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## GUIDANCE NOTES

To accompany the *Harassment/Sexual Harassment Prevention Policy - Complaint Procedure for ETB Staff and Complaint Procedure for ETB Staff*

**Nationally agreed for implementation on 1 September 2013**

The *Guidance Notes* should be read in conjunction with the ***Harassment/Sexual Harassment Prevention Policy - Complaint Procedure for ETB Staff***

## PREFACE

These *Guidance Notes* are provided by way of an aide both to the parties to a complaint and those involved in administering the process under the *Harassment/Sexual Harassment Prevention Policy - Complaint Procedure for ETB Staff*.

*Guidance Notes* should always be read in conjunction with the said policy. Wherever a disputed issue may arise with respect to interpretation, the *Harassment/Sexual Harassment Prevention Policy - Complaint Procedure for ETB Staff* shall have primacy.

These *Guidance Notes* may be subject to review, modification and updates from time to time as may arise on direction of the ETBI/Unions Consultative Forum (at national level) or in line with best practice or legislative requirements.

All references to ETB are understood to comprehend the appropriate Education and Training Board (ETB).

**Whether formal or informal, a complaint must be made within six months of the latest incident(s) of alleged harassment/sexual harassment behaviour.** In exceptional circumstances, the six month time limit may be reviewed. The decision on whether to admit an allegation under this procedure rests with the HR Manager of the ETB.

**Issued by the ETBI/Unions' Consultative Forum**

**September 2013**

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*\*Template alphabetical numbering is consistent with a dedicated Manual for HR Departments developed by the ETBI/Unions Consultative Forum*

*ETB headed paper*

**STRICTLY CONFIDENTIAL**

## **Aide-mémoire for ETB Contact Persons**

<i>ETB name:</i>	
<i>Name of ETB Contact Person:</i>	
<i>Name of complainant staff member:</i>	
<i>Contact phone number which the complainant staff member is happy to provide</i>	
<i>Date &amp; time of conversation (by phone, in person etc.)</i>	
<i>Conversation No. (X of X)</i>	
<i>Name(s) of respondent:</i>	
<i>Any action taken by the complainant to date (supply details):</i>	

### ***Have you as the Contact Person...***

<b><i>Questions</i></b>	<b><i>YES</i></b>	<b><i>NO</i></b>
1. Listened to the complainant's concerns?		
2. Summarised back to the complainant what you understand to be his/her concerns?		

<p>3. Have you informed the complainant in a <b>non-directional manner</b>, of the options available to him/her under the Prevention Policy?</p>		
<p><i>Option</i> Whether another policy would be more appropriate e.g. the nationally agreed grievance procedure? Any decision in this regard is a matter for the staff member concerned.</p>		
<p><i>Option</i> Attempt to resolve the situation informally with the other person? In circumstances where the employee finds it difficult to approach the person directly, he or she may request a colleague or trade union representative to do so on his/her behalf.</p>		
<p><i>Option</i> Mediation – have you explained what is involved?</p>		
<p><i>Option – Employee Assistance Service/Counselling</i>  About the independent employee assistance service which provides professional guidance and counseling. Have you directed him/her to their website? Have you advised what is involved? Have you provided contact details of the service?</p>		
<p><i>Option</i> To make a formal complaint and the process involved?</p>		
<p>4. Have you mentioned that s/he contact their trade union to discuss their concerns?</p>		
<p>5. Has the complainant indicated that s/he might be willing to engage in one of the options mentioned?</p>		
<p>6. Have you already emailed/posted the complainant a copy of the <i>Harassment/Sexual Harassment Prevention Policy - Complaint Procedure for ETB Staff</i> and other relevant information e.g. on mediation; employee assistance service/counselling, a copy of the nationally agreed grievance procedure etc. If not, have you told the complainant when s/he should expect to receive it?</p>		
<p>7. Have you asked the complainant to revert back to you within the next 2-3 days having considered his/her options and having</p>		

