

# **ELECTORAL OFFICE FOR NORTHERN IRELAND**



## **HARASSMENT AND BULLYING POLICY AND PROCEDURES**

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## 1. INTRODUCTION

- 1.1 The Electoral Office for Northern Ireland (EONI) is fully committed to promoting a good and harmonious working environment where each individual is treated with respect and dignity. No individual should feel threatened or intimidated because of his or her age, disability, marital or civil partnership status, political opinion, race, religious belief, sex (including gender reassignment), sexual orientation or trade union membership. All employees must comply with this policy.
- 1.2 Any form of unwanted, unreasonable and offensive conduct, including harassment and bullying, that may affect the person's dignity, are unacceptable and will not be tolerated or condoned. EONI will take all reasonable and practical steps to prevent the occurrence of these forms of unwanted conduct, in the interests of the well-being and morale of the staff.
- 1.3 The aim of this policy is to prevent harassment and bullying by communicating clearly the type of behaviour that is not acceptable in EONI and the action that will be taken should it occur. The policy ensures that every member of staff understands his or her right to dignity at work, and the right to complain about unwanted, unreasonable and offensive conduct, should it occur.
- 1.4 All those with management responsibilities in EONI must ensure that unwanted, unreasonable and offensive conduct does not occur. Furthermore, management must strive to be responsive and supportive of any member of staff, visitor or contractor who complains of such misconduct. This will include providing full and clear advice on the procedure to be adopted, guaranteeing confidentiality in all cases and ensuring that, once a complaint has been upheld, there is no further problem or victimisation. Where a complaint is brought to the attention of management, prompt action will be taken.
- 1.5 It is the responsibility of all staff to ensure that their behaviour is appropriate and does not contribute to the creation of an environment where, for example, harassment or bullying is condoned or encouraged. Staff may challenge unwanted, unreasonable and offensive behaviour where this is not distressing or uncomfortable. Alternatively, staff may bring it to the notice of management, or support any colleague who is being subjected to such misconduct. Unacceptable behaviour at work will be treated by this organisation as misconduct, up to and including gross misconduct warranting dismissal.

### **Examples of Harassment**

- 1.6 Sexual, sectarian and racial harassment, harassing a person on account of disability or harassing someone on grounds of sexual orientation or age is unlawful under the sex discrimination, fair employment, race relations, disability, sexual orientation and age legislation. Such action could also constitute commission of an offence, a breach of health and safety legislation and could give rise to civil liability for damages. The following list is not exhaustive but examples of harassment include:
  - Physical conduct ranging from touching to serious assault
  - Verbal and written harassment through jokes, racist, sexist or sectarian remarks,

homophobic comments, comments about a person's disability, offensive language, gossip and slander, sectarian songs, mobile telephone ring tones, threats, letters, emails

- Visual displays of posters, computer screen savers, downloaded images, graffiti, obscene gestures, flags, bunting or emblems, or any other offensive material
- Isolation or non-co-operation at work, exclusion from social activities
- Coercion, including pressure for sexual favours, pressure to participate in political or religious groups
- Intrusion by pestering, spying, following or persistent questioning in an attempt to find out information about a person's private life;

If any of the above behaviour is not related to an equality ground covered by anti-discrimination legislation, this could amount to bullying.

### **Examples of Bullying**

1.7 Bullying is defined as the persistent use of offensive, intimidating, malicious or insulting behaviour, which undermines a person's self esteem, and confidence. Bullying at work can take many forms. The following are just some of the most common ways:

- Bullies may use open aggression, threats, shouting, abuse or obscenities towards their target;
- Bullies may subject their target to humiliation or ridicule, belittling his or her efforts, often in front of others;
- Bullies may subject their target to unwarranted excessive supervision, monitoring everything he/she does, being excessively critical about minor things;
- Bullies may overrule their target's authority
- Bullies may remove whole areas of work responsibility from their target, reducing his/her job to routine tasks which are well below his/her skills and capabilities;
- Bullies may impose deliberately unrealistic targets and deadlines without reasonable discussion and, where possible, agreement, or may change the work remit without telling him/her.

Equally, one incident, if sufficiently serious, may be regarded as unacceptable and within the bounds of this policy.

1.8 Bullying may also take more subtle, insidious forms which gradually wear a person down over a period of time; for example, fault finding, undermining, twisting everything their target says or does, using sarcasm in a derogatory way, isolating or ignoring in work, excluding from social activities.

1.9 Bullying behaviour may occur in front of other employees who are often too afraid of becoming the next target to do anything to support the person being bullied. Often, however, the bullying takes place where there are no witnesses and the victim is afraid to make a complaint through fear of not being believed or of the bullying getting worse.

