

JOINT NEGOTIATING COUNCIL EDUCATION AUTHORITY

5 July 2018

To JNC Council Members
MSO/TUSO

Joint Negotiating Council Circular No. 245

DIGNITY AT WORK POLICY AND CODE OF PRACTICE - SCHOOLS

The Joint Secretaries of the Joint Negotiating Council have considered and agreed the attached Dignity at Work Policy and Code of Practice – Schools which provides a framework of guidance to deal with dignity at work complaints.

This policy supersedes JNC Circular No 77 'A Statement of Policy and Code of Practice on Measures to Combat Harassment in the Workplace for Non-teaching Staff in Controlled Schools and Non-teaching Staff in Maintained Schools dated 30 March 2007, which should be destroyed.



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EDUCATION AUTHORITY

DIGNITY AT WORK POLICY AND CODE OF PRACTICE FOR NON-TEACHING STAFF EMPLOYED IN CONTROLLED AND MAINTAINED SCHOOLS

STATEMENT OF POLICY

1. GENERAL PRINCIPLES

- 1.1** The Board of Governors recognises that its employees are its most valuable asset and as such have a right to be treated with dignity and respect. The Board of Governors is committed to providing a safe and harmonious working environment for its employees through pro-active and sensitive management.
- 1.2** All employees are required to co-operate in the promotion of harmonious working relationships. Principals, and where in place, their Senior Management Team, have a particular responsibility for ensuring this policy is operative on a day-to-day basis. They also have a responsibility to set a good example for other employees to follow and for intervening where necessary to protect and re-assure employees.
- 1.3** The Board of Governors acknowledge that all forms of unacceptable behaviour can adversely affect an employee's confidence and job performance and that it creates an intimidating and uncomfortable working environment.
- 1.4** It is recognised that unacceptable behaviour can constitute a threat to an employee's health, safety and welfare. Harassment, discrimination and victimisation in the workplace may contravene the law and will not be permitted or condoned. Should these forms of unacceptable behaviour occur employees affected have a right to complain about it and should not feel or be made to feel guilty or embarrassed about exercising that right.
- 1.5** The Board of Governors is committed, through the dissemination and explanation of this policy, to ensure that unacceptable behaviour does not occur in the workplace. The Board of Governors undertakes to deal with allegations of unacceptable behaviour seriously, sensitively and in confidence.
- 1.6** Employees who bring a dignity at work complaint will be protected against victimisation or retaliation, subject to paragraph 4.12 and employees who are determined to be guilty of unacceptable behaviour or victimisation will be subject to appropriate action in accordance with the agreed disciplinary procedures.
- 1.7** In order to effectively implement its dignity at work policy, the Board of Governors has adopted a Code of Practice designed to deal with circumstances where the complainant and person against whom the allegation is made are both EA employees.

This procedure should be read in conjunction with the protocol at Annex 1 for matters involving staff employed by a different employer/employing authority.

Where a bullying and harassment complaint is alleged against a third party who is not an employee of the school, the principles of TNC 2011/4 (Annex III of the Policy and

Procedure to combat bullying and harassment of Teachers including Principals and Vice Principals in Grant Aided Schools) shall apply.

Matters involving pupils should be dealt with under the school's suspensions and expulsions procedure, discipline and pastoral care policies.

- 1.8** The Policy and Code of Practice applies to non-teaching staff employed by EA in controlled and maintained schools. It replaces the former Statement of Policy and Code of Practice on Measures to Combat Harassment in the Workplace for non-teaching staff in controlled schools and non-teaching staff in maintained schools.

CODE OF PRACTICE

2. BACKGROUND INFORMATION

2.1 PURPOSE OF THE CODE OF PRACTICE

- a. to raise awareness among employees as to what constitutes unacceptable behaviour in the workplace;
- b. to define the duties and responsibilities of the Board of Governors, Principal, senior leadership team and employees in implementing the school's policy;
- c. to emphasise that unacceptable conduct on any of the grounds outlined in the policy will not be tolerated and will be dealt with promptly and fairly;
- d. to raise awareness of the advice and support which is available including the provisions available under the EA's welfare arrangements;
- e. to establish procedures to be followed in relation to a dignity at work complaint.

2.2 WHAT CONSTITUTES UNACCEPTABLE BEHAVIOUR?

- 2.2.1** Unacceptable behaviour can take the form of harassment, bullying, discrimination and victimisation and can be defined as:

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

2.3 HARASSMENT

- 2.3.1** Harassment is any unwanted physical, verbal or non-verbal conduct that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. A single incident can amount to harassment.

