

A Positive

Working Environment



An Anti Harassment, Sexual
Harassment and Bullying Policy
for the Civil Service
as revised, July 2005



INTRODUCTION

This document is the revised civil service policy on harassment, sexual harassment and bullying.

The revised document has been produced in partnership with the staff unions through the Equality Subcommittee of General Council. The policy is designed to ensure compliance with the codes of practice issued under the Safety, Health and Welfare at work Act 1989, the Industrial Relations Act 1990 and the Employment Equality Acts 1998 and 2004. The policy applies to all civil servants including staff on contract in Government Departments.

Part I of the document defines harassment and sexual harassment and adopts the definition of bullying recommended by the Task Force on the Prevention of Workplace Bullying. The civil service policy is set out in addition to a description of the types of behaviour that constitute harassment, sexual harassment and bullying. Part I also outlines the provisions of the Employment Equality Acts 1998 and 2004 in relation to the statutory offences of harassment and sexual harassment.

Part II of the document sets out the procedures for dealing with complaints of bullying and harassment. The revised policy emphasises the need for all reasonable efforts to be made by local management to deal with complaints without outside intervention. The policy also outlines the mediation process as a preferred alternative to a formal investigation where both parties agree to participate. Finally, the policy sets out the procedures to be followed where a decision is made to proceed to a formal investigation.

It is envisaged that the majority of complaints will be resolved through informal procedures and mediation with only a very small proportion of complaints proceeding to a formal investigation and that all staff will cooperate in ensuring its successful implementation. The revised policy comes into effect from 1 September 2005.

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1. What are harassment, sexual harassment and bullying?

- 1.1 Harassment and sexual harassment are defined in the Employment Equality Acts 1998 and 2004 and carry certain legal consequences.
- 1.2 Harassment and sexual harassment are defined in Section 14A of the Employment Equality Act 1998 as inserted by section 8 of the Equality Act 2004, as follows:

Harassment

Any form of unwanted conduct related to any of the discriminatory grounds and

Sexual Harassment

Any form of unwanted verbal, non-verbal or physical conduct of a sexual nature

being conduct that in either case has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

Such unwanted conduct may comprise of:

- acts
- requests
- spoken words
- gestures or
- the production, display or circulation of written words, pictures or other material.

- 1.3 The Employment Equality Acts 1998 and 2004 prohibit harassment by reference to particular characteristics flowing from difference in relation to sex, marital status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller community. Harassment may be by a client, customer or business contact of an employer in addition to other staff members. The Equality Acts also provide that different treatment of a person in the workplace in the course of employment, because of rejecting or accepting the harassment or where it could reasonably be anticipated that he or she would be so treated, constitutes discrimination by the victim's employer in relation to the victim's conditions of employment. The Equality Acts further provide that where an employee is harassed or sexually harassed and the

circumstances of the harassment are such that the employer ought reasonably to have taken steps to prevent it, the harassment or sexual harassment constitutes discrimination by the victim's employer in relation to the victim's conditions of employment.

- 1.4 The Employment Equality Act 2004 includes same sex sexual harassment in the definition of sexual harassment.

Bullying

- 1.5 Bullying is a term used to describe certain forms of unacceptable behaviour in the workplace.

No statutory definition of bullying exists. The employer's duty to take reasonable steps to prevent bullying and provide reasonable redress for staff members who have been subject to bullying behaviour, arises from the general duty of care that employers have towards all their staff, in particular the general duties arising under the Safety, Health and Welfare at Work Act 1989 and the Safety, Health and Welfare at Work (General Application) Regulations 1993, 2001 and 2003.

The Report of the Task Force on the prevention of workplace bullying in March 2001 recommended the definition of bullying set out below. The definition is also set out in the Code of Practice issued by the Health and Safety Authority under the Safety, Health and Welfare at Work Act 1989 as well as by the Labour Relations Commission under the Industrial Relations Act 1990.

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

Who harasses and bullies?

- 1.6 Because of their position of relative power, there is a greater possibility of harassment and bullying occurring in manager/member of staff relationships.

However, a harasser or bully may also be a more senior officer in another section, a colleague or a group of colleagues in the same grade or even a more junior member of staff. A harasser or bully may be a person of the same sex as, or of the opposite sex to, the victim of the behaviour.

2. Policy statement on harassment, sexual harassment and bullying

- 2.1 It is civil service policy that every employee has the right to carry out her or his duties free from any form of harassment, sexual harassment or bullying. Harassment, sexual harassment or bullying are totally unacceptable forms of behaviour, are in many instances illegal, in breach of civil service policy and will not be tolerated in the service. These forms of behaviour harm professional working relationships, undermine morale and damage efficiency in the workplace. The civil service is committed to the development and maintenance of a positive working environment. An essential component of a positive working environment is treating colleagues with respect and dignity.
- 2.2 A positive working environment places obligations on management and also places responsibilities on all civil servants. It is important that all civil servants treat their colleagues with respect. A positive working environment is not created merely through the introduction of policies on harassment, sexual harassment and bullying, each civil servant has a responsibility to ensure that such policies have real effect in the workplace. The policy on harassment, sexual harassment and bullying is underpinned by the following rights and responsibilities of each civil servant:
- the right of each civil servant to a work environment which is free from harassment, sexual harassment and bullying
 - the right of each civil servant to fair and prompt procedures in dealing with allegations of harassment, sexual harassment and bullying
 - the responsibility on each civil servant to treat colleagues with dignity and respect and refrain from harassment, sexual harassment and bullying
 - the responsibility on each civil servant to support the policy on harassment, sexual harassment and bullying by bringing instances of such behaviour to attention at an early stage, by not making false or frivolous complaints and by cooperating with the procedures set out in this policy whether as complainant, the person complained of or as a witness.

3. Understanding bullying

- 3.1 This section is intended to give staff and management a greater understanding of the many forms of behaviour that constitute bullying.

Bullying

- 3.2 Behaviour that constitutes bullying can occur across the organisational and management structure of a department or office. It can occur within peer groups (staff of the same grade), from management to staff and from staff to management.

The following are examples of the type of behaviour that may constitute bullying. The examples are illustrative but not exhaustive:

- physical abuse or threats of abuse
- regular humiliation, ridicule, belittling efforts – often in front of others
- insulting or unnecessarily commenting on the appearance of another person
- making an individual, his or her beliefs or opinions, the butt of jokes or uncomplimentary remarks which are likely to cause offence
- verbal abuse, including shouting, use of obscene language and spreading malicious rumours
- showing hostility through sustained unfriendly contact or exclusion
- inappropriate overruling or undermining of a person's authority
- reducing job to routine tasks well below the person's skills and capabilities without prior discussion or explanation
- persistently and inappropriately finding fault with a person's work and using this as an excuse to humiliate the person rather than trying to improve performance
- giving repeated unreasonable assignment to duties which are obviously unfavourable to one individual
- constantly picking on a person when things go wrong.