1.10 Bullying can be carried out by a manager on a subordinate or a subordinate on a manager, between staff of equivalent grades, by one group of staff to another individual member of staff or between staff and visitors or contractors.

## **What is not Bullying?**

- 1.11 Legitimate, constructive and fair criticism of an employee's performance or behaviour at work is not bullying. Isolated incidents of offensive behaviour such as abruptness, sharpness or rudeness, while to be condemned, would not automatically be described as bullying. Many of these are legitimate employment relations difficulties which, wherever possible, should be dealt with in the first instance by letting the person know how their behaviour has made you feel.
- 1.12 In stating this policy EONI is not attempting to hinder good working relationships or friendly and welcome office banter, nor is it trying to standardise how people should relate to each other. Rather it is seeking to distinguish between behaviour which is acceptable and that which is unacceptable and which may disrupt a good and harmonious work environment.

## **2. WHAT IS UNACCEPTABLE BEHAVIOUR?**

- 2.1 The following definition can be used to describe inappropriate behaviour or misconduct that may impact on the person's dignity at work.

2.2

**Where one person or persons engage in unwanted conduct in relation to another person which has the purpose or effect of violating that person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person. The conduct shall be regarded as having this effect only if, having regard to all the circumstances and in particular the alleged victim's perception, it should be reasonably considered as having that effect.**

***[Harassment & Bullying in the Workplace 2006: Equality Commission/LRA]***

- 2.2 On the one hand misconduct can relate to aspects of social identity as protected by existing anti-discrimination legislation (for example, harassment on grounds of age, disability, marital status, dependency, political opinion, race, religious belief, sex or sexual orientation). In these cases the misconduct typically would be regarded as one form of direct discrimination where the person has been treated less favourably on the grounds of one or more protected characteristics.
- 2.3 On the other hand, unwanted, unreasonable and offensive conduct may be unrelated to social identity (for example, bullying). On these occasions the anti-discrimination legislation may not be relevant but the principles contained in the EONI's common law duty of care remain significant.
- 2.4 To simplify, where the misconduct relates to an aspect of social identity then it is often referred to as **harassment**. Where the misconduct is not based specifically on an aspect of social identity but is based, for example, on an abuse of power, then it is often referred to as **bullying**. Both types of misconduct are addressed by this policy.
- 2.5 Unwanted, unreasonable and offensive conduct can occur in any workplace and at any level. It detracts from a productive working environment and can affect health,

confidence, morale and performance. It can involve not only staff but also members of the public, contractors etc., either as wrongdoers, victims or as those who witness or know about the misconduct.

- 2.6 Serious forms of misconduct, including criminal assault, are often clearly recognisable. Other examples of unwanted, unreasonable and offensive behaviour may involve less overt abuses of power and appear in far more subtle guises, including, for example, exclusion or isolation.
- 2.7 At times, the misbehaviour can be unintentional on the wrongdoer's part. However, it must be emphasised that it is the impact of the unwanted conduct on the recipient, provided that the conduct is reasonably capable of producing that impact and not the intention of the wrongdoer that is significant in terms of both the legislation and the operation of the EONI policy.
- 2.8 Furthermore, what one person may find acceptable, another person may find distressing; for example one person's light hearted comments may affect another person's dignity. Unwanted, unreasonable and offensive behaviour should not continue after the recipient has made it clear that s/he finds it unacceptable. .
- 2.9 The policy will not only afford protection from unwanted conduct but will also ensure that any member of staff who makes a complaint or assists a complainant in good faith in respect of alleged misconduct will be protected against **victimisation**. Victimisation occurs where a person who has made a complaint or assisted a complainant or is suspected of doing so under this policy is treated less favourably than others as a consequence.
- 2.10 Inappropriate behaviour both within the workplace and at other venues during work-related social events can lead to complaints of harassment and bullying. Recent tribunal cases have made it clear that work related events are considered under the law as a continuation of the workplace and that harassment or bullying which occurs at work related social events such as Christmas parties, can constitute unlawful discrimination in the same way as if the harassment or bullying had occurred in the workplace. Complaints of any such inappropriate behaviour will be subject to the provisions of this policy.

### **Other Legal Redress**

As explained in Annex A there are various legal remedies available for those who are subjected to harassment or bullying in the workplace. Where the main equality or anti-discrimination legislation is not relevant then legal redress may be possible as follows:

- criminal proceedings for assault (including sexual assault); and/or
- contravention of health & safety legislation.