- 2.3.2** It also includes treating someone less favourably because they have submitted or refused to submit to such behaviour in the past.

- 2.3.3** Unlawful harassment may involve conduct of a sexual nature (sexual harassment), or it may be related to age, disability, gender reassignment, marital or civil partner status, pregnancy or maternity, race, colour, nationality, ethnic or national origin, religion or belief, sex or sexual orientation. Harassment is unacceptable even if it does not fall within any of these categories.

2.3.4 A person may be harassed even if they were not the intended "target". For example, a person may be harassed by racist jokes about a different ethnic group if the jokes create an offensive environment.

2.3.5 The Board of Governors is committed to discouraging all forms of harassment and discrimination, whether unlawful or not.

2.4 BULLYING

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

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

2.4.3 Bullying is offensive, intimidating, malicious or insulting behaviour involving the misuse of power that can make a person feel vulnerable, upset, humiliated, undermined or threatened. Power does not always mean being in a position of authority, but can include both personal strength and the power to coerce through fear or intimidation.

2.4.4 Bullying can take the form of physical, verbal and non-verbal conduct. Bullying may include, by way of example:

- (a) physical or psychological threats;
- (b) overbearing and intimidating levels of supervision;
- (c) inappropriate derogatory remarks about someone's performance;

2.4.5 Bullying is similar to harassment in the sense that it too is offensive, hostile or oppressive behaviour which may not be related to equality grounds, but may be done for other reasons, such as jealousy or personal dislike or revenge or insecurity. Allegations of bullying will also be investigated under this Code.

2.4.6 Legitimate, reasonable and constructive commentary on a worker's performance or behaviour, or reasonable instructions given to workers in the course of their employment, will not amount to bullying on their own. An isolated incident of unreasonable behaviour such as abruptness, sharpness or rudeness, whilst totally unacceptable, should not be described as bullying. Wherever possible, this should be dealt with in the first instance by letting the person know how their behaviour has made you feel. Only offensive behaviour which is persistent should be regarded as bullying.

2.5 DISCRIMINATION

2.5.1 Unlawful Discrimination can be defined as less favourable or unfair treatment or harassment on the grounds of a person's age, gender or gender re-assignment, marital status, religious belief, political opinion, race, disability, sexual orientation, being/or not being a member of a trade union or being involved in trade union activity. Discrimination can be direct or indirect. Indirect discrimination is where a condition or requirement is applied equally but which has a disproportionate impact on a particular group as referred to above. Direct discrimination is the application of a condition or requirement which will

knowingly have a disproportionate impact. A failure to make an appropriate reasonable adjustment(s) for a person with a disability is also a form of discrimination.

2.6 VICTIMISATION

2.6.1 Victimisation occurs when a person making a dignity a work complaint or assisting a person making the complaint is treated less favourably as a consequence of doing so. A person can also be victimised if treated less favourably for pursuing a complaint when exercising their statutory rights.

2.6.2 Forms of unacceptable behaviour on grounds other than those addressed by equality legislation is no less distressing for individuals and no less detrimental to working relationships within the workplace. This Policy and Code of Practice aim to provide employees with protection from unacceptable behaviour on any basis.

2.7 EXAMPLES OF UNACCEPTABLE BEHAVIOUR

2.7.1 Unacceptable behaviour can take many forms, for example:

- inappropriate or unwanted physical contact ranging from unnecessary touching to physical assault or the threat of physical assault;
- continued suggestions for social activities after it has been made clear that such suggestions are unwelcome;
- bullying, overt abuse of power;
- inappropriate and baseless use of disciplinary or grievance procedures against another employee;
- coercion, including pressure for sexual favours, pressure to participate in political or religious groups;
- verbal or written harassment through jokes, ageist, racist, sexist, sectarian or homophobic remarks, comments about a person's disability, offensive language, gossip and slander, sectarian songs, mobile telephone ring tones, threats, letters, emails, etc or which contain innuendo or mockery;
- visual display of pornographic, sexually explicit or suggestive pictures, objects or written material (including the use of email and text messaging to send such material), political posters, graffiti, obscene gestures, flags, bunting, emblems and the wearing of distinctive clothing or sportswear which may be deemed as offensive by others;
- isolation or non co-operation at work, exclusion from social activities;
- intrusion by pestering, spying, stalking etc.;
- unwanted questioning of a person about their sexual interests or orientation, religious beliefs, political opinion, race or ethnic origin;
- unreasonable persistent criticism;
- blatantly unreasonable demands and impossible targets.

