

# PROMOTING A DIGNIFIED WORKPLACE

## A POLICY STATEMENT AND CODE OF PRACTICE ON MEASURES TO COMBAT BULLYING AND HARASSMENT OF TEACHING STAFF IN SCHOOL

### STATEMENT OF POLICY FOR TEACHERS

#### [1] GENERAL PRINCIPLES

- 1.1** The Board of Governors recognises that its staff are its most valuable asset and have a right to be treated with dignity and respect. The Board of Governors is committed to the promotion of a harmonious and supportive working environment through pro-active and sensitive management and is committed to treating and investigating all allegations of bullying and harassment with equal seriousness according to the negotiated procedures and protocols. Bullying and harassment is unacceptable behaviour.
- 1.2** Teachers, regardless of their status, are required to undertake their duties in a professional manner, and to comply with all reasonable instructions. They have an active role to play in the promotion of harmonious working relationships and are expected to be aware of what constitutes reasonable and acceptable behaviour.
- 1.3** The Board of Governors:
- condemns bullying and harassment as inappropriate to the maintenance of good employee relations and the promotion of the dignity of teachers' working lives
  - will work to promote dignity at work and protect teachers
  - will uphold the principles of equality
  - will ensure that teachers can carry out their roles effectively within a secure working environment.
- 1.4** Bullying and harassment may infringe several pieces of domestic and European legislation. These include:
- Health and Safety at Work (NI) Order 1978 (as amended)
  - Equality legislation including:
    - Fair Employment and Treatment (Northern Ireland) Order 1998 (as amended)
    - Sex Discrimination (Northern Ireland) Orders 1976 (amended 1988) (as amended)
    - Race Relations (Northern Ireland) Order 1997 (as amended)

- Disability Discrimination Act 1995 (as amended)
- Equal Pay Act (NI) 1970 (as amended)
- Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 (as amended)
- The Framework Employment Equality Directive (2000) Council Directive 2000/78/EC (as amended)
- The Race Directive 2004/43/EC (as amended)
- The Equal Treatment Directive – 76/207 (as amended)
- The Human Rights Act 1998
- The Protection from Harassment (NI) Order 1997
- Common Law

In addition bullying and harassment may constitute a threat to the teacher's health, safety and wellbeing. Should bullying and/or harassment occur, the teacher(s) affected has a right to complain using the attached Code of Practice and procedure. The Code and procedures are designed to be transparent and accessible. No teacher should be made to feel guilty or embarrassed in exercising their rights under the Code.

**1.5** The Board of Governors is committed to:

- the protection of the health, safety and wellbeing of all staff
- ensuring that all staff are made fully aware of their rights and responsibilities
- dealing with allegations of bullying and harassment seriously, sensitively and in confidence
- undertaking the necessary training in managing the procedure
- ensuring that a copy of this Policy, Code and Procedure is made available for every teacher and that every teacher is briefed on the promotion of a harmonious workplace.

**1.6** A teacher who brings a complaint of bullying and/or harassment or who is a witness to bullying and/or harassment and who as a result of this is subject to bullying and/or harassment themselves will be protected against victimisation or retaliation. A teacher who is found guilty of bullying and/or harassment or victimisation may be subject to appropriate action in accordance with the agreed disciplinary procedures.

**1.7** In order to effectively implement its policy on Bullying and Harassment, the Board of Governors has adopted a Code of Practice and Procedures to combat bullying and harassment of teachers within the school. The Code of Practice and Procedures, which have been agreed with the recognised teacher unions, set out the procedures for a teacher(s) to pursue a legitimate claim of bullying and/or harassment by another teacher(s) within the context of their employment in the school. Matters involving pupils should be dealt with under the appropriate procedures.

- 1.8** A teacher who invokes this procedure and the person(s) against whom allegations are made, should be given a copy of the Policy, Code and Procedures and advised of the right to be accompanied at all stages of the investigation and any subsequent procedural action by a Trade Union Representative or a teaching colleague. It is important that the same individual does not accompany both parties. Legal representation is not permitted in the operation of the procedure.
- 1.9** This procedure will also apply to Principals who consider they may be the subject of bullying or harassment.
- 1.10** No documentation will be provided to any other party, other than those directly involved in the case, without the explicit written authority of the author of the documentation, unless required at subsequent appeal, in the course of further proceedings or statutory requirements. Such documentation will form part of discoverable documents, should there be subsequent legal proceedings.
- 1.11** In order to effectively implement this Policy, appropriate training will be provided by the appropriate body in relation to the management and investigation of complaints of bullying and harassment, including future refresher training at the required time. In addition, the Board of Governors will make arrangements for the provision of awareness raising for **all** staff in relation to the promotion of a dignified workplace and the issues of adult bullying and harassment.
- 1.12** The Board of Governors will make an annual report to the relevant Employing Authority in respect of claims raised under the Policy and any remedial action taken as a result of such claims. The Employing Authority will monitor the application and operation of this Policy and provide an annual statistical report to the Teachers' Negotiating Committee.
- 1.13** The implementation and operation of this Policy, Code of Practice and Procedures are the responsibility of the Board of Governors and Employing Authorities.
- 1.14** This Policy, Code of Practice and Procedures is an evolving document. Any amendments or updates to comply with good practice or changes in employment or equality legislation will be the subject of joint consultation with the recognised Teacher Unions.
- 1.15** "Policy", in this document means Policy, Code of Practice and Procedures.

<b>CODE OF PRACTICE TO COMBAT BULLYING AND HARASSMENT</b>
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## [2] BACKGROUND INFORMATION

### 2.1 **PURPOSE OF THE CODE OF PRACTICE:**

- [i]
  - to inform, raise awareness and advise teachers in relation to their roles and responsibilities for ensuring that their behaviour is conducive to a harmonious workplace;
  - to raise awareness of behaviours or practices that may constitute bullying and harassment in the workplace and to highlight the consequences of such behaviours;
  - to advise teachers of measures they may take to address their concerns where they feel that they are the victims of or witnesses to workplace bullying and harassment by other employees.
  
- [ii] To define the duties and responsibilities of Boards of Governors and teachers in implementing the Bullying and Harassment Policy.
  
- [iii] The Board of Governors is committed to:
  - the prevention of bullying and harassment and the development of a culture of positive behaviour where a teacher's dignity at work is respected and valued. Behaviours contrary to the promotion of this policy will not be tolerated and will be dealt with promptly and fairly;
  - ensuring that a copy of the policy is made available for every teacher and that every teacher is briefed on the promotion of a harmonious workplace;
  - implementing the Procedures attached to this Code of Practice and the accompanying flowcharts (Appendix 2 & 3) for investigating claims of bullying and harassment.

