, the investigator may decide to end the investigation and make a finding of ‘no case to answer’. However, if the matters complained of are very serious or criminal in nature, the withdrawal of the complaint will not be accepted. In the event of non-co-operation by any party to the process, the investigation will still proceed and the investigator will make a determination on the basis of the available evidence.

On receipt of the investigation report, the Assistant General Secretary shall satisfy her/himself that all appropriate steps have been taken and that a thorough and impartial investigation has been carried out. Both parties should be furnished with a copy of the investigator’s report and advised in writing of the outcome and the further action (if any) that will be taken. Further action will be determined by whether the complaint that was subject to the investigation has given rise to the conclusion that there is a case to be answered. If so, the matter shall be dealt with under the Association’s disciplinary procedure, via a *de novo* hearing, conducted in line with the principles of natural justice.

The Investigator

- The investigator will be appointed by the Assistant General Secretary. Where an external facilitator is engaged to carry out the investigation, it shall be the function of the external facilitator to appoint the investigator or investigative team. However, all investigations will be carried out in line with this policy irrespective of the composition of the investigative team.
- The investigator will conduct separate interviews with the complainant and the alleged perpetrator to establish the facts surrounding the allegations.
- Both the complainant and alleged perpetrator have the right to representation if they so choose.
- The investigator will initially meet with the complainant to hear the complaint in detail and establish the facts of the complaint. The investigator will then prepare and agree a record of the meeting (minutes), which the complainant will be asked to sign and date.
- A copy of the agreed complaint will then be forwarded to the alleged perpetrator to allow them respond to the allegations. The investigator will then meet with this individual to record their response to the allegation. The investigator will then prepare and agree a record of the meeting (minutes), which they will be asked to sign and date.
- The investigator will interview any witnesses to the alleged incidents and other relevant persons. Confidentiality will be maintained as far as possible. Witnesses will respect the privacy of the parties involved by refraining from discussing the allegations with colleagues or persons within or outside of the organisation.

- All copies of records that the investigator will use to rely on to reach a decision must be available to the complainant and the alleged perpetrator in advance. The investigator will give all parties a time frame to in which to make comments on any relevant documents and if no comments are made within this time frame it will be assumed that no comment is to be made.
- The investigation will be completed as soon as possible after the receipt of the written complaint, unless there are exceptional circumstances, e.g. absence of a key witness on annual leave. Where a delay is anticipated, both parties to the dispute will be notified and an indicative date for completion of the investigation provided where possible.
- The investigator will provide to the Assistant General Secretary a written report of the investigation, which will include the findings of the investigator. Both the complainant and the alleged perpetrator will be given a copy of this report. Both parties will have five (5) days from the date on which the report was given to them to submit comments in writing on the findings.

Note 1: In the event that an officer of the Association has a role in a case (e.g. witness, complainant, accused) responsibilities associated with the investigation process under this policy shall be elevated to the next highest level. Should all officers have a role, this responsibility shall revert to the Association's Executive. The role of the Assistant General Secretary is equivalent to that of the 'Designated Person'(D.P.) as provided for in the Health and Safety Authority's '*Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying and Harassment in the Workplace*'. That is, that the D.P. be a senior member of staff who oversees complaints that have been referred to him/her. He/she shall ensure that complaints are dealt with in a timely and efficient manner and ensure that all parties have copies of this policy and any other relevant information.

Resolution

- If the investigator finds, on the basis of the information collected, that the complaint is well founded and the alleged bully or harasser has a case to answer, the matter will be progressed further through our disciplinary procedure.
- Appropriate non-disciplinary actions may be recommended (e.g. counselling).
- Disciplinary action may include suspension without pay or dismissal.
- Both parties will be advised of the outcome of the investigation in writing.

Monitoring

- The situation will be closely monitored to ensure the bullying or harassment (where it is found to have happened) has stopped.
- It will be considered a disciplinary offence to penalise or retaliate against a colleague for bringing a complaint of bullying, harassment or sexual harassment.

- Likewise, after an investigation where a complaint has not been upheld, management, and parties concerned, will seek to take all reasonable steps to resolve any matters raised in the course of the investigation.
- Management will also take reasonable steps to restore the reputation of the person against whom the complaint was made and ensure their career does not suffer as a result of the complaint.
- A person who is deemed to have made a malicious or vexatious complaint will be subject to disciplinary action through our disciplinary procedure.
- A written record will be kept of all hearings, correspondence and interviews which take place during the course of the investigation, appeal and any other follow up actions.

A Contact Person, as required under the Safety, Health & Welfare Act 2005 and the HSA Code of Practice 2007, will be appointed for each unit. A copy of this policy will be placed on the staff noticeboard of every unit and will contain the details (name & contact number) of this Contact Person.

If the Contact Person is involved in any way with the complaint then the employee should raise the complaint directly with the Contact Person's line manager or area manager.

***** This policy may change over time. If any changes are made you will be advised in writing of any such changes.***

APPENDIX: SAMPLE CORRESPONDENCE

Sample acknowledgement to the Complainant

To: _____

Re: Complaint of unacceptable behaviour under the Garda Representative Association's Dignity At Work policy

I acknowledge receipt of your complaint dated _____ and wish to inform you that I have notified the person complained of that you lodged a complaint about their behaviour.

This matter may now be dealt with in two ways.

Firstly, with your permission and with the permission of the party/parties complained of, I can refer this matter to an external mediator. If both of you agree to this option, you will be contacted directly by a mediator. The mediator will be tasked with helping you both to resolve the issues that have led to your complaint.

Secondly, if either you or the person you complained of does not wish to pursue mediation then I will have this matter investigated. In this case you will be contacted by the appointed investigator.

Please respond to this correspondence within five working days stating your preferred option.

Assistant General Secretary

APPENDIX: SAMPLE CORRESPONDENCE (cont.)

Sample notice to the person complained of

To: _____

Re: Complaint of unacceptable behaviour under the Garda Representative Association's Dignity At Work policy

I wish to inform you that a complaint of unacceptable behaviour has been alleged against you by _____ on (date). It is alleged that you (brief summary of allegations). This matter may now be dealt with in two ways.

Firstly, with your permission and with the permission of the party/parties making the complaint, I can refer this matter to an external mediator. If both of you agree to this option, you will be contacted directly by a mediator. The mediator will be tasked with helping you both to resolve the issues that have led to this complaint.

Secondly, if either you or the person making the complaint does not wish to pursue mediation then I will have this matter investigated. In this case you will be contacted by the appointed investigator.

Please respond to this correspondence within five working days stating your preferred option.

Assistant General Secretary

**Garda Representative Association
Floor 5
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D07 XH2D**