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

2.8 THE EFFECTS OF UNACCEPTABLE BEHAVIOUR

2.8.1 Unacceptable behaviour exacts a high price from employees and management alike. Employees can be subject to fear, stress, and anxiety, which can put great strains on personal and family life. It can lead to illness, increased absenteeism, the appearance of lack of commitment, poor performance, mental health problems and even resignation. All these have a direct impact on employee effectiveness.

2.8.2 A distinguishing characteristic of unacceptable behaviour is that employees subjected to it may be very vulnerable and are often reluctant to complain. They may be too embarrassed or unsure as to how to make a complaint or concerned that it will be trivialised. They may fear reprisals. Employees suffering from dignity at work problems may not want attention focused on the situation.

2.9 HARASSMENT AND THE LAW

2.9.1 Failure to deal with allegations or incidents of unacceptable behaviour in the workplace may expose the Board of Governors and the Education Authority to a number of legal consequences. These are outlined briefly below.

2.9.2 Harassment, insofar as it relates to a protected characteristic, may constitute discrimination under the Sex Discrimination (NI) Order 1976 (as amended), the Fair Employment and Treatment (NI) Order 1998 (as amended), the Race Relations (NI) Order 1997 (as amended), the Employment Equality (Sexual Orientation) Regulations (NI) 2003, the Disability Discrimination Act (Amendment) Regulations (NI) 2004, and the Employment Equality (Age) Regulations (NI) 2006.

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

The Regulations state:

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

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

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

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

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

2.9.7 In addition, actions which contravene this policy may lead to criminal complaints to the PSNI or civil claims for negligence, breach of statutory duty or breach of contract. It may

also result in claims to the Industrial Tribunal. There are also specific statutory provisions which allow employees to claim if they are harassed because of their trade union membership or activities, or because of their non-membership of a trade union.

3. ROLES AND RESPONSIBILITIES

3.1 BOARDS OF GOVERNORS

3.1.1 The Board of Governors has the overall responsibility for overseeing the implementation of this policy in consultation with the Employing Authority.

- a. The Principal and senior leadership team are responsible for the daily operational implementation of the school's policy on dignity at work.
- b. The Principal is responsible for communicating the policy to employees and taking steps to promote awareness of the policy and the procedures for dealing with complaints.
- c. The Principal has a responsibility to ensure that unlawful discrimination, harassment, bullying or victimisation does not occur amongst employees and have responsibility for dealing appropriately with any incidents of unacceptable behaviour or bullying which they are aware of, or ought to be aware of. If discrimination, harassment, bullying or victimisation does occur, they must deal with the situation effectively and in a timely manner.
- d. The Principal and senior leadership team should set a good example by treating all employees with dignity and respect.
- e. The Principal must take all reasonable action practicable to ensure that potentially offensive material is not displayed or circulated.
- f. The Principal must ensure that any dignity at work complaint is treated seriously, sensitively and in confidence. It is strongly recommended that schools should seek advice, assistance and support on the handling of complaints from the relevant HR office at the earliest opportunity.

3.2 EMPLOYEES

3.2.1 All employees of the school have a responsibility to help ensure a working environment in which the dignity of all employees is respected. All employees must comply with this code of practice and procedure and should ensure that their behaviour to colleagues does not cause offence and could not in any way be considered to be unacceptable.

3.2.2 Employees should discourage all forms of unacceptable behaviour by making it clear that they find such behaviour unacceptable and by supporting colleagues who suffer such treatment and are considering making a complaint. Any employee who is aware of any incident of unacceptable behaviour should alert the Principal, a member of the senior leadership team or a Governor to enable the Board of Governors to deal with it.

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

3.3 ROLE OF THE EDUCATION AUTHORITY'S HUMAN RESOURCES DIRECTORATE

3.3.1 It is the responsibility of the employing authority's Human Resources Directorate offices to advise, assist and support Board of Governors and Principals in dealing with dignity at

work issues. The Human Resources Directorate will identify trends and patterns which will help inform decision making and future policy.