- 3.3 Departments and individual officers should also be mindful of less obvious forms of bullying that might not be readily identifiable. Examples of such forms of bullying might include:

- deliberately and maliciously withholding work-related information in order to undermine a colleague
- subjecting an individual to unreasonable scrutiny
- setting unreasonable or impossible work deadlines or tasks

Appropriate Monitoring of Performance

3.4 The monitoring, review and evaluation of performance is an essential part of the management function. All managers in the civil service are required to carry out appropriate monitoring of the performance of their staff. It is the duty of management to be open with staff about performance, attendance or general conduct. Effective management may require critical comments to individuals about issues relevant to their official duties. However, such criticism should not be personalised but directed at the conduct or performance of a member of staff. Bullying does not arise where critical comments are made in an honest and constructive manner, are backed up by clear facts and are imparted in a reasonable way. Where issues arise in this area it may be more appropriate to address them under the Civil Service Grievance Procedure, Circular 11/01: Revised procedure for dealing with grievance problems.

4. The Employment Equality Acts 1998 and 2004

4.1 The Employment Equality Acts 1998 and 2004 deal with harassment and sexual harassment in the workplace or in the course of employment. The Acts place a responsibility on employers to ensure that harassment or sexual harassment will not be tolerated where perpetrated by the employer, employee, client or business customer.

4.2 Employers are compelled to take such steps as are reasonably practicable to ensure a work environment free of harassment and sexual harassment. The legislation also provides that different treatment of a person because of harassment or sexual harassment, whether in the workplace, in the course of employment or outside the workplace, constitutes discrimination. The Equality Act 2004 clarifies the protection to employees by providing that where there is different treatment of a person in the workplace in the course of employment, because of rejecting or accepting the harassment or where it could reasonably be anticipated that she or he would be so treated, such different treatment constitutes discrimination by the victim's employer in relation to the victim's conditions of employment. The Equality Act 2004 also clarifies the protection to employees in circumstances where an employee is harassed or sexually harassed and the circumstances of the harassment are such that the employer ought reasonably to have taken steps to prevent it, by providing that such

harassment constitutes discrimination by the victim's employer in relation to the victim's conditions of employment.

- 4.3 The Employment Equality Act 1998 provided for the establishment of the Equality Authority which has a range of functions including providing information to members of the public on the workings of the Act. A person who considers she or he has been discriminated against under the Act (such as being subject to harassment or sexual harassment) may seek support from the Equality Authority to take a case under the Act against her or his employer. The Authority may assist an individual in seeking redress from her or his employer where it considers there has been discrimination within the terms of the Act. Where the Authority decides to give support to an individual, this may, where appropriate, include providing free legal representation to assist the individual in taking a case before the Director of the Equality Tribunal.
- 4.4 A person may also refer the case directly to the Director of the Equality Tribunal appointed by the Minister for Justice, Equality and Law Reform. The Director will investigate each case (except those resolved at mediation) submitted to her or him and will issue a decision. The decision is binding and enforceable through the Circuit Court. All decisions may be appealed to the Labour Court within 42 days of issue. A person who considers she or he has been discriminated against on grounds of gender may apply directly to the Circuit Court for redress.
- 4.5 A person may also seek advice or assistance from her or his trade union in relation to harassment or sexual harassment.
- 4.6 It should be noted that a claim seeking redress in respect of alleged discrimination or victimisation must be referred to the Director of the Equality Tribunal or, if appropriate, the Circuit Court, within six months of the most recent occurrence of the alleged act of discrimination or victimisation. This time period may be extended for reasonable cause to twelve months on application to the Director of the Equality Tribunal or, if appropriate, the Circuit Court.

5. Employee Assistance Service

5.1 A member of staff who is subjected to harassment, sexual harassment or bullying may wish to seek personal support and assistance. Similarly, a member of staff against whom such a complaint has been made may need personal support and assistance.

All staff for example witnesses, managers and colleagues affected by such circumstances may wish to avail of the assistance and support available from the Employee Assistance Service (EAS).

- 5.2** The EAS is a work-based support service, designed to assist employees manage personal and work-related difficulties. It provides confidential assistance and a wide range of supports to staff in relation to personal or work-related problems. While the Service does not aim to provide a professional counselling service, all Employee Assistance Officers have counselling skills to enable them to deal appropriately with staff availing of the Service. However, it is not intended that the EAS should replace professional, medical or psychological services. Where the Employee Assistance Officer considers that a problem could best be dealt with by referral to external professionals, she or he has extensive information about the range of professional services available and can assist in arranging onward referral, should the client so wish.
- 5.3** The EAS is a neutral support service and will not be involved in the adjudication of cases. The EAS is available to support staff irrespective of whether the person is the subject of harassment, sexual harassment or bullying or is the subject of a complaint or is involved as a witness. Any discussion between a staff member and an Employee Assistance Officer is confidential. Third parties will not be involved without the prior knowledge and consent of the client, except in life threatening situations or where the Employee Assistance Officer has become aware of a breach of criminal law, or in some other similar situation where concealment of information would compromise the Employee Assistance Officer. The Code of Practice under which the Employee Assistance Officers operate will be brought to the attention of civil servants seeking information from the Service. A copy of the Code of Practice is attached at Appendix 3.
- 5.4** The EAS is available to provide support and assistance to staff in re-establishing positive working relationships following the conclusion of a case.

6. Creating a harassment, sexual harassment and bullying free environment

- 6.1** In March 2001 the Report of the Task Force on the Prevention of Workplace Bullying established by the Minister for Labour, Trade and Consumer

Affairs was published. The Task Force had the following terms of reference:

- to identify the size of the problem and the sectors most at risk
- to develop practical programmes and strategies to prevent workplace bullying and
- to produce a co-ordinated response from state agencies and to report to the Minister.

To establish the scale of the problem the Task Force commissioned the ESRI to carry out an independent survey in 2000 and 2001. This is the most comprehensive study available of the nature and extent of harassment, sexual harassment and bullying in Ireland.