### 2.2 **WHAT CONSTITUTES BULLYING AND HARASSMENT**

#### 2.2.1 The Board of Governors accepts the following as a broad definition of **bullying**:

*“Persistent offensive and unwelcome behaviour which may be abusive, intimidating and unwarranted. Bullying can manifest itself in many ways such as shouting, exclusion, use of invalid criticism, unjustified fault finding, isolation, excessive monitoring or supervision, allocation of excessive workloads, etc. The net result of bullying is that the recipient feels upset, threatened, humiliated or vulnerable, has their confidence undermined and*

*suffers a detrimental effect on their work and their health per se*".

Source: Tim Field.

**2.2.2** The Board of Governors accepts the following as a broad definition of **harassment**:

1. *"For the purpose of these regulations, a person (A) subjects another person (B) to harassment where, on the grounds of sex, race, disability or sexual orientation, (A) engages in unwanted conduct which has the purpose or effect of – (i) violating (B)'s dignity: or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for (B).*

2. *Conduct shall be regarded as having the effect specified above, only if, having regard to all the circumstances, including in particular the perception of (B), it should reasonably be considered as having the effect."* Source: The Framework Employment Equality Directive (2000) Council Directive 2000/78/EC.

The Board of Governors also accepts that an individual may be subject to both bullying and harassment within the workplace.

**2.2.3** The Board of Governors also accepts that while harassment may be identified with specific attributes including the individual's religious or political opinion, gender, marital status, sexual orientation, race or disability, bullying may be non-specific, crossing any or none of the categories mentioned above. It is not the intention of the perpetrator but the deed itself, and the impact on the recipient, which determines what constitutes bullying or harassment.

**2.2.4** Bullying and harassment may occur through unwitting prejudice or ignorance, stereotyping or thoughtlessness.

**2.2.5** It is recognised that bullying affects an individual's perception of his/her workplace and beyond. For the victim of bullying and/or harassment this perception of their world becomes a reality and may significantly affect their physical and/or mental health and prevent them from discharging their roles and responsibilities as a teacher.

**2.2.6** The impact of bullying and/or harassment on those who witness it may often be as great as the effect that the bully has on the victim.

- 2.2.7 While they are demonstrable by acts against the person, bullying and harassment may also be perpetrated by omission or failure to act.
- 2.2.8 Work related acts of bullying and harassment may occur inside and outside of the workplace.

### 2.3 FORMS OF BULLYING AND HARASSMENT

Bullying and harassment can take many forms. Some examples of the manner in which bullying and harassment may be manifested are listed below. The list is not exhaustive and will be subject to any review of this Policy:

- overt abuse of power, including setting unrealistic targets or excessive monitoring of a teacher;
- unfair work allocation or allocation of inappropriate work;
- inequitable allocation of resources;
- trivial fault finding;
- singling out and/or treating differently from other teachers;
- constant negative criticism which cannot be justified and is contrary to the assessment of the teacher's peers etc;
- repeated behaviour which has the effect of belittling, demeaning, ridiculing, patronising, degrading etc. another teacher;
- undermining a teacher either in private or in front of others;
- denying knowledge or information necessary to allow the teacher to undertake their work;
- lack of adequate management support;
- offensive language or inappropriate bad language;
- inappropriate use of formal procedures such as disciplinary or grievance procedures;
- unwelcome personal comments about dress or appearance, unrelated to the promotion of dress codes or standards within the school;
- isolation or non co-operation at work, exclusion from social activities;
- intrusion by pestering, spying, stalking;
- work overload/reduction;
- suppression of career development;
- use of third parties (e.g. pupils) to carry intimidating messages or carry out unwelcome actions on behalf of others;
- plagiarism, taking undeserved credit but never accepting responsibility when things go wrong.

Harassment may also be perpetrated in the workplace by a variety of acts including:

- verbal or written harassment including electronic communications,

- e.g. insensitive or embarrassing remarks, offensive language, gossip and slander, jokes, signals or gestures, racist comments, threats;
- coercion, requests for sexual favours;
  - offensive visual material e.g. pin-ups, pornographic pictures or literature, graffiti, etc.;
  - inappropriate physical contact ranging from unnecessary touching to physical assault or the threat of physical assault;
  - Disability Related Harassment:
    - Non-verbal (gestures, staring and offensive notes/letters),
    - verbal (language, jokes, comments, ridicule, nicknames, etc) or
    - physical (jostling, mistreating or assaulting);
  - Racial Related Harassment:
    - physical conduct ranging from touching to serious assault,
    - verbal and written harassment through jokes, racist remarks and the like,
    - displays of racist graffiti or other offensive material based on race,
    - isolation or non-co-operation or exclusion from activities,
    - taunting regarding the colour of his/her skin,
    - taunting regarding type of dress associated with his/her culture.

In addition to claims of harassment, acts referred to above may lead to claims of discrimination.

## **2.4 THE EFFECTS OF BULLYING AND HARASSMENT**

Bullying and harassment can exact a high price from teachers both in respect of their physical and mental health. Teachers may be subject to stress and anxiety, which can put great strains on professional, personal and family life.

These can lead to illness, increased absenteeism, an apparent lack of commitment, poor performance and even resignation. Collectively, retention and attendance problems may arise and ultimately affect teaching and learning within the school.

A distinguishing characteristic of bullying and harassment is that teachers subjected to it may be reluctant to complain. The individual may be too embarrassed or unsure as to how to make a complaint or concerned that it will be trivialised. He or she may fear reprisal. Teachers suffering from bullying and harassment may not want attention focused on the situation and therefore allow unacceptable behaviours to continue.

Individuals who witness bullying and harassment of a colleague may also

be reluctant to “whistleblow” or act as a witness for fear of reprisals. 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, with the highest degree of confidentiality and that a full and fair investigation is carried out.

## 2.5

### **BULLYING AND HARASSMENT AND THE LAW**

Boards of Governors have a collective duty of care under the Health and Safety at Work (NI) Order 1978 to provide a safe place of work. A failure to deal with allegations or incidents of bullying and harassment at work may expose employers to a number of legal challenges. These are outlined briefly below.

While there is no specific legislation to prevent bullying in the workplace, victims of bullying may bring legal claims for breach of contract, negligence, assault, false imprisonment, public order offences, constructive dismissal and breaches of health and safety legislation or common law. Individuals who witness bullying may consider referring the matter under the Public Interests Disclosure Act.

Harassment has been held to constitute discrimination under the Sex Discrimination Orders (NI) 1976 and 1988, The Fair Employment and Treatment Order 1998 and the Race Relations (NI) Order 1997. Under the Disability Discrimination Act 1995 harassment will invariably constitute less favourable treatment under the terms of the Act. It may also lead to claims of victimisation under equality legislation.