PROCEDURES

4. PROCEDURE FOR DEALING WITH DIGNITY AT WORK COMPLAINTS

4.1 The procedures outlined below indicate the action to be taken if an employee raises a dignity at work issue. The primary objective of these procedures is to resolve the issue/s and to restore effective working relations between the parties concerned as quickly as possible. It must be stressed that this can often be best achieved by use of informal methods. Employees are encouraged to consider an informal resolution before invoking formal procedures but they have the right to proceed directly to the formal complaints process.

4.2 INFORMAL PROCEDURE

4.2.1 An employee who feels that he/she is subject to unacceptable behaviour may attempt to resolve the problem informally in the first instance. This stage is appropriate where the employee simply wants the behaviour to stop, where the unacceptable behaviour is not of a serious nature and where it has not been repeated.

4.2.2 In some cases it may be possible and sufficient for the employee to make clear to the person concerned that their behaviour has caused offence and that the behaviour in question is not welcome and should cease.

4.2.3 Notwithstanding paragraph 3.2.2, it should be noted however that the complainant is not required to approach the alleged offender and is entitled to report the matter immediately if they so wish.

4.2.4 In any attempt to solve the problem without recourse to formal procedures an employee may wish to seek the confidential advice, assistance or support of a work colleague, their Principal, Vice Principal or a member of the senior management team, a Trade Union representative, an Officer from the Authority's Human Resources Directorate or other appropriate officer such as the staff welfare officer.

4.2.5 Where employees prefer those providing advice and support to be of their own gender, religion or race or someone who is aware of disability issues, then this should be accommodated where possible.

4.2.6 The intention of the informal process is to resolve the situation satisfactorily without recourse to formal procedure. However, if the unacceptable behaviour continues, if it is of a serious nature, if it is repeated or if the complainant prefers to do so, it should be raised through the formal complaints procedure.

4.3 Mediation

4.3.1 Mediation is another informal way of resolving workplace disputes. Mediation is an agreed process entered into voluntarily, in which an independent experienced intermediary assists participants who are in dispute. The mediation process shall be

confidential to the parties involved, non-legalistic and shall seek to reach an early resolution of the issues through consensus.

4.3.2 Mediation can be provided by the Labour Relations Agency or, exceptionally, an external provider.

4.3.3 It is recognised that some cases will not be amenable to mediation for a variety of reasons. Where a party chooses not to enter into the mediation process, or mediation has been unable to resolve the matter, the complainant shall be advised of the right to request a formal investigation of the complaint (see paragraph 4.4 below).

4.4 FORMAL PROCEDURE

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

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

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

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

4.4.5 An employee wishing to make a formal complaint should make the complaint in writing to:

- a. the Principal or Vice-Principal; or
- b. the Chair or Vice Chair of the Board of Governors where the Principal is making a complaint or is the subject of a complaint.

You should copy your complaint to the HR Directorate.

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

- c. a Trade Union representative.

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

4.4.6 An employee's written complaint should, as far as possible, set out full details of the conduct in question, including the name of the person against whom the complaint is made, the conduct, the date(s) and time(s) at which it occurred, the names of any witnesses and any action that has been taken so far to attempt to stop it from occurring.

4.4.7 In circumstances where unacceptable behaviour is suspected, or known to be occurring, the procedures may be initiated independently. As a general principle, the decision whether to progress a complaint is up to the complainant. However, in recognition of a duty to protect all employees, the Principal/Board of Governors may decide to pursue the matter independently if, in all the circumstances, it is considered appropriate to do so.

4.5 ACTION TO BE TAKEN ON RECEIPT OF FORMAL COMPLAINT

4.5.1 On receipt of a formal complaint acknowledgement will be made in writing and, within 10 working days of receipt, the Board of Governors shall nominate 2 people, unconnected with the allegation(s) to investigate the issues raised. The panel may consist of a combination of governors, the Principal or an external third party. Where possible the panel should be balanced in respect of age, gender, race or ethnic origin.

The remaining Governors will take no further part in the procedure but will remain available to participate in any subsequent disciplinary action. It is important that provision is made for a Disciplinary Appeal Panel, normally consisting of three members, if required should the Disciplinary Procedure be invoked (paragraph 4.10.3 refers).

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

The investigator will also meet with the alleged harasser or bully (who may also be accompanied by a colleague or trade union representative) to hear their account of events.

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

4.5.4 The employing authority should be informed, normally within 5 working days, that a complaint has been made. In considering whether there exists the need for precautionary suspension, the Board of Governors, Chair or Principal, must consult the employing authority before any suspension is imposed.