### **3. RIGHTS, ROLES AND RESPONSIBILITIES**

#### **All Staff**

- 3.1 All staff have a right to be treated with respect and therefore harassment or bullying, in any guise, will not be tolerated or condoned and staff have a right to complain about it should it occur. Staff have the right to expect that complaints will be dealt with sensitively, promptly and confidentially. The procedures to be used to progress a complaint are set out in this document beginning at Section 4.
- 3.2 This procedure does not replace or detract from the right to pursue any of the other remedies that may be available (*see Annex A*). However, in accordance with the statutory dispute resolution procedures, individuals must normally have submitted their complaint in writing to the Human Resources Officer and have allowed at least 28 days for the employer to respond before presenting a claim to a tribunal.
- 3.3 Victimisation is a form of discrimination and such behaviour will not be tolerated. Staff making complaints and those who give evidence or information in connection with a complaint should not be subjected to any form of victimisation. Victimisation may cover a wide range of actions from unpleasantness from colleagues, to an adverse impact on working conditions. Victimisation can itself lead to formalised procedures being invoked as it is contrary to fair employment, sex discrimination, disability and race legislation. Victimisation will be dealt with seriously, promptly and confidentially.
- 3.4 All staff irrespective of grade should:
- ensure a working environment exists in which the dignity and diversity of all employees is respected;
  - be aware of the serious and genuine problems which unacceptable behaviour can cause and ensure that their behaviour is beyond question;
  - inform their line manager if it becomes apparent that another member of staff is being harassed or bullied;
  - co-operate and assist where possible in the timely progress of informal complaints;
  - co-operate fully with the investigation of formal complaints, failure to do so may result in disciplinary action being taken.
- 3.5 Staff are also reminded that they should treat everyone with whom they come into contact in the course of their employment (including members of the public) fairly irrespective of sex, marital status, religious belief, political opinion, disability, race, age, sexual orientation, transsexualism and membership/non membership of a trade union.

#### **Managers and Supervisors**

- 3.6 Managers and supervisors have a duty to implement this policy and they should:
- Proactively promote the EONI Equal Opportunities Policy and Harassment & Bullying procedures to their staff eg, through regular team briefings.
  - Be responsive and supportive to any member of staff who makes an allegation of harassment, provide clear advice on the procedure to be adopted, maintain confidentiality and seek to ensure that there is no further problem of harassment or victimisation while a complaint is being dealt with or after it has been resolved;

- Set a good example by treating all staff, clients and customers with dignity and respect;
- Be alert and proactive to unacceptable behaviour and take appropriate action in accordance with our policy and procedures;
- Ensure that staff know how to raise harassment problems.

3.7 Where managers/supervisors are aware of acts of unwanted conduct (harassment or bullying) but fail to take appropriate action they may themselves be subject to disciplinary action.

### **Designated Advisers**

3.8 Should staff fail to co-operate with management in the carrying out of their responsibilities in this area e.g. a member of staff continues to make jokes of a sexual/sectarian nature when asked not to do so, the advice/assistance of a more senior officer and/or the HR Officer should be sought.

3.9 Designated Advisers have been appointed to provide information and guidance to both victims of harassment/bullying and persons accused of harassment/bullying. The Designated Adviser can provide advice and support on the options available to resolve the situation but can not recommend a particular course of action to take unless the information is judged to be so serious that formal action is required.

3.10 The same Designated Adviser can only provide guidance, support and assistance for one party involved in a complaint. Once it is clear that there may be a conflict of interest individuals may be referred to another Adviser, an appropriate line manager or a Trade Union Representative. The Staff Welfare Officer can also provide advice to both the complainant and the alleged wrongdoer *[see Annex B]*.

### **Investigating Officer**

3.11 An Investigating Officer will be appointed by the Assistant Chief Electoral Officer<sup>1</sup> to carry out a formal investigation and will interview the parties to a complaint and all relevant witnesses. Following all necessary interviews the Investigating Officer will prepare a written report of the facts and evidence found during the investigation. The report will be submitted through the HR Officer to the Assistant Chief Electoral Officer for consideration on whether or not the complaint should be considered in accordance with the disciplinary procedure.

### **The HR Officer**

3.12 The HR Officer has a responsibility to ensure that the policy is followed fairly and consistently which will involve:

- Ensuring the policy and procedures are communicated to all staff
- Advising managers and staff on the application of the policy
- Ensuring the effective implementation of the policy
- Monitoring complaints and how they have been resolved in order to ensure that consistent standards are being maintained
- Reviewing and proposing amendments to the policy as necessary
- Maintaining a written record of all formal proceedings including the investigation.

<sup>1</sup> Chief Electoral Officer where the alleged wrongdoer is the Assistant Chief Electoral Officer.