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

Bullying and 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.

Teachers may also rely directly upon European legislation to pursue claims of bullying and harassment. 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.

There are also specific statutory provisions which allow teachers to claim if they are harassed because of their trade union membership activities, or because of their non-membership of a trade union.

**[3] ROLES AND RESPONSIBILITIES****3.1 BOARDS OF GOVERNORS**

The Board of Governors has the overall responsibility for overseeing the introduction, implementation and operation of this Policy.

**3.2 PRINCIPAL**

- [a] The Principal is responsible for the operation of the Policy. This shall include ensuring that teaching staff are aware of the Policy and its provisions.
- [b] The Principal is also responsible for communicating the Policy to teachers, taking appropriate steps to promote the Policy and being proactive in raising awareness of the issues relating to the Policy.
- [c] The Principal has a responsibility to promote positive behaviours in professional and employment related matters.
- [d] The Principal must also ensure that any complaint of bullying and harassment is dealt with quickly and treated seriously, sensitively, fairly and in confidence. Advice on the management of complaints and further guidance is available from officers of the Employing Authority.

**3.3 TEACHERS**

All staff are responsible for promoting and maintaining effective and harmonious working relationships within the school.

Teachers are urged to resolve issues, as far as practicable, in a professional and courteous manner and as quickly as possible.

**3.4 THE EMPLOYING AUTHORITY**

Where appropriate, it is the responsibility of the Employing Authority to advise, assist and support Boards of Governors and Principals in dealing with the management of complaints of bullying and harassment and to advise on the provision of relevant training and awareness on the application of the Policy.

<b>PROCEDURES</b>
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**[4] PROCEDURE FOR DEALING WITH COMPLAINTS OF BULLYING AND HARASSMENT**

The procedures outlined below indicate the action to be taken if a teacher feels s/he is being bullied and/or harassed. 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 in most cases this is best achieved by use of informal methods. Those involved are strongly advised to make genuine efforts at informal resolution before having recourse to formal procedures. This could include suitable intervention and facilitation by appropriate officers of the Employing Authority.

**4.1 INFORMAL PROCEDURE**

- 4.1.1** A teacher who feels that s/he is subject to unacceptable behaviour may attempt to resolve the problem informally in the first instance. This stage is appropriate where the teacher simply wants the behaviour to stop, where the bullying and/or harassment is not serious and where it has not been repeated. In such circumstances an informal discussion between those involved can lead to greater understanding and an agreement that the behaviour will change. Such meetings should be conducted in a private forum and have the sole purpose of informing a colleague that the behaviour in question is offensive, regardless of the intention and must stop. In some cases it may be possible and sufficient for the teacher to notify the person concerned that the behaviour has caused offence and that such behaviour is not acceptable to the individual.
- 4.1.2** The Principal/Board of Governors should encourage teachers to avail of informal resolution of complaints wherever possible, using the resources of the school, Employing Authority and Trade Unions to do so. This could include suitable intervention and facilitation by appropriate officers of the Employing Authority.
- 4.1.3** In seeking to resolve issues in this way, a teacher may wish to obtain the confidential advice, assistance or

support of a work colleague, a Trade Union Representative or an appropriate officer from the Employing Authority.

**4.1.4** Where teachers prefer advice and support from a person of their own gender, religion, sexual orientation, age or race, this should be accommodated where practicable.

**4.1.5** It is expected that most cases will be resolved satisfactorily through the informal process. However, if the bullying or harassment continues, if it is of a serious nature, or if the behaviours are repeated, the complainant has the right to seek mediation or to proceed to formal complaint.

## **4.2 MEDIATION**

**4.2.1** Mediation is a formal process entered into voluntarily, in which an experienced intermediary assists participants who are in dispute. The process is to enable those involved to reach resolution and is also designed to assist them to work towards a better understanding of their specific substantive issues. Mediation can include:

- Improving communication and mutual understanding
- Improving relationships
- Working towards finding solutions
- Exploring positive outcomes and agreements.

**4.2.2** Before invoking the formal procedure, it may be possible to deal with the complaint through the use of mediation. The aim of mediation is to move away from adversarial procedures and to resolve issues as early as possible. This will benefit teachers in re-establishing effective and harmonious working relationships and preserve the dignity of all those involved.

**4.2.3** The aim of the process shall be to seek an early resolution of the issues using the resources of a mediator who will give an independent evaluation of the situation and make recommendations on the best way forward. The mediation process shall be confidential to the parties involved, non-legalistic

and shall seek to reach agreement through consensus.

**4.2.4**

The teacher shall indicate in writing to:

- [a] The Principal or in the absence of the Principal the nominated deputy; or
- [b] The Chairperson of the Board of Governors where the Principal is making a complaint or is the subject of a complaint,

that s/he wishes to initiate the mediation process. This request shall be forwarded to the other party for agreement.

**4.2.5**

Upon receipt of agreement from the parties the Principal shall notify to the Chairperson of the Board of Governors who shall contact the Employing Authority to initiate the mediation process. The Employing Authority will be responsible for the appointment of the mediator.

**4.2.6**

The Employing Authority will provide an agreed independent mediator who will have had no previous involvement with the issue/s. This mediator will, in the first instance be drawn from resources internal to the Authority or from another Employing Authority, or, exceptionally, from an external provider.

**4.2.7**

The cost of the mediation process will be met by the school.

**4.2.8**

Where a party refuses to enter into the mediation process, the complainant shall be advised of the right to request a formal investigation of the complaint.

**4.2.9**

Meetings with the mediator will be held in a neutral venue. Teachers involved in the process will be allowed reasonable time, at work, to prepare and participate in the process.

**4.2.10**

Teachers involved in the mediation process are entitled to be accompanied by a representative of their union, or a teaching colleague. Legal representation is not permissible.

- 4.2.11** The mediator shall be responsible for the arrangements and management of the specific mediation process and will forward a copy of Appendix 1(a) to both parties.
- 4.2.12** The parties will be advised in writing, of the date / time / venue of the initial meetings with the mediator. This will normally be within 20 working days of the formal notification to the Employing Authority.
- 4.2.13** The mediator will be provided with a copy of any notes or records relevant to the issues under consideration. In addition parties may wish to make written submissions summarising the issues to the mediator.
- 4.2.14** The mediator will meet with each party separately to outline the process and ascertain the details of the issue/s to be resolved.
- 4.2.15** The mediator will endeavour to bring the parties to a mutual agreement as quickly as possible and will outline the process including agreement on written statements / outcomes etc.
- 4.2.16** An outline of the mediation process is attached as Appendix 1.