4.5.5 Where your complaint is about an employee, the Board of Governors, Chair or Principal may consider suspending them on full pay or making other temporary changes to working arrangements pending the outcome of the formal investigation if circumstances required.

4.5.6 The Board of Governors/Principal/Chair will also seriously consider any request that you make for changes to your own working arrangements during the investigation, for example changes to your duties or working hours so as to avoid or minimise contact with the alleged harasser or bully.

4.5.7 Where a precautionary suspension is implemented by the Chair or Principal, the remaining members of the Board of Governors shall be informed as soon as possible.

4.6 INVESTIGATORY PANEL

- 4.6.1** It is important that investigations of any complaints are handled with sensitivity and due respect for the rights of both the complainant and the person against whom the allegation is made. The investigation should be thorough, impartial and objective.
- 4.6.2** The members (paragraph 4.5.1 refers) of the investigatory panel carrying out the investigation must be impartial, not be connected with the allegation, nor should they be members of any Disciplinary Authority which may be established to deal with any issues arising from the investigation.
- 4.6.3** The remit of the investigatory panel will be to:
- a. investigate the complaint;
 - b. establish if there is evidence to support the complaint; and
 - c. provide a factual report of their investigation to the Board of Governors (excluding those members nominated to act as the potential Disciplinary Appeal Panel), who will consider the investigation report and decide on appropriate action to be taken.
- 4.6.4** All members of investigatory panels will be fully trained in best practice in conducting investigations.
- 4.6.5** The investigatory panel responsible for investigation of a complaint should deal with it promptly and discreetly. Any investigatory meetings should normally commence within 10 working days of receipt of the written complaint.

4.7 FORMAL INVESTIGATION

- 4.7.1** The investigatory panel nominated by the Board of Governors shall advise the complainant in writing that:
- a meeting has been arranged to enable him/her to discuss his/her complaint with the panel;
 - he/she has the right to be accompanied and/or represented at all stages of the procedure by a Trade Union representative or a work colleague.

Initial meeting with the Complainant

- 4.7.2** The investigatory panel nominated by the Board of Governors shall meet with the complainant, who may be accompanied by a Trade Union representative or a work colleague to:
- clarify and formally record the nature of the complaint and that it is being handled under the formal procedure;
 - establish the facts and issues relevant to the complaint and take receipt of all and any relevant documentation;
 - ensure that the complainant is aware of the next stage of the procedure;
 - identify what the complainant would regard as a satisfactory resolution;
 - make the complainant aware of the Staff Care/Welfare Service.

4.7.3 Precautionary suspension may be considered at any stage when circumstances dictate it appropriate. Suspension should be undertaken in accordance with the guidance at paragraph 4.5.4.

4.8 INFORMING THE PERSON AGAINST WHOM THE ALLEGATION IS MADE

4.8.1 The investigatory panel nominated by the Board of Governors shall advise, in writing, the person against whom the allegation is made:

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

4.8.2 The investigatory panel nominated by the Board of Governors shall meet separately with the person against whom the allegation is made and who may be accompanied by a Trade Union representative or a work colleague to:

- listen to what the person against whom the allegation is made has to say about the alleged incidents;
- establish the facts and issues relevant to the complaint and take receipt of all and any relevant documentation;
- ensure that the individual is aware of the next stages of the procedure;
- make the person against whom the allegation is made aware of the Staff Care/Welfare Service.

4.9 INFORMATION FROM OTHERS WHO MAY ASSIST THE INVESTIGATION

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

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

4.10 INVESTIGATORY PANEL REPORT

4.10.1 Following its investigation, the panel will consider all of the evidence presented, determine if there is evidence to support the complaint and whether there is a case to be answered. The panel will provide a factual report of the investigation to the Board of Governors [excluding those members nominated to act as the potential Disciplinary Appeal Panel] who will consider the investigation report and decide on appropriate action to be taken.

4.10.2 The investigatory panel should advise both parties to the complaint of its findings in writing. This should normally be actioned within 10 working days of completion of the investigation. If the complainant is not satisfied with the findings of the investigation they

may appeal this decision to an Independent Appeal Panel (see section 5 below). If no appeal is received paragraph 4.10.1 should be implemented as appropriate. There is no facility for appeal after the 15 working days detailed in paragraph 5.2 has passed or once disciplinary proceedings (if appropriate) have commenced against the alleged harasser.