The survey found that:

- 7% of those currently in the workforce said that they had been bullied in the six months before the survey. The incidence rate among women is 1.8 times that among men and the rate among employees is 3.6 times that among the self-employed
- the incidence of bullying was strongly related to educational qualification; that is, the level of reported bullying, particularly for males, rises substantially with educational attainment; men with a third-level qualification had a 55% higher chance of being bullied than their counterparts who left the education system with a Junior Certificate or less
- the highest risk of bullying was found in Public Administration/Defence (14%), education (12%) and health and social work (10%); the lowest levels were recorded in construction, retail/wholesale and transport and communications
- the incidence of bullying was linked to changes in management and corporate structures; respondents who had a new manager or supervisor, or who worked in a company or an organisation whose structures were being changed, were particularly likely to report being bullied or harassed.

The Report recognised that harassment, sexual harassment and bullying can have a number of serious consequences:

- the psychological or physical welfare of the victim may be damaged in a variety of different ways such as physical illness, depression, loss of confidence and/or self-esteem
- the capacity of the victim to give of her or his best in work terms may be seriously diminished

and consequently may adversely impact on her or his career prospects

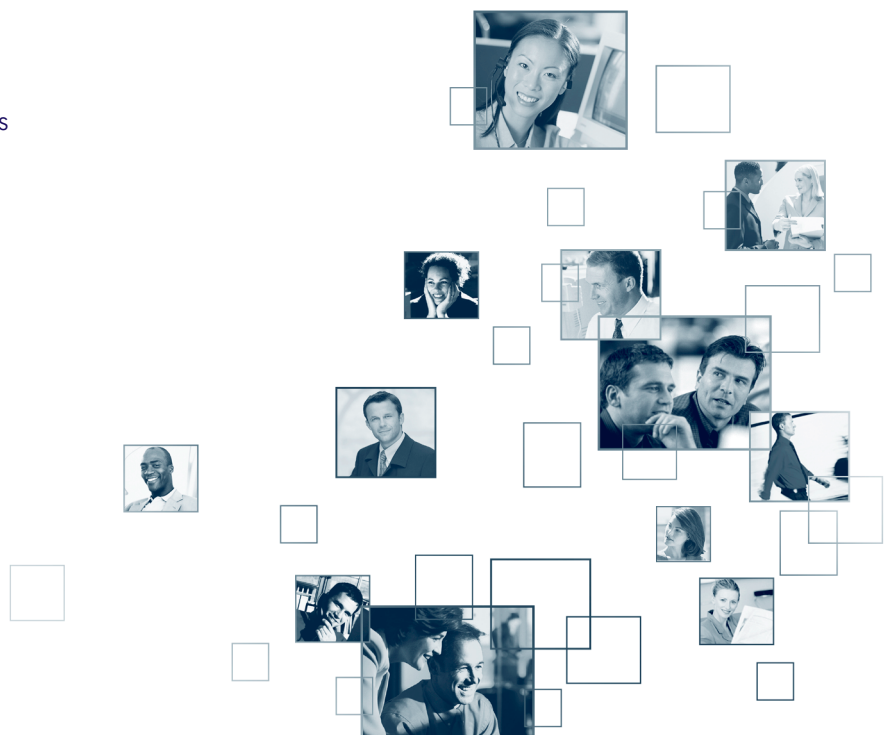
- the working environment may also be damaged for those not directly involved.

The Report's findings, particularly in relation to circumstances where the risk of bullying can increase, highlight the need to have a structured approach to identifying and dealing with workplace bullying. Such an approach also creates confidence among staff that problems of harassment, sexual harassment and bullying will be addressed in an effective manner.

- 6.2** Clearly harassment, sexual harassment and bullying are problems, not just for the victim, but also for their colleagues and for the management in the department or office in which they work and may also impact on the family life of a victim.
- 6.3** It is not the intention of this policy to prevent normal good humoured banter between work colleagues. However, care needs to be taken not to cross the line into unacceptable behaviour which is offensive, abusive, intimidating, malicious or insulting. In any case a civil servant should desist immediately when a colleague indicates that such behaviour is unacceptable.
- 6.4** The existence of a policy on harassment and bullying is not of itself sufficient to ensure that the work environment is free from any form of harassment, sexual harassment or bullying. The maintenance of discipline and of proper standards in the workplace is primarily the responsibility of management. Civil service management should adopt a proactive approach to ensuring that the workplace is free from harassment, sexual harassment and bullying. Heads of departments and offices must formally remind managers and supervisors of staff of their responsibilities to assist in the generation of a harassment, sexual harassment and bullying free environment in their own areas. The Civil Service Code of Standards and Behaviour at paragraph 12 advises civil servants to support the civil service policy on harassment, sexual harassment and bullying.
- 6.5** Managers and supervisors are obliged to uphold this policy as an integral part of their responsibilities. To this end, managers/supervisors will be expected to:
- ensure that all members of staff are informed and aware of this policy
 - take seriously any complaints of harassment, sexual harassment or bullying which are made to them

- take appropriate action when any incidents of harassment, sexual harassment or bullying arise in their areas and
- apply the procedures set out in this policy.

- 6.6** Heads of departments and offices must also notify Personnel Officers of their specific duties arising from this policy in relation to the fair and thorough investigation of any complaints of harassment, sexual harassment or bullying which may be referred to them.
- 6.7** Heads of departments and offices should develop appropriate training initiatives, including the training of investigating officers, to counteract harassment, sexual harassment and bullying.
- 6.8** While it is not possible to set down a single set of rules which will apply to every case and the ways in which the principles of natural justice may apply will differ, the Department of Finance is satisfied that the procedures set out in Part II of this policy for dealing with complaints, are consistent with the principles of natural justice and can be implemented with confidence.