### **4.3 FORMAL PROCEDURE**

- 4.3.1** It is recognised that there may be situations where it may be impractical or inappropriate to implement the informal stage and/or that the nature of the alleged bullying or harassment requires a more formal approach. In such circumstances it is appropriate for the complainant to request investigation on a formal basis directly.
- 4.3.2** A complaint should be made as soon as possible following behaviour deemed inappropriate so that the matter can be dealt with swiftly and decisively. Ideally, this should be within 10 working days of an incident or of the last or most recent incidence of unacceptable behaviour.

**4.3.3** A formal complaint should be made in writing and outline the nature of the behaviour deemed unacceptable. The person/s against whom the allegation is made should be identified to:

- [a] The Principal or in the absence of the Principal their nominated deputy; or
- [b] The Chairperson of the Board of Governors where the Principal is making a complaint or is the subject of a complaint.

Alternatively the complaint may be made to the management of the school through:

- [c] A Trade Union representative or a teaching colleague from the school. In such circumstances the representative or teaching colleague will notify the Principal or Board of Governors in writing of their nomination to formally accompany the teacher. In such circumstances the representative or teaching colleague will be provided with correspondence relevant to the matters under investigation.

**4.3.4** In circumstances where bullying or harassment is suspected on the basis of an objective and reasonable belief the appropriate procedures may be initiated by the management of the school.

**4.3.5** A decision to initiate a formal investigation will not militate against the complainant unless the claim/s is deemed to be frivolous, baseless or vexatious and the formal procedure was instigated in this context, (see paragraph 5).

#### **4.4 ACTION TO BE TAKEN ON RECEIPT OF FORMAL COMPLAINT**

**4.4.1** The Principal or Chair of the Board of Governors will acknowledge receipt of a formal complaint, in writing, and the Chair will establish a sub-committee of the Board of Governors, normally within 10 working days of receipt, to investigate and deal with the complaint. The remaining Governors will take no further part in the investigation and determination of the case, but will remain available to participate in any subsequent disciplinary action which may be required. It is important in this respect that provision

is made for Appeal Panel members, to hear any subsequent appeal.

- 4.4.2** The complainant will be advised in writing that:
- s/he will be asked to attend a meeting of the investigatory sub committee;
  - the person against whom the allegation is made will be informed that a complaint has been made;
  - the allegation(s) and any statement(s) or evidence will be made known to the subject of the complaint in the course of the investigations.

**4.4.3** The subject of the complaint will be advised in writing, as soon as possible, that a complaint has been made and that s/he will be informed in writing of the details of the allegations, following the investigatory panel's meeting with the complainant. A copy of this Policy and Procedure will be provided.

**4.4.4** Upon receipt of a formal complaint of bullying and/or harassment the Chair of the Board of Governors will inform, in writing, the Employing Authority that a complaint has been made.

**4.4.5** In exceptional circumstances, at any stage in the process, consideration may need to be given to the need for precautionary paid suspension as a means of protecting the health, safety and welfare of the complainant and / or the subject of the complaint, or where there is a likelihood that the subject of the complaint may seek to obstruct or unduly influence the outcome of the investigation.

The Employing Authority must be consulted before a suspension is imposed, or where this is not practicable, as soon as possible thereafter.

Where the person against whom the allegation is made is a representative of a recognised teacher union this suspension will not normally take place until the full time official has been informed.

The teacher shall be given written confirmation of

the suspension, indicating that it is a precautionary measure pending the investigation and must not be seen as prejudicial to the outcome.

#### **4.5 MEMBERSHIP & ROLE OF THE INVESTIGATORY SUB-COMMITTEE OF THE BOARD OF GOVERNORS**

**4.5.1** The Chair of the Board of Governors will establish a sub-committee of the Board of Governors, hereafter referred to as the investigatory panel, comprising not more than three voting members, with delegated authority to investigate and decide on the case. Where possible and appropriate the panel should be balanced in respect of age, gender, race or ethnic origin. In normal circumstances the Principal may be in attendance and may be interviewed by the investigatory panel, but there may be reasons why it would be inappropriate for the Principal to be present. The investigatory panel may invite an officer from the Employing Authority to be in attendance and/or assist in or undertake part of the investigation on behalf of the Panel. Governors may co-opt others, where a small number of governors exist.

A written record of all proceedings will be taken.

**4.5.2** The members of the investigatory panel carrying out the investigation should be unconnected with the allegation, nor should they be members of any disciplinary committee which may be established to deal with any issues arising from the investigation.

**4.5.3** The remit of the investigatory panel will be to:

- investigate the complaint in a thorough manner;
- elicit the facts;
- determine if there is substance to the complaint;
- attempt, with the prior approval of the parties, to resolve the issues between them in an agreed way;
- decide on appropriate action.

**4.5.4** The overall conduct and the management of the

investigation shall be for the investigatory panel to determine. It will ensure that the process is confidential, prompt and discreet. An initial meeting of the investigatory panel will normally take place within 15 working days of the receipt of a written complaint.

## **4.6 FORMAL INVESTIGATION**

### ***Initial meeting with the Complainant***

**4.6.1** The investigatory panel shall advise the complainant in writing:

- that a meeting has been arranged to enable him/her to discuss the complaint with the panel;
- of his/her right to be accompanied by a Trade Union representative or a teaching colleague at all stages of the procedure;
- a copy of this Policy and Procedure should be provided.

**4.6.2** The investigatory panel shall meet with the complainant to:

- clarify and record the nature of the formal complaint;
- establish the facts and issues relevant to the complaint;
- note any evidence brought by the complainant;
- take note of any witnesses being relied upon;
- ensure that the complainant is aware of all stages of the procedure;
- determine what the complainant would regard as a satisfactory resolution;
- make the complainant aware of the Employer's Welfare Service provision.

The investigatory panel will summarise the issues and particularly the precise terms of complaint which is to be investigated, and will provide such to the complainant or representative at the earliest opportunity.

## **4.7 INFORMING THE PERSON AGAINST WHOM THE ALLEGATION IS MADE**

**4.7.1** The investigatory panel shall advise in writing the person against whom the allegation is made, normally within 10 working days of their initial meeting with the complainant:

- of the detailed nature of the allegations that have been made;
- that s/he will be called to a meeting to investigate the allegations, under the formal procedure;
- that s/he has the right to be accompanied by a Trade Union representative or a teaching colleague at all stages of the procedure.