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

(a) Disciplinary Action Inappropriate

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

(b) Disciplinary Action to be taken

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

- 4.10.4** Copies of the decision and letters sent to the employees concerned should be forwarded to the relevant HR Section which has been supporting the process.

4.11 RECORDS

- 4.11.1** A complete record of all meetings, investigations and findings shall be made and retained by the Board of Governors for not less than three years.

4.12 ABUSE OF DIGNITY AT WORK PROCEDURE

- 4.12.1** It should be noted that, while an employee has the right to invoke the formal procedure without first exhausting informal procedures, any employee who deliberately provides false or misleading information or otherwise acts in bad faith as part of an investigation or in the initiation of a complaint under this procedure may be subject to action under the disciplinary procedure.

5. APPEALING THE FINDINGS OF THE INVESTIGATORY PANEL

- 5.1** The appeal process will only be invoked following completion of the formal procedure (paragraphs 4.7 to 4.10).

- 5.2** If the complainant is not satisfied with the outcome of the formal procedure, he or she may make a written appeal, stating full grounds of appeal to the Chair or, where appropriate, the Vice Chair of the Board of Governors to have their complaint referred to an Independent Appeals Committee. Such a request must be made within 15 working days of receipt of the above outcome. There is no facility for appeal after the 15 working days has passed or once disciplinary proceedings (if appropriate) have commenced against the alleged harasser.

- 5.3** The Chair or Vice Chair of the Board of Governors should contact the relevant HR Section which has been supporting the process who will refer the appeal to the Labour Relations Agency within 10 working days of receipt of the request.
- 5.4** The Appeals Committee shall consist of an Independent Chairperson appointed by the Labour Relations Agency and two panel members, one drawn from a list supplied by recognised unions (the union member) and the other drawn from a list supplied by the Management (the management member). The union member may be from the same union as the complainant and/or the person against whom the allegation of unacceptable behaviour is made provided they are not an employee or trade union representative of the Education Authority. The management member shall be based in a different EA location to that of both the complainant and the person against whom the allegation of unacceptable behaviour is made.
- 5.5** The Agency shall appoint a Secretary to the Appeals Committee who shall be responsible for the setting up of the Committee and for the provision of administration services.
- 5.6** The Secretary in conjunction with the Chairperson, shall fix a date for the Committee's hearing of the appeal and shall advise the parties accordingly.
- 5.7** The Secretary shall also invite the complainant to outline the grounds for their dissatisfaction with the decision not later than 10 days before the hearing. The investigatory panel report and all other relevant papers will also be provided to the Secretary by the Chair of the Board of Governors at the same time. The Secretary will distribute all the information to the Committee members and to the other party not later than 5 days before the date of the hearing.
- 5.8** The Committee will meet the parties to hear the appeal normally within 20 working days of the matter being referred to the LRA. The complainant will present the grounds for their dissatisfaction with the outcome of the formal procedure and then management side will be provided with an opportunity to respond.
- 5.9** Legal representation is not permitted at the Appeal Hearing.
- 5.10** The decision of the Appeals Committee shall not be invalidated by the absence of one or other of the parties. The decision of the Appeals Committee will be final and binding on both parties.
- 5.11** The Appeals Committee may confirm or revoke the original findings of the investigatory panel. In circumstances where the Appeals Committee is satisfied there may be a case to answer, the matter should be referred for consideration under the Disciplinary Procedure.
- 5.12** The decision of the Appeals Committee shall be given in writing to both parties within 10 working days of the hearing.
- 5.13** The decision of the Independent Appeal Committee should be provided to the Chair of the Board of Governors for action as appropriate under paragraph 4.10.3 of the dignity at work procedure.

6. VICTIMISATION OR RETALIATION

- 6.1** The Board of Governors considers that an employee who makes a complaint in good faith should be protected from victimisation or retaliation. Any complaint of victimisation will be dealt with quickly, seriously and in confidence and may result in the disciplinary procedures being invoked. Furthermore victimisation may constitute discrimination contrary to the Sex Discrimination [NI] Order 1976, (as amended), the Fair Employment and Treatment (NI) Order 1998 (as amended), the Race Relations (NI) Order 1997 (as amended), the Disability Discrimination Act 1995 (as amended), the Employment Equality (Age) Regulations (NI) 2006 and the Employment Equality (Sexual Orientation) Regulations (NI) 2003.
- 6.2** Under the Employment Rights (Northern Ireland) Order 1996, an employee should not be subject to detriment on grounds related to union membership or activities.
- 6.3** Nothing in this code of practice should be construed as seeking to remove any person's legal rights. Furthermore an employee has the right to seek advice from any appropriate statutory body.