had a chance to look at the <i>Harassment/Sexual Harassment Prevention Policy - Complaint Procedure for ETB Staff</i> ?		
8. Has the complainant indicated when s/he will revert back to you?		
9. Have you completed this aide memoire?		
10. Have you informed the complainant that you will send him/her a copy of this aide memoire and when s/he would expect to receive it?		
11. Have you explained that this aide-memoire will be retained in a strictly confidential and securely placed file marked “ <b>Contact Persons &lt;relevant year e.g. 2013&gt;</b> ” and will be destroyed by shredding following a period of six months.		
12. Have you explained that the retention of this information for a period of six months is merely as an aide-memoire to the Contact Person to assist you in the event that the complainant may contact you again within that six-month period?		
13. Have you explained that no other records regarding the conversation will be retained on any other files (e.g. personnel file)?		
14. Have you diarised forward to ensure that you contact the complainant in at least one working week to check in with him/her? If so, list the date.		

**NOTE:**

The role of the ETB Contact Person does not extend to intervening or approaching any person on behalf of the staff member.

**Retention of Aide-memoire:** It is the policy of the relevant Education and Training Board to retain the original copy of the Aide-memoire (as completed by the Contact Person) in a strictly confidential and securely placed file marked “**Contact Persons <relevant year e.g. 2013>**”. The Aide-memoire is just as its meaning suggests, to refresh the Contact Person’s memory in the event that a further contact to him/her is made on the same issue by the same person within six months. It is the policy of the ETB concerned that the aide-memoire will be destroyed by shredding following a period of six months’ duration from its initial completion.

**TEMPLATE LETTER B – Assessment Agreement for Mediation as an appropriate remedy for conflict at work)**

*(To be signed by the parties when engaging in mediation)*

Assessment Agreement of [insert name]

For Mediation as an Appropriate Remedy for Conflict at Work

“WITHOUT PREJUDICE”

What is your desired best outcome? *(Please insert your own hopes here)*

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Do you want the conflict to end?

Yes

No

Do you accept that the Mediator will not take sides?

Yes

No

**Do you understand/accept that:**

- The process will not assign blame to anyone but will explore and acknowledge how the conflict has evolved.
- The purpose of Mediation is for the individuals in dispute to find their own solutions with the assistance of the Mediator.
- The process is entirely voluntary and will not succeed if the parties are not fully engaged, or are unwilling participants.
- The process involves each person speaking while the other listens.
- Following this part of the process there may be some argument and discussion, but within strict bounds.
- Separate meetings can occur any time during the Mediation process to check out a person's concerns, confront unhelpful behaviour, or help people think through their options.
- The discussion will shift toward the future and what will happen from now on.
- The parties agree on an agenda of issues which need resolution.
- The parties will work through each issue on the agenda, generating a number of ideas then weighing, adjusting and testing the alternatives to craft a workable, mutually satisfactory outcome.
- If the parties are able to settle their differences, the Mediator will write a formal agreement containing these decisions. Everyone involved signs and keeps a copy.
- The Mediator may be invited to review the operation of the agreement within a specific period at the request of the parties.
- No full session will exceed 2 hours.
- Most situations should be resolved in 2-3 sessions.
- It will require the parties looking at the wider picture.
- It will require an element of examining one's own behaviour and responses to difficult situations.
- It will require each person to "walk in the shoes of the other" and see the picture from the other persons perspective.
- The goal of Mediation is to help people improve their confidence in handling conflicts and help rebuild a professional working relationship.
- An ultimate workable resolution may require engagement with parties other than those directly involved. (*Please indicate here who you consider might be relevant to the process*).

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**I have read and understood the above and am willing to engage in the mediation process. If at any stage I am of the view that Mediation is not appropriate, I reserve my right to withdraw and exercise other options available to me.**

**Signed** \_\_\_\_\_

**Date** \_\_\_\_\_

*[Insert name]*



**Record of the Outcome of Mediation under the**

***Harassment/Sexual Harassment Prevention Policy - Complaint Procedure for ETB Staff***

**Name(s) of complainant:**

**Name(s) of respondent:**

**Name of Mediator:**

**Dates of sessions undertaken:**

The above named parties have engaged in a mediated process involving <X number> of sessions.