**4.7.2**

The investigatory panel shall meet separately with the person against whom the allegation is made to:

- obtain his/her view of the alleged incident/s and any other related matter;
- establish all the facts and issues relevant to the complaint in an unbiased and impartial manner;
- take note of any witnesses to be relied upon;
- examine or take note of any evidence provided;
- ensure that the individual is aware of the next stage of the procedure;
- advise of the Employer's Welfare Service provision.

**4.8 INFORMATION FROM OTHERS WHO MAY ASSIST THE INVESTIGATION**

**4.8.1** 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. The panel will ensure that any information is objective, verifiable and relevant to the issues under investigation.

**4.8.2** 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/s.

Witnesses will be advised at the outset of the meeting of the extent of the information that is being sought. They will also be advised that their anonymity cannot be guaranteed should the matter become the subject of appeal, further proceedings, or statutory discovery.

A written record of all meetings will be retained. Evidence provided to assist with the investigation will be treated as confidential by all parties to the investigation.

## **4.9 INVESTIGATORY PANEL DECISION**

**4.9.1** Following its investigation the panel will consider all of the evidence presented, determine if there is substance to the complaint and decide on appropriate action.

The outcomes may include the following:

- **The Allegation is Substantiated**

If the investigation establishes that there is a disciplinary case to answer, the Disciplinary Procedure should be invoked at paragraph 4.1. Where an investigation has been conducted under this policy, this can be substituted for a Disciplinary Investigation as provided at paragraph 3.2 of the Disciplinary Procedure.

- **The Allegation is Unsubstantiated**

The investigation may establish that the allegations are unsubstantiated.

- **Matter Mutually Resolved or Other Management Action Required**

The investigation may have resolved the issues or may indicate other appropriate management action to meet the desired outcomes e.g.

- the provision of counselling;
- implementation of agreed mediation;
- training in areas of conflict and anger management;
- attendance at external training on harassment or bullying;
- the drawing up of agreed action plans or personal codes of conduct.

**4.9.2** The investigatory panel should prepare a factual and detailed record of its findings. These will be made available to the Chairperson of any sub-committee

convened under the Disciplinary Procedure.

**4.9.3** The investigatory panel shall advise both parties in writing of its decision and the reasons why it has reached this determination. This should normally be actioned within 10 working days of completion of the investigation.

**4.9.4** Copies of the decision and letters issued should be forwarded to the Employing Authority.

#### **4.10 RECORDS**

**4.10.1** A record of all meetings, investigations, findings and decisions shall be made and retained by the Board of Governors for not less than 3 years. This may be subject to access requests under Part 2 of the Code of Practice on Data Protection by the subject of data held, specifically about the subject.

### **[5] ABUSE OF THIS PROCEDURE**

**5.1** It should be noted that, the use of this procedure to

- make cynical, frivolous, baseless or vexatious allegations,
- to distract from other issues
- to divert attention from or action in the application of other procedures,
- to defame or perpetrate malicious falsehoods,

are likely to constitute misconduct and render the complainant subject to investigation and disciplinary penalty.

### **[6] APPEAL PROCESS**

**6.1** The appeal process shall only be invoked following completion of the Formal Procedure (paragraphs 4.3 – 4.9 refer).

#### **Stage I: Conciliation**

If the complainant is not satisfied with the application of the procedure s/he may avail of the conciliation services of the Labour Relations Agency.

- 6.2 The teacher should write to the Conciliation Secretary of the Labour Relations Agency within ten days of receipt of the investigatory panel's decision, specifying the grounds of dissatisfaction.
- 6.3 The Conciliation Secretary of the Labour Relations Agency shall arrange to meet both parties to seek a conciliated settlement. This meeting shall normally be arranged within 15 working days of notification to the Labour Relations Agency.
- 6.4 Should the conciliation process fail to resolve the complaint, the teacher shall have the right to have the matter referred to an Appeal Committee convened by the Labour Relations Agency.

### **Stage II Appeal Committee**

- 6.5 The teacher, or the union representative or teaching colleague, must within 10 working days of the outcome of the conciliation process, lodge a formal notice of appeal to the Secretary of Arbitration, Labour Relations Agency, and shall simultaneously copy it to the Chairperson of the Board of Governors. The notice will require transfer of all papers from the Labour Relations Agency Conciliation Secretary to the Chair of the Independent Appeal Panel.
- 6.6 Within 10 working days of the notice of appeal, both parties shall be contacted to make arrangements for a hearing before an Appeal Committee.
- 6.7 The Appeal Committee shall consist of an independent Chairperson appointed by the Labour Relations Agency and 2 panel members, one nominated by the Management Side, the other nominated by the Teachers' Side of the Teachers' Salaries and Conditions of Service Committee (Schools). Neither panel member should be an employee, representative or official of the Employing Authority or the Teachers' Union involved in the case.
- 6.8 The appeal shall normally be heard within 15 working days of receipt of the formal notice of appeal by the Secretary of Arbitration who shall be responsible for the setting up and administration of the Appeal Committee. The teacher may be accompanied by the full-time union official or a teaching colleague.
- 6.9 Neither party in the independent appeal is entitled to have legal representation.
- 6.10 The proceedings of the Appeal Committee shall not be invalidated by

- 6.11** the absence of one or other of the parties.  
The decision of the Appeal Committee shall be communicated in writing to both parties within 10 working days of the hearing. It shall be final and binding on both parties.

[7] **ACTS OF VICTIMISATION OR RETALIATION**

- 7.1** The Board of Governors considers that a teacher who demonstrably makes a complaint in good faith should be protected from acts of victimisation or retaliation.
- 7.2** Victimisation or retaliation may be defined as the use of or the threat of abuse to any individual because they have made a bonafide complaint of bullying or harassment or have assisted an individual in pursuing such a claim, or have acted as a witness in any investigation relating to an allegation of bullying or harassment.
- 7.3** Any complaint of victimisation or retaliation will be dealt with and may result in investigation within the provisions of Disciplinary Procedure.

[8] **LEGAL RIGHTS**

- 8.1** Nothing in this Policy and procedure should be construed as seeking to remove any person's legal rights. Furthermore, a teacher has the right to seek advice from any appropriate statutory body. An Industrial Tribunal may, however, draw negative inferences from the fact that internal investigation or dispute resolution mechanisms were by-passed before making a complaint to the tribunal.

[9] **FURTHER ACTION**

- 9.1** The Chairperson of the Board of Governors or his/her nominee will meet the teachers concerned and/or their trade union representative, within 3 months to monitor and evaluate the situation and assess the effectiveness of any action taken. As a result of this meeting further actions or support may be agreed. In addition, a further review date will be agreed, if necessary. The Human Resources Branch/Section or the Teacher Welfare/Staff Care Service or other counselling services may be contacted for advice or assistance.