7. Handling Complaints of Harassment, Sexual Harassment and Bullying

- 7.1 All complaints of harassment, sexual harassment and bullying must be treated seriously both by the line manager and by the Personnel Officer with due regard to the sensitivities of the complainant and to the rights of the person against whom the complaint has been made. All complaints must be dealt with promptly and sympathetically. To the extent possible, a complaint of harassment or bullying will be handled in confidence. However, it is not possible to guarantee anonymity to persons who report harassment, sexual harassment or bullying or who participate in an investigation. The principles of natural justice require that a person who is accused of harassment, sexual harassment or bullying be given a fair opportunity to respond to the allegations made against her or him.
- 7.2 An officer who considers that she or he has been subjected to harassment, sexual harassment or bullying should consider the following steps in dealing with the matter:
- the officer concerned may wish to speak to a support contact person whose function is to provide information and support to the officer. The contact person will explain the definition of bullying, harassment and sexual harassment and the procedures in place. The contact person may not act as an advocate or representative for the officer and may not approach the person complained of on the officer's behalf. (Further information on the role of the contact person is set out at Appendix 1). Details of support contact persons will be made available on bulletin boards or other appropriate information sources. The officer may also seek information and advice on a confidential basis from her/his Personnel Section, a staff representative or Employee Assistance Officer or a trusted colleague
 - having consulted with the contact person or other appropriate person, if the officer decides to pursue the matter she or he may approach the person concerned directly and make her/him aware that the behaviour is unwelcome or request a supervisor to approach the person on her or his behalf. An informal discussion is often enough to alert the person to the effects of her or his behaviour and can lead to greater understanding and an agreement that the behaviour will stop
 - if the officer decides to bypass this procedure or if the behaviour persists, she or he should make a formal complaint to the line manager or, if the line manager is the person against whom the complaint is being made, report the matter to the second supervisor. The line manager or second supervisor will, where appropriate and with the consent of the complainant and the person complained of, seek to resolve the matter locally. Informal resolution could comprise, for example, of an apology from the person against whom the complaint was made, agreement by the person complained of that the conduct will not be repeated, or an explanation to the complainant about what occurred from the point of view of the person complained of which dispels the complaint. The line manager or second supervisor may also advise the person in relation to the options available to resolve the matter under the Civil Service Grievance Procedure.
 - it is recognised that circumstances may occasionally exist where, for good reasons, a complainant cannot pursue her/his complaint through the line management structure. In such circumstances, the complainant may bring the matter directly to the Personnel Officer of the department/office
 - the officer concerned may also wish to report the matter to the union holding recognition for the grade
 - if it is not possible to resolve the matter locally in a manner which is acceptable to the complainant and the person complained of, the line manager or second supervisor shall report the complaint to the Personnel Officer.
- Timescale for bringing a complaint**
- 7.3 A complaint of harassment, sexual harassment or bullying, must be brought under this policy within 6 months from the date of the most recent occurrence of the behaviour to which the complaint relates. However if reasonable cause can be shown for the failure to make the complaint in time, for example, illness or absence from work, the period may be extended by the Personnel Officer to a period not exceeding 12 months.

7.4 The Personnel Officer, on receipt of a complaint of harassment, sexual harassment or bullying that may constitute a criminal offence (for example, indecent assault or assault), should consider whether the complaint is a matter that should be referred to the Garda Síochána. In addition the Personnel Officer should ascertain whether the matter is, or is likely to be, the subject of an investigation by the Garda Síochána. If the matter is to be investigated by the Gardaí, the Personnel Officer should contact them to seek advice on whether or not to proceed with the departmental investigation. The internal investigation procedure should continue where the Gardaí advise that it is appropriate to do so.

Procedures following a complaint to the Personnel Officer

Informal Procedure

- 7.5** The Personnel Officer shall, on receipt of a complaint of harassment, sexual harassment or bullying, seek to have the matter resolved informally with the consent of the parties involved, where appropriate. Informal resolution could comprise, for example, of an apology from the person against whom the complaint was made, agreement by the person complained of that the conduct will not be repeated, or an explanation to the complainant about what occurred from the point of view of the person complained of which dispels the complaint. The Personnel Officer should not try personally to informally resolve the complaint but should refer the dispute for resolution to another senior officer, or such other person as may be agreed. Involvement by the Personnel Officer in any attempt at informal resolution may, if such an attempt were unsuccessful, prejudice her or his role in any subsequent disciplinary proceedings, should they arise from the complaint.
- 7.6** If the complaint is reported to the Personnel Officer from a line manager/second supervisor who has previously sought to resolve the matter and the parties to the complaint do not consent to an informal resolution, then the Personnel Officer shall proceed to institute the formal procedures.

Formal Procedure

- 7.7** The formal procedure for handling a complaint of harassment, sexual harassment or bullying, comprise referral of the complaint for mediation and, if necessary, for investigation.
- 7.7.1** If the complaint is not already set out in writing, the complainant should be asked to make a formal complaint in writing to the Personnel Officer.

7.7.2 On receipt of the complaint, in writing, the Personnel Officer shall:

- promptly notify the person complained of that a complaint has been made in writing
- give her or him a copy of the complainant's statement
- advise the person complained of that she or he will be afforded a fair opportunity to respond to the written allegation.

Mediation

7.8 Before embarking on an investigation of the complaint, the Personnel Officer shall consider the possibility of mediation. Unlike the process involved in an investigation, mediation empowers parties to find their own solution to their difficulties. It uses various techniques to separate the issues from the personalities involved and can bring about a new awareness of other perspectives. Solutions found in this manner, because they are owned by the individuals, tend to be more stable, longer lasting and also enhance the working environment. The fundamental objective is to bring about a resolution of conflict, for agreements to be reached and these agreements to be confidential to the parties.

7.8.1 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. If the Personnel Officer considers that the matter is appropriate for mediation, she or he should write to both parties within 10 working days of receiving the complaint, outlining the procedures for mediation. Details of the process are set out in Appendix 2. The possibility of mediation should be open to the parties at any stage. If the matter proceeds to an investigation the investigator should also facilitate referral to mediation if requested to do so by both parties. The person chosen to provide mediation services should be qualified in workplace mediation. 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 Personnel Officer to that effect. The matter should then be referred by the Personnel Officer to an investigator to commence or resume an investigation.

7.8.2 Information disclosed in the course of mediation must remain within the mediation process and will not be given by the mediator to an investigator if there is a subsequent investigation.

Investigation

7.9 The purpose of an investigation is to determine the facts and the credibility or otherwise of a complaint of harassment, sexual harassment or bullying. Where an investigation is to be carried out, the procedures below should be followed.

7.9.1 Where the complaint involves a number of allegations an officer from the Personnel/ HR Section, nominated by the Personnel Officer, may meet the complainant with her or his agreement to discuss the allegations. It must be explained to the complainant that the aim of the meeting is to clarify the allegations that are to be the subject of the investigation. While the nominated officer should make reasonable efforts to clarify the complaint she or he must not be drawn into framing the complaint on behalf of the complainant. At the end of this meeting the complainant should be asked by the nominated officer to draw up and sign the complaint. The nominated officer should make clear to the complainant that the complaint will not be widened at a later stage beyond the limits set out in the complaint unless reasonable cause can be shown; in this particular context, reasonable cause means that other incidents or staff members who might be included in a further allegation must be directly related to or directly relevant to the original allegations set out in the complaint. Once an investigator has been appointed, it will be her or his responsibility to consider whether the original allegations should be widened on the basis that any new allegations are related to those in the signed complaint and only on that basis.