**The outcome of these sessions has resulted in:**

**An agreed outcome**

**OR**

**An agreed outcome not being achieved**

**Mediator's signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

*This record should be furnished by the Mediator, to the HR department of the ETB (marked strictly private and confidential for the attention of the HR Manager) and copied to the parties to mediated process.*

*A copy will be retained on the personnel file of the parties to the process for a period of one year where mediation has been successful. Where mediation has been unsuccessful, a copy will be retained on file until the expiration of Formal Procedure (if invoked) and for a period not exceeding six years thereafter.*

**TEMPLATE K – Timeframes in the procedure**

<b>Correspondence/Documentation</b>	<b>Timescale</b>	<b>Corresponding parties</b>
<b>PROCESSING A FORMAL COMPLAINT</b>		
Formal complaint in writing submitted by the complainant. This shall include the written statement of complaint.	Within 10 working days of the conclusion of any mediation undertaken  <i>OR;</i>  Directly into the Formal Procedure in writing	Submitted to the Head of HR
Correspondence issues from Head of HR formally acknowledging receipt of complaint & advising right of representation	Within 5 working days from receipt of the complaint in writing	From Head of HR back to complainant
Correspondence issues from Head of HR/nominee to the respondent enclosing a copy of the written complaint and all relevant documentation. Respondent is advised of right of representation	Within the <u>same</u> 5 working days from receipt of the complaint in writing	
Respondent invited to respond in writing to the complaint.	Respondent has 10 additional working days to respond to the complaint details.  i.e. 10 additional working days from the date of issue by the ETB, of the complaint details to the respondent party.	Respondent submits response to the Head of HR in the ETB within the 10 additional working days
Head of HR appoints an investigation team comprising two persons from the panel of approved organisations which can be drawn upon to undertake the investigation (under a contract for service). See procedure, appendix 1.	Within the same 10 additional working days, the Head of HR appoints an investigation team & arranges for a recording secretary	Internal to HR
Head of HR advises parties of the names of those nominated to conduct the investigation.	Within the same time period of 10 additional working days	Head of HR to the parties to the complaint
Parties to the complaint have <u>2 working days</u> from the date of notification of the names of the investigators to advise HR of the exceptional circumstances of where an investigator so nominated is related to, or a personal friend of either party to the complaint.	2 working days from the date of notification of the names of the investigators to respond. This all takes place within the same additional 10 working days	Parties to the complaint advise by phone/email/in writing in such circumstances

Head of HR copies all documentation to the investigation team	Within a further 3 working days from expiry of the 10 working day period	
Copy of the response is also sent to the complainant	Within the same further 3 working days (following expiry of the 10-day working period)	
<b>THE INVESTIGATION</b>		
<b>The investigation should commence no later than the expiration of 30 working days from the date of receipt by the Head of HR of the written complaint details.</b>		Head of HR/nominee makes all administrative arrangements e.g. notification of investigation meeting dates, liaising with parties to the complaint and investigation team etc.  A copy of the terms of reference for the investigation and contract governing the investigation is provided by the ETB/ETB to the investigation team
Investigation team conducts investigation in accordance with the specified terms of reference (and protocol for the conduct of investigations) – see actual policy Appendix 2.	ETB to cross-check that the investigation report includes statement that the investigation has been undertaken in accordance with the terms of reference and protocol	
Investigation team issues final report to the Head of HR plus a statement of adherence to the terms of reference and protocol	Final report to issue no later <b>than 40 working days</b> from the date of receipt by the investigators of the complaint documentation from the Head of HR	From investigation team to Head of HR
The investigation report is a report of the findings based on the evidence presented:  <ul style="list-style-type: none"> <li>• <b>Provides a rationale, related to the evidence presented, for the finding/s in respect of each element of the complaint.</b></li> </ul>		