[10] **REVIEW**

This policy will be reviewed in 3 years following agreement at the Teachers' Negotiating Committee.

*Further information and advice is available from the  
Employing Authority.*

**MEDIATION**

The ultimate aim of mediation is to resolve the issue (s) between the parties involved in a manner which is mutually acceptable. Should this not be achieved, mediation may nevertheless provide parties with other positive outcomes, for example, better mutual understanding, improved relationships and / or de-escalation of their dispute. Mediation should not be deemed to be another layer in the process but rather a genuine method of alternative dispute resolution which retains the integrity of the working relationship and allows effective working relationships to be restored whilst retaining the dignity of everyone involved.

Mediation is a voluntary formal process which takes place before other formal dispute procedures are deemed necessary by any of the participants. The mediator will be a neutral third party who will meet both sides separately and/or together in order to facilitate a possible resolution. The specific details of the process itself will be explained to each party at the outset by the mediator.

This mediation process has been agreed by the employers and the trade unions to enable staff to have an appropriate means of resolution as part of the informal route for resolving complaints of bullying and / or harassment. (see Appendix 2 flowchart). The mediation process is available to staff, regardless of seniority, who perceive themselves to have been subjected to bullying and /or harassment.

The Chief Executive will receive statistical information from HR on an annual basis (see Appendix 1c) which will be monitored in order to analyse usage, success of process and so on.

The Trade Unions will also receive summary information on an annual basis, preserving anonymity where appropriate, for the purpose of feedback and success of process.

All staff should be aware of the mediation process and attempt to familiarise themselves with the process and procedures through the normal channels. Staff will also need to familiarise themselves with how and when various aspects of the Bullying and Harassment Policy interface with other Procedures.

## GUIDANCE AND INFORMATION (MEDIATION)

### Key aspects and principles of mediation

- Mediation is a well established form of alternative dispute resolution.
- Parties need to be informed of the definition and processes of mediation.
- Mediation is voluntary and requires the consent of both parties.
- The parties are advised to examine the possibility of using mediation.
- For the purpose of this Policy the process only applies to cases of bullying and / or harassment.
- The process is confidential and informal. Once participation is agreed it should be prioritised by all sides and conducted as soon as possible.
- The process will involve the parties agreeing ground rules at the outset.
- The process may involve: separate meetings, submissions of short statements, possible access to witnesses and possible joint meetings (if agreed by the parties).
- The process does not involve in-depth investigations, nor is it a platform for re-stating allegations nor a forum for demanding a disciplinary sanction.
- Resolution, if achievable, will come from the facilitation of participants seeking a mutually acceptable solution.
- Meetings are less formal, non-confrontational and held in a neutral venue.
- Regardless of the result of mediation, a statement of the outcomes will be agreed with the participants.
- The cost of the mediation process should be borne by the school's delegated budget.

### **Roles and responsibilities of parties involved in mediation**

#### **Teachers**

Teachers who are voluntarily participants in the mediation process agree:

- To engage positively and meaningfully in the process
- To respect the dignity and feelings of the other party
- To use the process in good faith with a view to resolution
- To act professionally at all times
- To be honest and truthful in the meetings with the mediator
- To use the mediation process for its proper purpose.

#### **Board of Governors**

The Chair of the Board of Governors has agreed and recommends that the parties enter into this process in an attempt to resolve the issues identified at the informal stage. The Chair of the Board of Governors has agreed to allocate a sufficient period of time for the completion of the mediation process and meet the direct costs associated thereof. The Chair of the Board of Governors will receive a statement of outcome between the parties

as facilitated by the mediator. This is solely for the purpose of identifying any resource implications for the school and planning their implementation. The chair will also be advised of the review date for the parties.

**Mediator**

The mediator will be responsible for the management of the arrangements for the entire mediation process. The mediator may determine that it is appropriate for the parties to meet separately in order to fully ascertain the details of the issue to be resolved. In the initial meeting with the parties, the mediator will explain fully his/her role and the mechanics of the mediation process.

The role of the mediator is to assist the parties in conducting a mediation process to resolve the issues and in this respect the process involves facilitated negotiation where the mediator guides the parties to their own solution. The mediator does not reach agreement for the parties nor does he/she make a determinative adjudication. The mediator meets separately with the parties engaging in constructive dialogue on ways of resolving the issues between them. The mediator is totally impartial and objective and will ensure that both parties understand the other's position.

Whatever the mediation outcome, the mediator, on behalf of the parties, will draft the terms of the statement and ask that the parties sign an agreement to the effect that they agree to abide by any agreed recommendation contained within it.

The mediator will set a review date for the parties, taking into account the nature of the discussions and the details any agreement reached.

If an agreement cannot be reached, the formal stage of the Bullying and Harassment Policy may be invoked and the outcomes of the mediation will be recorded in the statement.

**Human Resources Section/Branch**

The Human Resources Section/Branch will:

- Provide the independent mediator;
- Provide the Chief Executive with statistical information on an annual basis.

SAMPLE FORM

GUIDANCE SHEET FOR THOSE INVOLVED IN THE USE OF MEDIATION PROCEDURES.

**Details of Parties involved in mediation**

Teacher's Name:

Contact Details:

School Address:

:

Telephone Number(s)

Mediation advisor's details

Date and Time of interview / meetings

Signed

Mediator

Date

## **Mediator's Checklist**

### **Guidance and information sheet to be given to all parties prior to the mediation process commencing.**

The mediator should confirm the following:

- The parties have read and are conversant with policy aspects on Bullying and/or Harassment
- The parties have read and are conversant with the mediation guidance and information sheet
- The parties have sought information and guidance on the process of mediation from appropriate sources such as: HR, lay representatives, full time officials
- The parties are aware of the central issues of impartiality, confidentiality, neutral locations, separate rooms and so on
- The names and positions of the participants
- The receipt of the necessary paperwork in relation to the complaint which will include: written consent to mediation from both sides, submission summaries from both sides ensuring guidelines are given, information elicited from meetings with appropriate dates and times, timescale for mediation process in terms of weeks
- Full details of the complaint, without the need for an investigation, using probing questions regarding, for example: specific incidences and the duration, demeanour and objective perceptions and sensitivities, how the complainant perceives the alleged behaviour, witnesses to the alleged behaviour, the nature and impact of the alleged behaviour, attempts to resolve personally, action taken previously, guidance or advice given, confirmed previous histories of such behaviour, what both sides would consider to be the basis of a reasonable resolution and so on.