7.9.2 The Personnel Officer should appoint an investigator to investigate the complaint within 20 working days of the receipt of the complaint. Where a process of mediation has taken place without resolution, the time scale will run from the date of the letter from the mediator indicating that mediation has failed. It may be appropriate in certain circumstances to appoint two investigators as an investigation team in respect of a complaint. In cases of sexual harassment two investigators should be appointed to investigate a complaint, one female and one male. (References in the policy to an investigator should be understood to include more than one person).

7.9.3 Decisions on the appointment of an investigator must be made having regard to the need to ensure transparency and fair procedures in the conduct of an investigation. An investigator appointed by the Personnel Officer to investigate a complaint may be from outside the civil service, from another department or from the department

or office concerned. Where there are two investigators appointed to carry out an investigation both should be involved at all stages in the interviewing of witnesses and parties to the complaint.

7.9.4 An officer appointed to investigate a complaint of harassment, sexual harassment or bullying should have the grading and authority necessary to ensure that the complaint is fully investigated. An investigator should be a person of tact and trustworthiness and should have received training in the investigation of complaints of harassment, sexual harassment and bullying. The investigation should be governed by terms of reference. The terms of reference should specify the following:

- The investigation will be conducted in accordance with the civil service policy 'A Positive Working Environment'
- The likely timescale within which it will be completed
- The scope of the investigation, that is, that the investigator will consider whether the complaint falls within the definition of harassment, sexual harassment or bullying, and whether the complaint has been upheld.

7.9.5 It is advisable to record the statements in writing from all parties in the investigation, as the use of written statements tends to make matters clearer from the outset of the investigation and maintains clarity throughout the procedure. Those who make statements to the investigator should be given copies of the record of their statements. Where there is disagreement on the written record such disagreement should be noted.

7.9.6 All parties to an investigation should continue to work normally, if possible, during the course of the investigation.

7.9.7 At the start of a formal investigation, the Personnel Officer should inform both parties to a complaint of the necessity to maintain confidentiality. Parties should be required to sign a statement to this effect. Confidentiality extends only to the processing of the complaint under the policy so that if a complainant seeks redress through the courts she or he will not be constrained by the need for confidentiality. It should be made clear to both parties that any breach of confidentiality (other than to a person supporting them in the conduct of the case) may be dealt with under the Disciplinary Code. Investigators should also be asked to remind both parties and any witnesses of the need for confidentiality.

7.9.8 If a person requests that information provided to an investigator remain confidential there is no legal duty to maintain confidentiality. Where the investigator is of the view that natural justice (such as each side being fully aware of the case being made against them) requires disclosure, such obligation may override any undertaking of confidentiality.

Interview with the complainant

7.9.9 The investigator should begin the investigative process with a thorough interview with the complainant to ascertain the facts behind the complaint. It is important that the investigator indicate clearly to a complainant that she or he is not a counsellor. Where a complainant seeks counselling she or he should be directed to the Employee Assistance Service. It should also be clearly indicated to a complainant that the investigation must follow fair procedures mindful of the rights of both the complainant and the person complained of. The investigator should seek to discover:

- what precisely occurred
- who was involved
- when the incident(s) occurred
- where the incident(s) occurred
- whether there were any witnesses to the event(s).

The complainant should be reminded not to discuss the case with any other party to the investigation. The complainant has a right to be accompanied at interviews held during the investigation by a person of their choice (this may include a colleague, friend or trade union representative) whose function will be to support and assist the person during the course of the interview. However, it would not be appropriate for such an accompanying person to be a witness who will also be interviewed or making a statement during the course of the investigation. The complainant should be informed that a copy of her or his statement will be furnished to the person against whom the complaint has been made.

Interview with the person complained of

7.9.10 The investigator should hold a thorough interview with the person complained of. It is important that the investigator indicate clearly to the person complained of that she or he is not

a counsellor. Where counselling is sought she or he should be directed to the Employee Assistance Service. It should also be clearly indicated to the person complained of that the investigation must follow fair procedures mindful of the rights of both the person complained of and the complainant. The person complained of must be:

- advised in sufficient detail on the allegations against her or him and given a copy of the complainant's written statement in advance of the interview
- given an opportunity to answer the complaints made in writing, if she or he so wishes. This may be done in advance of the interview
- given an opportunity to comment on the alleged incident(s) from her or his perspective and to comment on the detailed statement of the complainant
- asked whether there were any witnesses to the alleged events.

The person complained of should be reminded not to discuss the case with any other party to the investigation. She or he has a right to be accompanied at interviews held during the investigation by a person of their choice (this may include a colleague, friend or trade union representative) whose function will be to support and assist the person during the course of the interview. However, it would not be appropriate for such an accompanying person to be a witness who will also be interviewed or making a statement during the course of the investigation.

7.9.11 If the complainant requests a copy of the statement of the person complained of, such should be provided. The crucial factor is that each party knows fully the case that is being made by the other party and that an investigator cannot take evidence into account without first obtaining what comments or reply may be made to that evidence by the other party. Information which is not relevant to the investigator's decision need not be exchanged.

Interviews with witnesses

7.9.12 Following the interviews with the complainant and the person complained of, the investigator should approach all the witnesses named by the parties to obtain their account of what transpired.

Witnesses should only be given sufficient information to allow the investigator to determine what occurred in relation to the allegation. Witnesses may be accompanied at interviews held during the investigation by a person of their choice (this may include a colleague, friend or trade union representative whose function will be to support and assist the person during the course of the interview. However, it would not be appropriate for such an accompanying person to be a party to the investigation or another witness who will also be interviewed or making a statement during the course of the investigation. In addition, witnesses should be reminded that in accordance with paragraph 7.9.7 they are not to discuss the case with any other party. Witnesses should be asked:

- what precisely occurred
- who was involved
- when the incident(s) occurred
- where the incident(s) occurred
- whether there were any other witnesses to the event(s).

7.9.13 In accordance with fair procedures, the complainant and the person complained of must be given an opportunity to comment on the statements made by any witnesses.

Conflicting Accounts

7.9.14 Where the investigator is faced with two conflicting accounts of an alleged incident and where no witnesses are available or where their evidence is not conclusive, the case rests upon which version of events the investigator considers the more credible. In this connection, it is important to pay attention to the details of the evidence and the consistency of the version of events presented by each party.