## 4. INTERNAL COMPLAINT PROCEDURES [See flowchart Annex D]

### Outline Procedures

4.1 EONI operates two independent procedures for resolving complaints brought under this policy. In deciding which procedure to follow, the complainant may seek advice from a Designated Adviser, Trade Union representative or the HR Officer.

- **Informal Procedure** where the complainant, possibly with the help of a Designated Adviser or appropriate line manager, deals with the issue without any recourse to the formal procedure.
- **Formal Procedure** a process where, following investigation of the complaint, action may be taken in accordance with the EONI disciplinary procedures.

When a complaint has been made, regardless of whether it has been made using the informal or formal procedure, it will be dealt with sensitively and as quickly as possible, ensuring that the rights of the alleged wrongdoer are protected as well as those of the complainant.

4.2 As soon as an individual considers they are the subject of harassment or bullying they must decide how they want the matter dealt with. In many cases difficulties can be dealt with informally with no recourse to the formal procedure. However, if the complainant wishes, the matter will be dealt with as a formal complaint.

4.3 Individuals who consider they are being harassed or bullied should act as soon as reasonably practicable. It is recognised that in some circumstances the individual may be distressed or for other reasons unable to act immediately. Where possible, a record of incidents should be kept including dates, times and the names of any witnesses. Having said this, a person should not be deterred from complaining nor delay making a complaint simply because he/she has no written records. A complaint can still be raised even without such evidence.

4.4 It will always be assumed that complaints have been made in good faith unless there is evidence to the contrary. If the evidence, following an investigation, supports the conclusion that an allegation was deliberately false and was not due to a misunderstanding or to a genuine mistake, then this will be treated as a serious matter and may lead to disciplinary action against the complainant.

### Complaints: Contractors etc

4.5 Complaints in relation to contractors or consultants may be considered under these procedures following informal liaison. All contractors and consultants engaged by EONI will be provided with a copy of the Harassment & Bullying Policy and Procedures.

### Data Protection

4.6 Under the Data Protection Act employees have the right to access information held on them and this may, in certain circumstances, apply to information provided in connection with harassment or bullying complaints. On request, EONI will consider supplying any information held about the individual making the request. The consent of the person who supplied the information will normally be sought before any disclosure is made. However, if consent is not given to disclose information provided by one individual about another, and EONI considers it necessary to comply with the request for information, anything which would identify the supplier of the information as the source, will normally be deleted.

## 5. INFORMAL PROCEDURE

- 5.1 This procedure is appropriate where the employee simply wants the behaviour to stop. Normally the expectation would be to attempt to resolve the matter using the informal procedure, however, the seriousness of the complaint may prevent this. Using the informal procedure does not affect the individual's right to subsequently invoke the formal procedure.
- 5.2 A member of staff can seek to resolve matters informally, either directly or through a third party using a number of means, including:
- approaching the alleged wrongdoer with, if desired, the support of a Designated Adviser, a colleague or a trade union representative;
  - approaching the alleged wrongdoer, making it clear to the person(s) that the behaviour in question is unreasonable, offensive, is not welcome and should be stopped immediately;
  - approaching the alleged wrongdoer with the support of a line manager<sup>2</sup>;
  - asking the Designated Adviser to meet with the alleged wrongdoer in order to move towards an informal resolution;

When a line manager handles a complaint informally they can seek advice/guidance from a Designated Adviser or the HR Officer.

- 5.3 Once the alleged wrongdoer is approached in any of the above ways it may be sufficient to stop the offending behaviour happening again. In many cases it may be sufficient to tell (verbally or in writing) the alleged wrongdoer that their behaviour is unwelcome and that it must stop or result in a formal complaint.
- 5.4 It should be noted that the informal procedures do not involve disciplinary action and where the alleged wrongdoer accepts that their conduct has been or could be construed as offensive, and provided the complainant is satisfied with the outcome, the matter will usually end there, no further action will be required and no record will be attached to either party's personal file.
- 5.5 If, however, the alleged wrongdoer denies any offence or is not prepared to modify his/her behaviour, or if the complainant is not satisfied with the outcome he/she has the option of pursuing the matter formally.
- 5.6 Both parties have the right to be accompanied by a Designated Adviser, trade union representative or a work colleague at any meetings which are arranged in connection with informally resolving the matter. Before the meeting the alleged wrongdoer should be provided with details of the complaint made against them and suitable arrangements made for the meeting, including any reasonable adjustments.
- 5.7 In order to minimise the distress of all involved, all action in relation to the informal complaint should be carried out where possible within 10 working days of the complaint being made. Both parties are to be advised that they should consider keeping a record of any informal action taken and notes of any meetings.
- 5.8 Throughout this process, the person accused of misconduct has the same rights as the complainant and can approach an Adviser for advice and support.