Explain to the teacher what will happen now (e.g. – processes, timescales, documentation and so on):

- Identify areas of agreement and disagreement and establish likelihood of success of mediation process
- Determine what would be the basis of a satisfactory outcome for each party and attempt to construct a workable and durable solution as part of the outcome
- Advise that a statement of outcomes will be forwarded to the Chair of the Board of Governors.

***Further Action***

Agreement reached – formulate working of agreement, acquire signatures, agree review date, prepare report for Chair of Board of Governors and forward report to Chair, participants and any staff representative involved.

Agreement not reached – prepare statement of agreed outcomes of mediation and forward to all parties concerned. Advise parties of their right to seek resolution of matter through other processes.

Advise Chair of Board of Governors of the outcome identifying resource implications, if any, and of the review date.



**SAMPLE FORM**

**Example of Key**

**KEY:-**

**MEDIATOR'S CODES:**

**NATURE OF COMPLAINT CODES:**

Harassment – <CODE>

Bullying – <CODE>

**OUTCOME CODES:**

Solved in mediation - <CODE>

Training - <CODE>

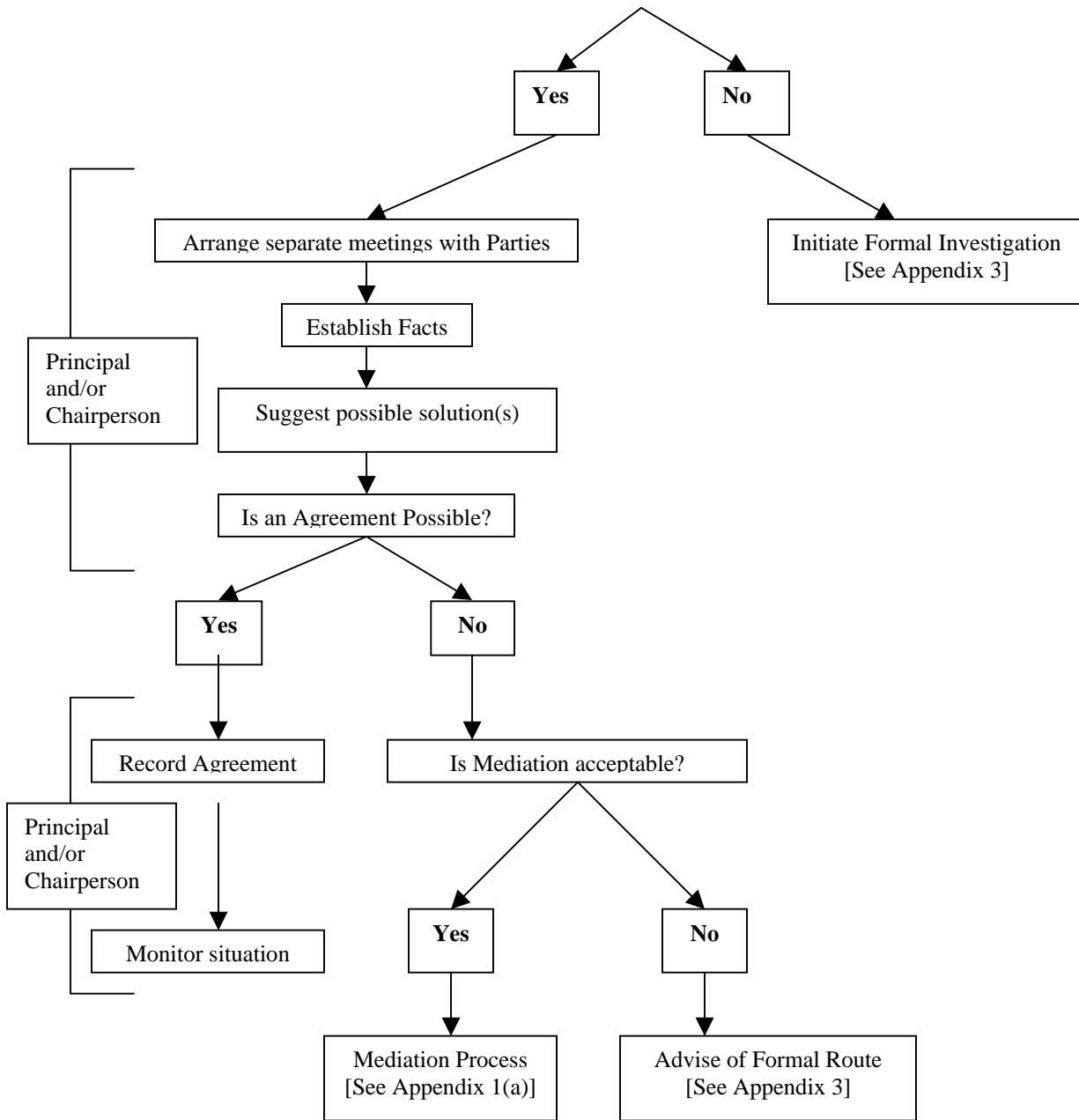
Other support - <CODE>

Proceeding to formal procedure - <CODE>

Other action required – (eg disciplinary) <CODE>

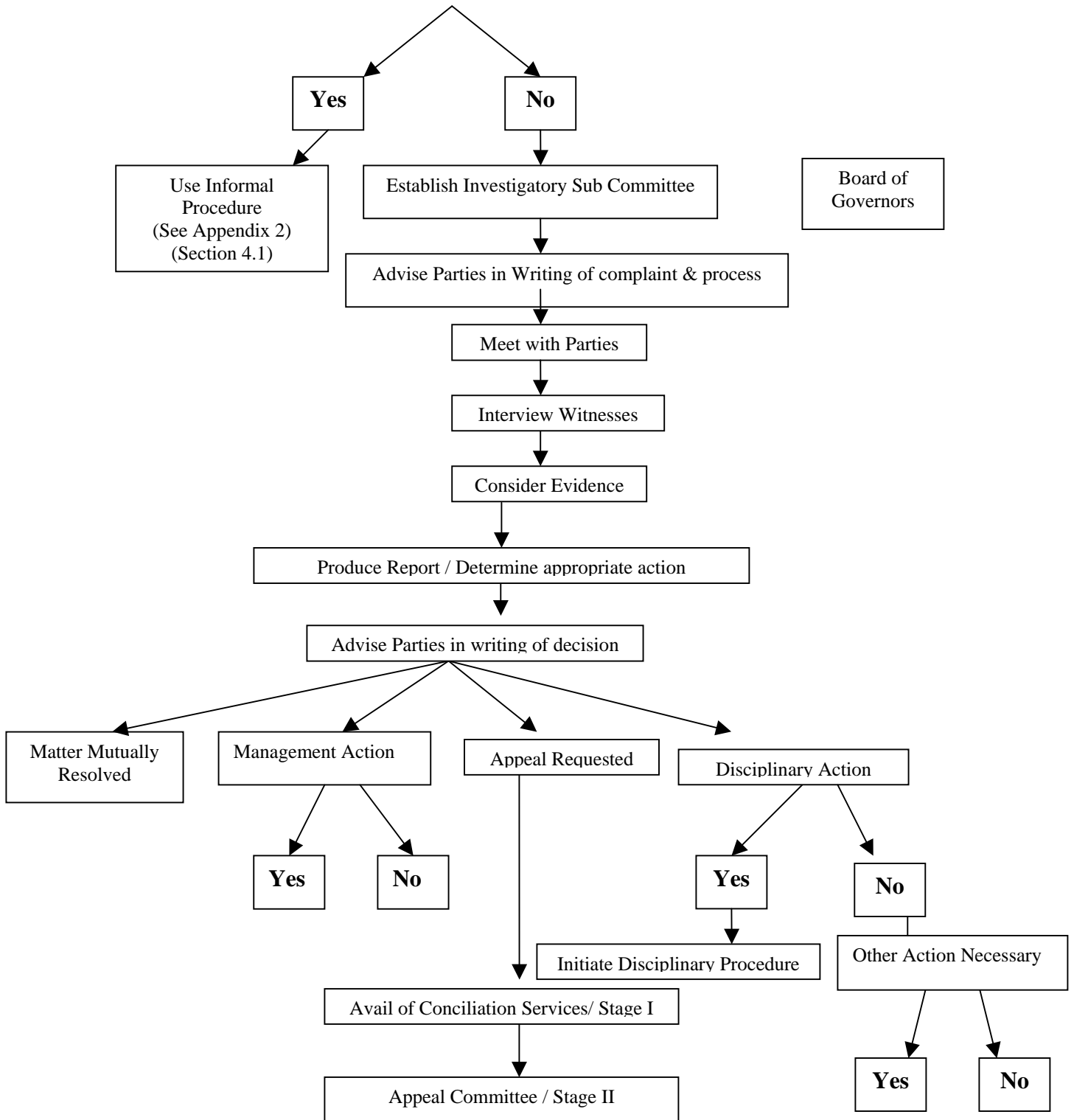
## Complaint of Bullying and / or Harassment

Do Parties wish to resolve the matter informally?



**Complaint of Bullying and / or Harassment**

**Do Parties wish to resolve the matter informally?**



**Promoting A Dignified Workplace**

**Combating Bullying**

**And**

**Harassment of Teaching Staff in Schools**

**A Guide to the new Policy, Code of Practice  
And Procedures  
For Teachers**

## **PURPOSE OF THIS GUIDE**

The Policy, Code of Practice and Procedure for Combating Bullying and Harassment in Schools has recently been reviewed by the recognised teachers' unions and employing authorities working in partnership. They have been assisted in this process by the Labour Relations Agency and the Health and Safety Executive for Northern Ireland.

The result has been a comprehensive review of the policy and procedures, to enable teachers who feel they are the subject of bullying and / or harassment to raise the matter and have it dealt with by using appropriate mechanisms which have the support of both employers and the recognised trade unions.

This Guide should be read in conjunction with the Policy, Code of Practice and Procedures.

## **WHAT ARE THE NEW FEATURES OF THIS POLICY AND PROCEDURE?**

There are a number of new developments, refinements and adjustments to the existing procedure. They include:

- Separate definitions for bullying and harassment;
- Access to mediation for the resolution of informal complaints of bullying and / or harassment;
- Access to conciliation and independent appeal;
- Access to appropriate training for those individuals charged with managing and investigating complaints of bullying / and or harassment;
- Awareness raising on the issues of bullying and / or harassment for all serving teachers, Vice Principals and Principals.