Principles to be observed by the investigator

7.9.15 The investigator must avoid discussing the case with any person, either within or outside of the workplace, other than those with whom she or he must speak in the course of the investigation and to the Personnel Officer in relation to procedures.

7.9.16 During the course of the investigation, the investigator should not indicate her or his views to anyone with regard to the credibility or otherwise of:

- the complaint itself, or
- the evidence given by the complainant, the person complained of or any witnesses.

7.9.17 The investigator should refuse to be drawn into any speculation with any party as to the likely outcome of the investigation.

7.9.18 Due regard must be had at all stages of the investigation to the rights of the complainant, the person complained of and any witnesses, particularly their constitutional right to the protection of their good name, bearing in mind that a complaint is no more than an allegation unless and until the facts have been satisfactorily established by the investigation.

7.9.19 The investigator should maintain a written record of all interviews/meetings held during the investigation. Where possible, interviews should be held 'off site' to ensure the privacy of the persons concerned.

7.9.20 Every effort should be made to complete an investigation within a three month period from the appointment of the investigator. Departments should ensure that priority is given to an investigation in order that deadlines are complied with. Where it becomes clear that the deadline will not be met, both the complainant and the person complained of should be informed that the investigation is ongoing. The limit shall not be extended except by decision of the investigator at her or his sole discretion. Where the investigator considers that further time is required to allow for the proper completion of the investigation and the preparation of a report, the investigator may decide to extend the time limits. The investigator shall inform both parties and the Personnel Officer in writing of the decision to extend the time limits.

7.9.21 Investigators should be instructed by the Personnel Officer to reach one of the following conclusions:

- a) that, on the balance of probability the complaint is upheld for reasons which are stated or
- b) that, on the balance of probability, the complaint is not upheld for reasons which are stated; (cases where there was insufficient evidence to decide the complaint would be included under (b))
- c) if a complainant withdraws a complaint or refuses to cooperate in the investigation, the investigator may, depending on the circumstances, make a finding of 'no case to answer'.

Non cooperation of the person complained of

7.9.22 An investigator is entitled to draw conclusions from the failure to cooperate with the investigation. An investigator may decide, depending on the evidence available, that in the absence of any explanation from the person complained of, on the balance of probability the incident alleged did occur.

Withdrawal of a complaint

7.9.23 If a complainant withdraws a complaint or refuses to cooperate 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 of a very serious nature, the investigator may inform the complainant that the withdrawal of the complaint will not be accepted until the investigator has satisfied herself or himself that there are no grounds for continuing with the investigation without the cooperation of the complainant.

7.9.24 Should the investigator or any other person become aware that an attempt has been made to persuade the complainant or any witness to withdraw the complaint or change her or his evidence, the matter should be reported immediately to the Personnel Officer. Any such interference will be regarded as a serious breach of discipline. Any attempt at interference or victimisation in the case of harassment or sexual harassment may also constitute an offence under the Employment Equality Acts 1998 and 2004.

On completion of the investigation

7.10 When the interviews have been completed, the investigator shall submit a report to the Personnel Officer within 21 days. This report shall include the conclusions of the investigator in accordance with paragraph 7.9.21. On receipt of the report from the investigator the Personnel Officer shall satisfy herself or himself that all appropriate steps have been taken to carry out a thorough and impartial investigation.

7.11 Both parties should be given a copy of the investigator's report within 10 working days of receipt of the report by the Personnel Officer or as soon as possible thereafter. Both parties should be given an opportunity to comment before any action is decided on by the Personnel Officer. The comments of the parties on the investigator's report should be given to the Personnel Officer within 10 working days of the issue to parties of the report or as soon as possible thereafter.

7.12 The Personnel Officer shall determine whether having regard to the report of the investigator and the comments of the parties, if any, the complaint is upheld. The Personnel Officer shall inform the complainant and the person against whom the complaint was made, of the outcome of the investigation in writing, within 10 working days of receipt of the comments from the parties or as soon as possible thereafter.

Action where the complaint is upheld

7.13 If the complaint is upheld the Personnel Officer, having regard to the nature of the behaviour alleged, the report of the investigator and any other appropriate information, shall decide whether the matter should be pursued as a disciplinary issue. The Personnel Officer shall inform the party concerned of that decision in writing within 10 working days of notification to the parties of the outcome of the investigation or as soon as possible thereafter.

7.14 If the matter is to be pursued as a disciplinary issue, the Personnel Officer shall follow the appropriate procedures including affording the person complained of the right to be represented by the union which holds recognition for the grade. These procedures include, where a decision has been made to take disciplinary action against an individual, access to the Disciplinary Code Appeals Board as set out in Appendix 2 of Circular 1/92: '*Procedures for dealing with grievance and disciplinary problems*'. An investigation carried out under this policy shall be the fact-finding investigation as required for the purposes of the Disciplinary Code.

7.15 If the Personnel Officer decides that the matter should not be pursued as a disciplinary issue, she or he shall decide what further action in relation to the complaint is warranted. The Personnel Officer should also keep the situation under review for a period of time. It may be appropriate in certain circumstances to refer a person against whom a complaint has been upheld to counselling or other appropriate interventions or support services in respect of their behaviour. It is important that departments and offices do not merely transfer the problem to another area of the service.

7.16 The Personnel Officer shall inform the complainant of the action, if any, which is to be taken. If the matter is to be pursued under the Disciplinary Code, the Personnel Officer shall inform the complainant as to whether or not disciplinary action was taken.

Action where the complaint is not upheld

- 7.17** It is important that departments and offices monitor the situation to ensure that there is no victimisation or appearance of victimisation of a complainant following an investigation.
- 7.18** A complainant may wish to be transferred to another section following an investigation into an incident of harassment, sexual harassment or bullying, irrespective of whether the complaint has been upheld. Such a transfer should only take place where a complainant has indicated a wish for a transfer.
- 7.19** If the complaint is not upheld, staff can be assured that bona fide complaints will not be viewed as malicious.
- 7.20** While a malicious complaint will be treated as serious misconduct under the disciplinary procedure, this should not deter staff from making genuine complaints.