<sup>2</sup> Or the manager's line manager where the complaint is about the manager.

## 6. FORMAL PROCEDURE

### Stage 1: Lodging a Formal Complaint

- 6.1 If informal attempts have been unsuccessful, or if the officer to whom the matter has been reported has determined that the alleged behaviour is too serious to be dealt with under the informal procedure, or if the complainant prefers, he/she may immediately lodge a formal complaint.
- 6.2 Any member of staff who wishes to invoke the formal procedure should submit their complaint in writing to the HR Officer **within six months of the last incident**. Only in exceptional circumstances will a complaint be considered outside this timescale. The complaint **must be completed on the appropriate form [see Annex C]**, which is available in alternative format where required. It should be noted that legislation places time limits on bringing complaints to tribunals (paragraph 3.2 refers).
- 6.3 On receipt of the completed Formal Complaint Form, the HR Officer will acknowledge receipt and direct the complaint to the Assistant Chief Electoral Officer with an assessment of whether or not the complaint falls within the scope of the policy.
- 6.4 Where it is decided that the complaint does not fall within the harassment and bullying remit, the Assistant Chief Electoral Officer will write to the complainant explaining this decision outlining any options which may be used to resolve the complaint raised eg, internal grievance procedure.

### Stage 2: The Investigation

- 6.5 An Investigating Officer, where necessary, will be appointed by the Assistant Chief Electoral Officer to carry out a formal investigation. The investigation will be conducted with the objective of establishing the facts of the complaint. The Investigating Officer will have authority to interview all persons and examine all documentation considered by him/her to be relevant to the complaint. The Investigating Officer will prepare a written report of the findings setting out the facts and evidence found during the investigation. The report will be submitted through the HR Officer to the Assistant Chief Electoral Officer.
- 6.6 The Assistant Chief Electoral Officer will write to the complainant and the alleged wrongdoer to:
- advise that an Investigating Officer has been appointed;
  - advise that the HR Officer will be responsible for the administration of the complaint;
  - advise that they have the right to be accompanied at the investigatory interview by a Designated Adviser, a work colleague or a trade union representative;
  - provide both with a copy of the Harassment Policy and Procedure;
  - explain the need for confidentiality and the consequences of a breach of confidentiality;
  - advise them not to approach the other party or any potential witnesses about the case as this could be construed as victimisation;
  - ascertain whether any reasonable adjustments are required for the interview.

The alleged wrongdoer will also be provided with a copy of the complainant's Formal Complaint Form at this stage and will be given the opportunity to comment (in writing to the HR Officer) on the allegations made by the complainant.

- 6.7 Prior to an investigation, action may need to be taken to avoid contact between the complainant and the alleged wrongdoer. The wishes of the complainant should, where possible, be taken into account by the Assistant Chief Electoral Officer.
- 6.8 Anyone involved in an investigation will be expected to co-operate fully with the Investigating Officer by making themselves available for interview and, where possible, by giving detailed responses when answering questions. A member of staff who fails, without reasonable excuse, to co-operate with an investigation may be subject to disciplinary procedures. Where they are the alleged wrongdoer it may be necessary to proceed with the investigation with the available evidence. If the complainant, alleged wrongdoer or any witnesses are absent from work due to sickness, arrangements may be made, if circumstances permit, to interview such persons at home or at a suitable neutral location. This is to ensure that matters can be brought to a proper conclusion within a reasonable timeframe.
- 6.9 Prior to interview, the Investigating Officer must advise the other witnesses, in writing, of the following details:-
- explain that the Investigating Officer has been appointed to investigate the complaint;
  - make suitable arrangements for interview and ascertain whether any reasonable adjustments are required;
  - explain the purpose of the interview;
  - where applicable, clearly state that the interviewee is to be interviewed as a witness to events;
  - explain the need for confidentiality and the consequences of a breach of confidentiality;
  - advise that they have the right to be accompanied at the meeting by a Designated Adviser, a work colleague or a trade union representative;
  - provide them with a copy of the Harassment Policy & Procedure;
- 6.10 Every effort should be made by the Investigating Officer to complete the investigation as quickly as possible. Ideally this will be within 20 working days of being handed responsibility for the investigation but may depend on the circumstances of each individual case.