<ul style="list-style-type: none"> <li>• <b>Determines whether each element of the complaint is <u>upheld, not upheld or ruled out</u></b></li> <li>• <b>Provides an overall finding concluding whether or not harassment/sexual harassment occurred and the extent, if any, to which it occurred.</b></li> </ul>		
	This will conclude the actual investigation.	
Head of HR issues the FINAL INVESTIGATION REPORT to the parties to the complaint	Final investigation report issues to parties to the complaint <b>no later than 3 working days.</b>	From Head of HR to parties to the complaint
Head of HR issues the FINAL INVESTIGATION REPORT to the CEO of the ETB	Final investigation report issues to CEO of ETB <b>no later than 3 working days.</b>	From Head of HR to CEO of ETB or person so nominated to undertake this function where CEO is a party to the complaint
<p><i>The time limits advised with respect to the 40 working days may be extended only in very extenuating circumstances subject to the discretion of the ETB HR Manager.</i></p> <p><i>Note: This applies only in a first formal hearing and not an ab initio hearing where the timeframe of 40 days must be adhered to.</i></p>		
<b>STAGE 2 – DECISION BY ETB AS EMPLOYER TO ACCEPT/REJECT INVESTIGATION REPORT</b>		
HR refers final investigation report referred to CEO for consideration and a determination.	<b>15 working days for CEO (operating executively on behalf of the ETB) to communicate the decision as to whether to accept or reject the investigation report.</b> <p>15 working days counts from the date of issue by the Head of HR, of the final investigation report to the parties to the complaint and CEO.</p>	

<p>CEO (on behalf of ETB) has 15 working days to evaluate and make a decision to accept/reject Investigation Report.</p>	<p>Within this timeframe – CEO and HR meet with the investigation team to ensure they are happy that the investigation team has met terms of reference.</p> <p>Decides to adopt or reject the report.</p>	
<p>Where investigation report is <b>adopted:</b></p>	<p>CEO shall have due regard to the procedures undertaken over the course of the investigation and, the discharge of the terms of reference by the investigation team.</p> <p>Pay particular regard to being able to respond to the potential for a procedural appeal under the specified appeal grounds (noted in Appendix 3).</p>	
<p>Where investigation report is <b>rejected:</b></p>	<p>Reject on grounds that the terms of reference for conduct of investigation have not been adequately adhered to. Provide a rationale for this decision and examples.</p> <p>Options:</p> <ul style="list-style-type: none"> <li>(i) <i>Ab initio</i> investigation with restriction of 40 days</li> <li>(ii) Third party dispute resolution facility. Agreement is needed and doesn't prejudice an <i>ab initio</i> being undertaken if third party resolution fails.</li> </ul>	
<p>CEO issues decision to the parties to the complaint.</p> <p>Provide rationale for adoption or rejection.</p> <p>Provides in case of rejection of report – what is being done by way of 2 options (i) and (ii)</p> <p>Advises in cover letter of right of</p>	<p><b>MUST BE WITHIN 15 WORKING DAYS</b> from the date of issue by the Head of HR, of the final investigation report to the parties to the complaint and CEO.</p>	<p>CEO issues decision and rationale plus covering correspondence for right of appeal.</p>

appeal to an external third party on the specific appeal grounds and in accordance with Appendix 3 of the actual policy.		
The decision of the CEO shall complete the internal process		
<b>STAGE 3 – APPEAL OF ETB’S ADOPTION OF INVESTIGATION REPORT</b>		
An appeal can only be taken in response to the CEO’s <b>adoption</b> of the findings of the Investigation Report and under the provisions of the specified appeal ground that the <b>terms of reference for the investigation were not adhered to.</b>	15 working days from the date of issue by the CEO of the ETB (of the decision to accept the findings of the investigation report) for either party to appeal	Appellants have to submit and management has to respond on the basis of the forms supplied
Appeal form/s from appellant/s into HR Manager by registered post marked private and confidential.	HRM has <b>3 working days</b> to issue by registered post copies to the Appeal Officer and other original party to the complaint.	HR sends copy of the <b>Appeal Form</b> and documentation to Appeal Officer and other party to complaint
When HRM gets and appeal in – has 15 working days from postal date receipt by ETB of the appeal documentation to submit its response	<b>15 working days</b> for ETB Appeal Response Form to be submitted	HR sends <b>ETB Appeal Response Form</b> with documentation to: Independent Appeal Officer and copied to other party to complaint for reference.  ETB Appeal Response Form is completed and any supporting documentation (which should be clearly referenced to correspond with the appeal response elements)
Appeal Officer undertakes initial paper review to determine if appeal submitted complies with the grounds for appeal.	In either case, the decision of the Appeal Officer is final.	
If it is determined that the appeal complies, an oral hearing will be arranged.	Appeal takes place and <b>20 working days for Appeal Officer to issue decision.</b>	Responsibility of this nominated person (in the ETB) having consulted