8 Review Procedures

Review procedure where the complainant is not satisfied with the conduct or outcome of the investigation

- 8.1** There should be a senior designated officer (at Assistant Secretary level, where possible, or otherwise at Principal Officer level) to review the conduct or outcome of investigations of cases of harassment, sexual harassment and bullying. The senior designated officer should be from another department or office and selected by agreement between the staff unions and the Personnel Officer.
- 8.2** An application for a review must be made in writing to the Personnel Officer no later than 42 days from the date of the letter informing parties of the outcome of the investigation.
- 8.3** A review will not be undertaken unless the grounds for such review are clearly stated in the application.
- 8.4** The complainant may also ask the union of which she or he is a member, to make an application for review on her or his behalf. This application should also be made in writing and the grounds for the review clearly stated
- 8.5** The reviewer shall consider:
- a) whether the investigation followed the procedures set down in the policy and, in particular, whether the procedures for gathering evidence were properly followed, and, if the procedures were properly followed

- b) whether the conclusion reached by the investigator in the report (i) could be validly drawn from the evidence on the balance of probability or (ii) could not be validly drawn from the evidence on the balance of probability.
- 8.6** The Personnel Officer shall inform the other party of an application for a review and of the grounds for the review, as soon as possible after the application is made.
- 8.7** The senior designated officer shall be instructed by the Personnel Officer to carry out the review and provide a report in accordance with paragraph 8.5.
- 8.8** Where a reviewer considers that the conduct of the investigation was not in accordance with the procedures she or he shall report to the Personnel Officer who will decide on a course of action having regard to the report. This may involve establishing a new investigation. Where the finding of the review is that the evidence does not support the conclusion drawn by the investigator, she or he shall report this together with the reasons for so finding, to the Personnel Officer.
- 8.9** The Personnel Officer having regard to the report of the investigator and that of the reviewer, shall consider whether the complaint is upheld.
- 8.10** The Personnel Officer shall inform both parties of the decision and shall give reasons for the decision, as soon as possible after receiving the reviewer's report.
- 8.11** In the case of harassment and sexual harassment a complainant who is not satisfied with the conduct of an investigation may also wish to note section 4 of this policy in relation to the provisions of the Employment Equality Acts 1998 and 2004.

Review procedures where the person complained of is not satisfied with the conduct or outcome of the investigation

- 8.12** The same avenues as outlined in paragraphs 8.1 – 8.11 are open to the person complained of.

Where the person complained of is the Personnel Officer

- 8.13** A Principal Officer should be assigned to perform the functions of the Personnel Officer set out in this policy, in relation to a complaint of harassment, sexual harassment or bullying, where such a complaint has been made against the Personnel Officer.

Appendix 1 : Role of the Contact Person

The role of the departmental contact person is to provide information and support in a confidential, non judgmental and off the record discussion to any employee who feels they have been subjected to harassment, sexual harassment or bullying, or against whom a complaint has been made. The contact person only provides information and support in relation to complaints under the civil service policy 'A Positive Working Environment' and not in relation to any other forms of workplace grievance.

The contact person may not act as representative on behalf of the person she or he is supporting nor direct someone as to the best course of action to take. The aim of the contact person is to give information to help employees to clarify what they are experiencing and empower them to decide their own course of action.

A contact person cannot support both parties on a particular issue and if approached by them should only support the person who has first approached them and refer the second person to another contact person. The contact person's role is at this initial information stage and she or he has no role in relation to any other procedures under the policy.

The contact person will treat the discussion as confidential and will not be requested to disclose any matters to a third party. Where a potential danger to an employee arises such as an assault or risk of suicide, the HR Department should be contacted so that appropriate professional advice can be sought.

The supervisor or manager of the contact person should be made aware of what the role of the contact person entails to ensure that she or he fully supports and facilitates the requirements of the role.

Meetings between employees seeking support and the contact persons should take place during office hours, in a suitable private location on notice to the contact person's line manager. The meetings should take no more than one hour and 2 - 3 meetings should be sufficient.

No home or mobile telephone numbers should be exchanged.

Departments/Offices will provide details of contact persons who have made themselves available to provide this service and who have received instruction on the role they will carry out.

Appendix 2 : The Mediation Process

Mediation is a voluntary process: it can only be undertaken if both parties agree and it can end at any stage if either party decides to do so.

The following principles apply to mediation:

- consent to mediation is sought independently from both parties
- if both parties consent, a meeting is convened by the mediator as soon as practicable after the decision to appoint a mediator is made
- the mediator is impartial and does not take sides with either party. The role of the mediator is to assist the parties to negotiate their own agreement and not in making decisions for or imposing solutions on them
- mediation is voluntary. Either party may withdraw the initial consent at any stage and mediation will be terminated immediately. The complainant may request the resumption or initiation of an investigation under the civil service policy at any stage
- accompanying persons such as a colleague, friend or trade union representative, are welcome at mediation and the mediator will agree with the parties at the outset as to how they can contribute to the mediation process
- it is the responsibility of the parties to identify, if necessary with the help of the mediator, the issues on which they wish to negotiate. The parties are responsible for the terms of agreement which they reach
- mediation is conducted in private and the terms of the agreement are private. No details of what occurs within the process will be formally recorded or placed on personnel files. Information disclosed at mediation will not be made available to an investigator in the event of an investigation being carried out subsequently
- sessions are normally held jointly but in some instances it may help the process to have separate confidential meetings with the parties. The mediator will agree with parties in advance how this process will operate.

Once these principles have been established the mediator will arrange a mutually convenient meeting between the parties as soon as is practicable after the complaint has been referred to her or him.

At the meeting the parties are brought together to discuss the problem they face. The mediator facilitates the process without offering solutions, taking sides or making a judgment. (This is in contrast to arbitration where the arbitrator may suggest solutions or in certain cases decide on issues between the parties).

The mediator assists each party, beginning with the complainant, to explain what happened from their perspective and how they feel about the alleged incident. This dialogue is an important part of the mediation process as it gives the parties a chance to say what happened from their point of view while the other person listens. In many cases this may be the first time the parties have spoken to each other since the alleged incident.

Mediation may only be appropriate in cases where both parties can agree that a decision on whether the alleged behaviour constitutes bullying or harassment, is not as important as reaching an accommodation which will allow both people to work together in the future.

Meetings will generally be scheduled to last two hours and a number of such meetings may be necessary. Detailed submissions are not required from either party in the case of mediation. The parties are helped to identify the key issues that need to be addressed and how they might see the dispute being resolved.