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

7. FURTHER ACTION

- 7.1** The Chair of the Board of Governors or his/her nominee will meet the employees concerned within three months to monitor the situation and assess the effectiveness of any action taken. The Human Resources Directorate may be contacted for advice or assistance. Employees have the right to be accompanied by a trade union representative or work colleague.
- 7.2** The Education Authority will monitor the number and type of complaint together with other material circumstances, for example, gender, religious belief, political opinion, sexual orientation etc., together with a note of outcomes. It will be assisted in this by the Board of Governors who will provide the necessary information.

8. TRAINING

- 8.1** It is recommended that, in order to effectively implement this policy, appropriate training should be provided by the Authority.

Further information and advice is available from Human Resources as follows:

Belfast Office, 40 Academy Street, BELFAST, BT1 2NQ

Ballymena Office, County Hall, 182 Galgorm Road, BALLYMENA, BT42 1HN

Dundonald Office, Grahamsbridge Road, DUNDONALD, BT16 2HS

Armagh Office, 3 Charlemont Place, The Mall, ARMAGH, BT61 9AX.

Omagh Office, 1 Hospital Road, OMAGH, BT79 0AW

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Annex 1 - Addendum to Existing Procedures

JOINT PROTOCOL FOR DEALING WITH GRIEVANCES/COMPLAINTS INVOLVING STAFF EMPLOYED BY DIFFERENT EMPLOYER/EMPLOYING AUTHORITIES

Whilst it is recognised that existing procedures serve the majority of those with a grievance/complaint, there may be occasions when co-workers working for different employer/employing authorities wish to initiate a grievance/complaint against one or other.

This protocol, which has been agreed by the relevant Trade Unions, will be an addendum to relevant policies and procedures. It is not intended to detract in any way from the rights of the parties to the matters under investigation.

PURPOSE

The purpose of this addendum is twofold:

Firstly to put in place a process whereby employees have access to a means of resolving disputes where the parties to the dispute are employed by different employers/employing authorities, and

Secondly, to ensure employers have a procedure in place whereby such complaints can be dealt with in an effective and consistent manner for all staff and where access to normal processes including interviewing witnesses etc is permitted.

Agreement of relevant employing authorities

This protocol will support existing procedures and has been agreed by the relevant employing authorities and staff and management side of the negotiating committees including:

Education Authority;
CCMS and other relevant employing authorities;
Joint Negotiating Council (All support Staff);
Teachers Negotiating Committee (Teaching Staff)

Employing authorities and employers, including Boards of Governors of Fully Delegated Schools and their representatives, will co-operate fully to ensure that matters are dealt with in accordance with this protocol which are initiated as part of an agreed procedure.

The process will be initiated by the Employing Authority or the Board of Governors, as appropriate in cases where the parties (normally co-workers) to the dispute are employed by different employers/employing authorities. In such cases the implementation of this process should ensure complaints are dealt with in a timely and efficient manner and that the concerns of all staff regardless of the employer/employing authority are dealt with in a fair and consistent manner.

PROCEDURE

In the event a complaint is received regarding a co-worker employed by a different employing authority, the undernoted procedure should be initiated by the Employing Authority or Chairperson of the Board of Governors, as appropriate. The other Employing Authority or Chairperson of the Board of Governors should also be advised that a procedure has been initiated.

The relevant procedure appropriate to the complainant should be used when dealing with the complaint e.g. where a member of catering staff lodges a grievance against a member of teaching staff in a maintained school, the grievance procedure appropriate to the member of catering staff should be followed. If the circumstances were to be reversed, then the grievance procedure appropriate to the member of teaching staff would be followed.

The Employing Authority or Chairperson of the Board of Governors, as appropriate, on receipt of a complaint will write to both parties enclosing a copy of the procedure to be used, together with a copy of this joint protocol.

The Employing Authority or the Board of Governors of both parties involved should seek advice, assistance and support from an appropriate officer from Human Resources, in accordance with the provisions of the relevant procedure being used.

The outcome of the relevant procedure should be communicated to the relevant Employing Authority or Board of Governors to consider and take appropriate action.