### Interviews

- 6.11 The Investigating Officer will initially interview the complainant to obtain fuller details of the complaint.
- 6.12 The Investigating Officer will then interview the alleged wrongdoer and if, having been made aware of the allegation, the alleged wrongdoer admits the offence there will normally be no need to involve witnesses. The Investigating Officer will then proceed to the report stage.
- 6.13 If the alleged wrongdoer denies the offence, the Investigating Officer will proceed to interview all relevant witnesses. Depending on the outcome of these interviews, it may be necessary for the Investigating Officer to re-interview the complainant, the alleged wrongdoer or the witnesses.

- 6.14 Interviews should be conducted in private and normally held in the workplace unless an officer requests an alternative arrangement or if; for example, the person is suspended from duty and would prefer not to attend his/her own office.
- 6.15 A note taker, normally the HR Officer, will attend all interviews and the Investigating Officer should explain that the notes taken will help to ensure an accurate record of the interview.
- 6.16 At the outset of any interview the Investigating Officer should outline the purpose of the interview and seek confirmation that the person being interviewed and any colleague or Trade Union representative attending the interview has had an opportunity to read these procedures.
- 6.17 The Investigating Officer should emphasise to all parties, including the witnesses and representatives, that the investigation must be treated in the strictest confidence. Anyone found to be in breach of confidence may be subject to disciplinary action.
- 6.18 All interviewees should also be advised that information provided by them may have to be put to others interviewed in connection with the investigation, but that, to maintain the principle of confidentiality, the source of the information will not be disclosed. However, all material, including copies of statements, may have to be made available to the complainant/alleged wrongdoer and/or their representatives should the matter go to a Fair Employment or Industrial Tribunal (see also Para 4.6 in relation to the Data Protection Act).
- 6.19 The Investigating Officer must ensure that the work colleague or trade union representative accompanying the interviewee understands that his/her role is purely advisory and that he/she must not answer any question on behalf of the person being interviewed. The interviewee may, however, consult his/her friend or colleague during the interview. Only the Investigating Officer will ask questions of the person being interviewed.
- 6.20 If an interviewee decides not to have anyone present, that fact should be recorded. If, during an interview, an individual decides that he/she wishes to have a representative present, the interview should be adjourned to facilitate this request.
- 6.21 The interviewee should be offered a break where an interview has continued for an hour, or at any other time if it becomes obvious that it is needed.
- 6.22 The Investigating Officer should make sure that all the appropriate questions are asked, and that each question is answered. If necessary the Investigating Officer should probe the interviewee for additional information, taking care not to turn the interview into an inquisition.
- 6.23 At the close of each interview the interviewee should be informed that it might prove necessary to interview him/her again depending upon what emerges as the investigation proceeds.
- 6.24 It must be stressed to the interviewee that victimisation of any person involved in the making of, or investigation of a complaint, constitutes unlawful discrimination

under fair employment, sex discrimination, disability, race and harassment legislation.

- 6.25 If at any stage during an interview it appears to the investigating officer that the interviewee may be implicating himself/herself in the commission of any criminal offence the interview is to be terminated immediately and the matter brought to the attention of the Chief Electoral Officer.

#### Notes of Interviews

- 6.26 The interviewee will be advised that they will be given an opportunity to review the interview notes and will be asked to sign and date the interview notes to confirm that they are a true and accurate record of what was said. Where the interviewee wishes to add additional material this should be in the form of a further signed statement and should be retained with the signed notes.
- 6.27 If the interviewee disagrees with the content of the record and agreement cannot be reached; the interviewee should not sign the statement but should complete and sign a 'supplementary statement' indicating the area(s) of disagreement. This supplementary statement should be retained with the interview record.
- 6.28 Records of interview should be agreed and signed as quickly as possible to assist in the timely completion of the investigation.
- 6.29 Interviewees may not have access to any statements taken in connection with the investigation other than their own. However, where witness statements may be used in a disciplinary hearing they would normally be made available to the alleged wrongdoer. EONI will take full account of the Data Protection Act 1998 in determining disclosure of witness statements.

#### Report

- 6.30 When all necessary interviews have been completed, the Investigating Officer will prepare a written report summarising the evidence gathered during the investigation and from the evidence provided offer an opinion on whether or not he/she believes, on the balance of probabilities, the alleged harassment/bullying has occurred. The report should be factual and impartial.
- 6.31 The report will not recommend disciplinary action nor will any penalty be suggested.
- 6.32 The report, along with all notes taken during the interviews, will be submitted through the HR Officer to the Assistant Chief Electoral Officer.
- 6.33 The Assistant Chief Electoral Officer will consider the Investigating Officer's report and decide either that no further action needs be taken or to convene a disciplinary hearing in accordance with EONI's Disciplinary Procedures issued in September 1994.
- 6.34 Legal advice may be sought before final decisions are made. Both parties to the complaint will be advised in writing of the Assistant Chief Electoral Officer's decision. Witnesses will also be informed in writing that the investigation has been completed.