<p>Appeal Officer advises the appellant, the ETB and the other complainant party by phone/email or letter of the intention to move to an oral hearing.</p>	<p><b>Outcome of appeal issues: CEO of the ETB will take appropriate action based on the findings of the appeal and such action may include initiating the appropriate disciplinary procedure for the staff member/s concerned.</b></p>	<p>with the Appeal Officer, to make all necessary practical arrangements for the hearing on the specified date including advising the parties to the appeal (in writing and/or by phone) of the details of the date, time and venue arranged.</p>
<p>If it is determined that the appeal does not comply, the Appeal Officer advises the appellant, the CEO of the ETB and the other complainant party by phone/email/letter.</p>	<p>No further action will be taken by the Appeal Officer and the decision of the CEO (as employer) to adopt the investigation report stands.</p>	<p>Appeal Officer shall provide a statement to rule on the appeal and a rationale for same. This is circulated to the CEO/HR Manager of the ETB, the appellant/s and copied to the party/parties to the original complainant.</p>
	<p>So concludes the entirety of the process including appeal.</p>	
	<p>Recourse to making a complaint under statutory provisions apply.</p>	

*Harassment/Sexual Harassment Prevention Policy - Complaint Procedure for ETB Staff*

*(Reference: HSH Appeal Form)*

# APPEAL FORM

**Please note that appeal provisions extend to a procedural appeal only.**

**You are required to familiarise yourself again with the terms of reference for the conduct of the investigation and comply with the terms of reference governing this appeal detailed in the *Harassment/Sexual Harassment Prevention Policy - Complaint Procedure for ETB Staff (Appendix 3)*.**

## Section A – Personal Details

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_ Mobile \_\_\_\_\_

Email contact address: \_\_\_\_\_

ETB: \_\_\_\_\_

(Place of employment e.g. school/college/centre/office) \_\_\_\_\_

Parties to original complaint: \_\_\_\_\_ v \_\_\_\_\_

Parties to this appeal: \_\_\_\_\_ v \_\_\_\_\_

*(Named ETB)*

## Section B – Notice of Appeal

I hereby give notice of appeal against the decision of the ETB's acceptance of the findings of the Investigation Report (*dated X*) arising from a complaint lodged under the *Harassment/Sexual Harassment Prevention Policy - Complaint Procedure for ETB Staff (1 September 2013)*. I agree to be bound by the outcome of the appeal process provided under the said policy.



Signed: \_\_\_\_\_

Date: \_\_\_\_\_

## Section C – Appeal Ground

*Please tick the box as appropriate*

The terms of reference for the investigation were not adhered to

With respect to your appeal, please summarise **below** how, in your opinion, the terms of reference for the investigation were not adhered to. Please make reference to the page and/or extract from the investigation report to support your appeal (*maximum 1000 words in total*).

Supporting evidence to the appeal may be separately appended but must clearly reference the page number and/or extract from the Investigation Report as appropriate.

<i>Appeal</i>	<i>Insert details below</i>	<i>Insert reference to Investigation Report page number and /or extract as appropriate</i>
<i>Appeal Issue 1</i>		
<i>Appeal Issue 2</i>		
<i>Appeal Issue 3</i>		
<i>Appeal Issue 4</i>		

<i>Appeal Issue 5</i>		
<i>Appeal Issue 6</i>		

Please return this completed form by registered post, marked **“Private and Confidential- for the attention of the addressee only”** to the HR Manager of the ETB.