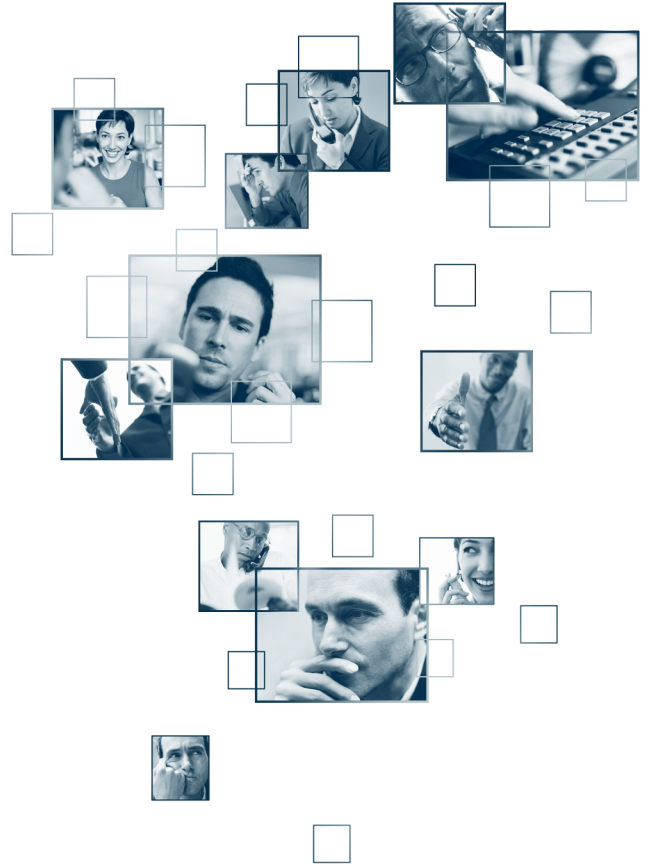
Mediation will be conducted in private, and will be directly between the parties concerned, with the support of the mediator, who will act as an independent facilitator. Either party may withdraw from the process at any time by notifying the mediator in writing that they wish to do so.

Mediation Agreements

If the mediation process results in an agreement acceptable to both parties, the mediator will draw up a written record of the terms of the agreement for signature by the complainant and person complained of. A copy of the mediated agreement will be given to both parties and a copy will be kept by the Personnel Officer who will oversee implementation of the agreement. Once signed, this agreement is binding on both parties.

Where Mediation is unsuccessful

If, during the course of mediation, one party withdraws or the mediator decides for any other reason that the complaint cannot be resolved by mediation, the mediator shall write to the parties and to the Personnel Officer to that effect. The matter should then be referred by the Personnel Officer to an investigator to commence or resume an investigation.



Appendix 3 : Code of Practice, Civil Service Employee Assistance Officers

1. Introduction

This code of practice constitutes guidelines for the Employee Assistance Officers in the Civil Service in the exercise of their professional role. The code was drawn up in consultation between the Employee Assistance Officers' Network and the Department of Finance and is in keeping with best practice models. Employee Assistance Officers will at all times work in accordance with the terms of Circular 35/97: Employee Assistance Service.

2. Definitions

In this Code of Practice, the following terms have the meanings given to them below:

“EAO” means Employee Assistance Officer.

“EAS” means Employee Assistance Service.

“Client” means any client of the EAS: a management referred client, self-referred client or other referred client to whom Employee Assistance services are being or have been provided by an EAO or the EAS.

“Client Record” means all information recorded in whatever medium by any EAO relating to Employee Assistance services provided by that EAO to any Client.

3. Professional Competence and Responsibility

- 3.1 EAOs will at all times work to the highest standards in their profession and promote the Employee Assistance Service in the Civil Service.
- 3.2 EAOs will not attempt to provide services for which they do not have the relevant expertise and will make referrals where appropriate.
- 3.3 EAOs will engage in regular individual professional supervision to monitor their provision of the service.
- 3.4 EAOs will conduct themselves in their professional activities in a manner which does not denigrate other officers for the sake of promoting their own interests.
- 3.5 EAOs will conduct themselves in a manner that does not undermine staff confidence in EAOs' ability to carry out their duties.
- 3.6 EAOs will not allow any personal obligation or prospect of gain or loss or any other circumstances, which might present a conflict of interest to affect their professional conduct.
- 3.7 EAOs will not engage in the provision of EAO service at a time when their physical or

psychological condition or their ability or professional judgement is impaired by the influence of alcohol, drugs or illness.

4. Confidentiality

- 4.1 EAOs will take all reasonable steps to ensure safety of clients. Confidentiality is the primary means of providing the client with safety and privacy. The maintenance of a relationship of trust between EAOs and clients is critical to credibility and success of the EAS as a whole.
 - 4.2 In situations where clients self-refer to the EAS, any discussions between the EAO and the client are confidential. Third parties will not be involved without the prior knowledge and consent of the client except:
 - i) in life-threatening situations;
 - ii) where the EAO becomes aware of a breach in criminal law;
 - iii) in serious situations where the concealment of information would compromise the EAO;
 - iv) where the EAO is being compromised in any way.
 - 4.3 In situations where a client is referred to the EAS by a line manager or by Personnel Division and progress reports are requested, any proposed feedback or report will be discussed with the client in advance.
 - 4.4 EAOs will as a matter of course advise clients of any situation where limitations of confidentiality might arise.
 - 4.5 In cases of alleged bullying/ harassment/sexual harassment, clients will be advised of the policy document for the civil service: *'A Positive Working Environment'*.
- ### 5. Record Keeping
- 5.1 All records created and held will comply with the provisions of the Freedom of Information Act and Data Protection Act.
 - 5.2 EAOs in compiling a Client Record will use all reasonable efforts to ensure that the record is accurate and current.
 - 5.3 Records will contain only such information as is directly related to and necessary for, the provision of Employee Assistance services to the Client and does not include speculation or value judgement about that Client or any other party.

6. *Client Protection*

- 6.1 To preserve the integrity of the EAS the best interest of the client will always be upheld while giving due regard to the organisation's (the Civil Service) right to meet its own responsibility.
- 6.2 EAOs will be conscious of maintaining the integrity of the client/EAO relationship in their everyday dealings with colleagues.
- 6.3 EAOs will not exploit or discriminate against clients in any way.

7. *Complaints and Disciplinary Procedures*

- 7.1 Any complaint in relation to the Employee Assistance Service will be subject to the usual Civil Service grievance and disciplinary procedures, i.e. Circular 11/2001 and Circular 1/92 respectively.



FURTHER INFORMATION :

Department of Finance

www.finance.gov.ie

Civil Service Employee Assistance Officers

www.cseas.gov.ie

Personnel Code

www.personnelcode.gov.ie

Equality Authority

www.equality.ie

Health and Safety Authority

www.hsa.ie



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