6.35 Cases involving assault or other possible criminal behaviour will normally be reported to the police.

### Appeals

6.36 Either party may appeal that decision to the Chief Electoral Officer on the following grounds –

- (a) new evidence has come to light that would be likely to result in a different decision
- (b) there was procedural unfairness that was likely to have prejudiced the appellant
- (c) the decision was irrational or without justification.

6.37 Such an appeal must be made by giving notice in writing to the HR Officer, setting out the grounds for the appeal, within 5 working days of the decision or of the matter coming to the attention of the appellant.

6.38 The Chief Electoral Officer shall determine the procedure for such appeals.

### No Further Action Required

6.39 Where no disciplinary proceedings are to be instituted the Assistant Chief Electoral Officer shall, in writing, advise both parties of the decision and the reasons for it.

6.40 No record of the complaint will be attached to either party's personal file (para 6.48 refers).

6.41 Complaints will be assumed to have been made in good faith. However, following investigation, where it is concluded that an accusation was deliberately false or made maliciously, then this may be treated as a serious matter and may lead to disciplinary action against the complainant.

6.42 If a complaint is not upheld, consideration may still be given, where practicable, to the voluntary transfer of one of the officers concerned, rather than requiring them to continue to work together against the wishes of either party. If neither party wishes to move, reasonable steps should be taken to encourage them to work together harmoniously. In the event that working relationships cannot be repaired, both parties may be moved.

### Further Action Required

6.43 Disciplinary proceedings will be progressed in accordance with the Disciplinary procedures issued in September 1994.

### Follow-up Action & Preventing Victimisation

6.44 The HR Officer will advise the wrongdoer's line manager of the outcome of the complaint and bring to their attention any particular problems within their office eg the need for remedial equal opportunities training, poor staff/management relations or lack of clear procedures in a certain area which have been highlighted in the Investigation Report.

- 6.45 When misconduct has occurred, the wrongdoer's line management will be expected to monitor the situation carefully to ensure that discrimination has stopped and that no form of victimisation is occurring. This will include speaking at periodic intervals to those at risk from victimisation until management is satisfied that any risk has passed.
- 6.46 Victimisation may cover a wide range of actions from unpleasantness from colleagues, to an adverse impact on working conditions. Victimisation can itself lead to formalised procedures being invoked as it is contrary to fair employment, sex discrimination, disability and race legislation. Victimisation will be dealt with seriously, promptly and confidentially. It is important that both parties to the complaint are protected from victimisation.
- 6.47 Support and/or counselling may be offered to any parties associated with the complaint, irrespective of the outcome of the complaint. This will be provided by a trained member of staff or by an external provider, as appropriate.

### **Monitoring Complaints**

- 6.48 The HR Officer retains all records pertaining to a formal harassment investigation. These will be destroyed after a period of three years from the completion of the investigation or tribunal decision (unless there is reason to believe that the papers are likely to be of historical interest). Any reports that are prepared for monitoring purposes will only include the type of complaint, outcome of each case and appropriate action taken. (The names of both complainant and alleged wrongdoer will be excluded from this report). Reports will be made available to senior management and trade union representatives.

The procedures have been set out to strongly endorse, promote and adopt what is considered to be best practice in dealing with misconduct as defined in this policy. This Policy has been approved by the Electoral Office Management Board and by the Northern Ireland Public Service Alliance (NIPSA). Both parties affirm their full support for the policy and will take whatever action is necessary to ensure its full and effective implementation.

**Signed:** Douglas Bain CBE TD Advocate  
Chief Electoral Officer for NI

**Signed:** Paddy Mackel  
on behalf of NIPSA

**Dated:** 11 April 2007

**Dated:** 04 April 2007

**LEGISLATION**

1. Various legal remedies are available for those who are subjected to unwanted, unreasonable and offensive behaviour at work. Should the behaviour constitute a criminal offence (e.g. assault) then criminal law would apply. Otherwise the civil remedies listed below are available. The common law duty of care requires an employer to take reasonable care to provide a safe working environment.

**Anti-Discrimination Legislation**

2. Unwanted conduct that is based specifically on one or more aspect of social identity or protected characteristic (i.e. harassment based on gender, marital status, religious belief, political opinion, race, sexual orientation, disability, age, dependency) would be addressed under the following equality or anti-discrimination legislation:

- Sex Discrimination (NI) Order 1976 (gender; marital status)
- Fair Employment and Treatment (NI) Order 1998 (religious belief; political opinion)
- Race Relations (NI) Order 1997 (race; ethnic origin; nationality)
- Disability Discrimination Act 1995 (specified medical conditions)
- Employment Equality (Sexual Orientation) Regulations (NI) 2003 (sexual orientation)
- Section 75 of Northern Ireland Act 1998 (all of the above, plus age and dependency)
- The Employment Rights (NI) Order 1996 also makes it unlawful to discriminate on grounds of membership or non-membership of a trade union.