Where the Appeal Officer determines following an initial review of the appeal, that an oral appeal hearing is appropriate, you will be so advised of the date of the hearing.

Where the Appeal Officer determines following an initial review of the appeal, that an appeal is not appropriate, you will be advised accordingly. **The decision of the Appeal Officer will be final.**

**OFFICIAL USE BY ETB**

Date Appeal Received: \_\_\_\_\_

Received by: \_\_\_\_\_

*Harassment/Sexual Harassment Prevention Policy - Complaint Procedure for ETB Staff*

(Reference: HSH Appeal Response Form)

# ETB APPEAL RESPONSE FORM

**You are required to comply with the terms of reference governing this appeal as detailed in the *Harassment/Sexual Harassment Prevention Policy - Complaint Procedure for ETB Staff* (Appendix 3)**

## Section A – ETB Details

ETB: \_\_\_\_\_

Address:

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

Contact name (HR Manager) \_\_\_\_\_

Contact name (CEO) \_\_\_\_\_

Email contact address: \_\_\_\_\_

Telephone \_\_\_\_\_ Mobile \_\_\_\_\_

Appellant parties: \_\_\_\_\_ v \_\_\_\_\_ (named ETB)

Original complainant parties: \_\_\_\_\_ v \_\_\_\_\_

## Section B – Notice of Appeal

I hereby provide the ETB's response to the appeal raised by (insert name of appellant party) arising from an appeal lodged to the Independent Appeal Officer under the nationally agreed *Harassment/Sexual Harassment Prevention Policy - Complaint Procedure for ETB Staff* (1 September 2013). I agree to be bound by the outcome of the appeal procedure provided under the said policy.

Signed: \_\_\_\_\_

<Name of CEO>

Date: \_\_\_\_\_

## Section C – Response to grounds for appeal

### RESPONSE TO APPEAL

Please summarise your response **below** with respect to the appeal lodged alleging “the terms of reference for the investigation were not adhered to”. Please make reference to the page and/or extract from the investigation report to support your appeal (*maximum 1000 words in total*)..

Supporting evidence to the appeal may be separately appended but must clearly reference the ETB’s defence in respect to the appeal issues raised in the appellant’s form (**BPP Appeal Form**) and reference, as appropriate to the response, the page number and/or extract form the Investigation Report as appropriate.

<i>Appeal sub-number</i>	<i>Insert details of the ETB’s response below</i>	<i>Insert reference to Investigation Report page number and /or extract as appropriate</i>
<i>Appeal Issue 1</i>		
<i>Appeal Issue 2</i>		
<i>Appeal Issue 3</i>		
<i>Appeal Issue 4</i>		
<i>Appeal</i>		

<i>Issue 5</i>		
<i>Appeal Issue 6</i>		

**Please append to this form, a copy of the statement undertaken by the Investigation Team confirming that:**

- The terms of reference of the investigation was, in its view, followed.
- The ETB’s communication to the parties to the complaint advising that it accepts the findings of the Investigation Report arising from the complaint lodged under the *Harassment/Sexual Harassment Prevention Policy - Complaint Procedure for ETB Staff (nationally agreed on 1 September 2013)*.

- Please return this completed form marked **“Private and Confidential- for the attention of the addressee only”** to the Appeal Officer (*at the LRC address*).
- A copy should also be forwarded marked **“Private and Confidential”** to the appellant and to the other party to the complaint (for his/her reference).
- All should be forwarded by registered post no later than 15 working days from receipt of the appeal by the Head of HR.

Where the Appeal Officer determines following an initial review of the appeal, that an oral appeal hearing is appropriate, you will be so advised of the date of the hearing.

Where the Appeal Officer determines following an initial review of the appeal, that an appeal is not appropriate, you will be advised accordingly. **The decision of the Appeal Officer will be final.**

**OFFICIAL USE ONLY BY ETB**

Issued by: \_\_\_\_\_ Name of ETB: \_\_\_\_\_

Date of issue (by registered post) to the independent Appeal Officer:

Date of issue (by registered post) to the appellant party:

Date of issue to the other party to the complaint (ordinary post):