**Other Legislation**

3. Where the above legislation is not relevant (i.e. where the issue is not one related to social identity) then the following may be cited:  
Health and Safety at Work (NI) Order 1978  
Protection from Harassment (NI) Order 1997,  
and/or  
Other employment regulations

**Personal Liability**

4. If legal proceedings are invoked then wrongdoers may be held personally liable for acts of unwanted, unreasonable and offensive conduct. If a member of staff is considered to have been acting outside the scope of his/her employment, EONI has no legal responsibility, that officer will have to arrange his/her own representation and EONI will not accept responsibility for compensation or damages. It is important to remember that the legislation focuses attention on the outcome of the behaviour rather than motive or intent.

**CONTACT DETAILS:**

**ELECTORAL OFFICE FOR NI**

**Designated Advisers:**

<b>Name</b>	<b>Extension</b>
Vivienne Pike	6660
Andrew Minnis	6669
Rae Kirk	6601
Martin Fox	6651

**Human Resources Officer**

Lisa Cherry 6671

**NIO STAFF WELFARE OFFICER**

Claire Stewart, Knockview Buildings, Stormont Estate, Belfast

Tel: 90 522307

**NIPSA**

NIPSA Official, Harkin House, 54 Wellington Park, Belfast, BT5 6DP  
Tel: 02890 661831

EONI NIPSA Representatives  
Sharon Allen – Ext 6631  
Martin Fox – Ext 6651

**General Advice and/or assistance on the issue of harassment can also be obtained from:**

The Equality Commission - 9050 0600  
The Labour Relations Agency - 9032 1442

RESTRICTED – STAFF (WHEN COMPLETED)

**ELECTORAL OFFICE FOR NORTHERN IRELAND**

**HARASSMENT & BULLYING FORMAL COMPLAINT FORM**

**YOUR DETAILS**

NAME: \_\_\_\_\_

DEPT/AREA OFFICE: \_\_\_\_\_

PRIVATE CONTACT NO(s): \_\_\_\_\_

**DETAILS OF PERSON/PEOPLE YOU WISH TO COMPLAIN ABOUT:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NATURE OF COMPLAINT** (eg. bullying, harassment on grounds of a specific social identity [please specify] or victimisation):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**FORM OF BULLYING/HARASSMENT (please tick):**

Verbal       Physical       Other (Please specify):

\_\_\_\_\_  
\_\_\_\_\_

(N.B. You should refer to the Harassment & Bullying Policy)

RESTRICTED – STAFF (WHEN COMPLETED)

**DETAILS OF SPECIFIC INCIDENTS** (please include details of all relevant incidents including the dates, times and locations on which these occurred in chronological order). Detail the incident and the impact this had upon you. Please continue on a separate page if necessary.

A large, empty rectangular box with a thin black border, intended for the user to provide details of specific incidents as instructed in the text above.

**WITNESSES TO THESE INCIDENTS:** For each witness, please detail name (where not a staff member, a contact address) and which of the above incident(s) the individual witnessed (witnesses may be required to make themselves available for interview during the course of any investigation). Continue on a separate page if necessary.

**PLEASE PROVIDE DETAILS OF DOCUMENTARY EVIDENCE:**

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**PLEASE PROVIDE DETAILS OF ANY CONTACT YOU HAVE HAD WITH A DESIGNATED ADVISOR STATING WHO YOU HAVE APPROACHED?** (Where a confidential adviser has been approached in relation to a complaint, we may ask them to provide copies of any records they have kept as these could be relevant to any investigation).

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**IF ANY INFORMAL ATTEMPTS HAVE BEEN MADE TO RESOLVE THIS MATTER, PLEASE PROVIDE DETAILS?**

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**I confirm that to the best of my knowledge and belief, the facts given in this complaint are correct:**

**SIGNATURE:**

NB. It will always be assumed that complaints have been made in good faith unless there is evidence to the contrary. If the evidence, following an investigation, supports the conclusion that an allegation was deliberately false and was not due to a misunderstanding or to a genuine mistake, then this will be treated as a serious matter and may lead to disciplinary action against the complainant.

**DATE:**

**COMPLETED FORMS SHOULD BE SUBMITTED TO THE HR OFFICER**