## **HOW ARE BULLYING AND HARASSMENT DEFINED?**

### **Bullying is defined as:**

*“Persistent offensive and unwelcome behaviour which may be abusive, intimidating and unwarranted. Bullying can manifest itself in many ways such as shouting, exclusion, use of invalid criticism, unjustified fault finding, isolation, excessive monitoring or supervision, allocation of excessive workloads, etc. The net result of bullying is that the recipient feels upset, threatened humiliated or vulnerable and has their confidence undermined and suffers a detrimental effect on their work and their health per se”.*

**Source: Tim Field**

### **Harassment is defined as:**

- 1) *“When, a person (A) subjects another person (B) to harassment where, on the grounds of sex, race, disability or sexual orientation, (A) engages in unwanted conduct which has the purpose or effect of – (i) violating (B)’s dignity: or(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for (B).*

- 2) *Conduct shall be regarded as having the effect specified above, only if, having regard to all the circumstances, including in particular the perception of (B), it should reasonably be considered as having the effect.”*

*Source: The Framework Employment Equality Directive (2000)  
Council Directive 2000/78/EC.*

## **FORMS OF BULLYING AND HARASSMENT**

Bullying and harassment can take many forms. The list below contains examples of how bullying can occur. They are not exhaustive or ranked in any particular order.

1. Overt abuse of power, including setting unrealistic targets or excessive monitoring of a teacher.
2. Unfair work allocation or allocation of inappropriate work.
3. Inequitable allocation of resources.
4. Trivial fault finding.
5. Singling out and/or treating differently from other teachers.
6. Constant negative criticism which cannot be justified and is contrary to the assessment of the teacher's peers etc.
7. Repeated behaviour which has the effect of belittling, demeaning, ridiculing, patronising, degrading etc. another teacher.
8. Undermining a teacher either in private or in front of others.
9. Denying knowledge or information necessary to allow the teacher to undertake their work.
10. Lack of adequate management support.
11. Offensive language or inappropriate bad language.
12. Inappropriate use of formal procedures such as disciplinary or grievance procedures.
13. Unwelcome personal comments about dress or appearance, unrelated to the promotion of dress codes or standards within the school.
14. Isolation or non co-operation at work, exclusion from social activities.
15. Intrusion by pestering, spying, stalking.
16. Work overload/reduction.
17. Suppression of career development.
18. Use of third parties (e.g. pupils) to carry intimidating messages or carry out unwelcome actions on behalf of others.
19. Plagiarism, taking undeserved credit but never accepting responsibility when things go wrong.

Harassment may also be perpetrated in the workplace by a variety of acts including:

1. verbal or written harassment including electronic communications e.g. insensitive or embarrassing remarks, offensive language, gossip and slander, jokes, signals or gestures, racist comments, threats;
2. coercion, requests for sexual favours;
3. offensive visual material e.g. pin-ups, pornographic pictures or literature, graffiti, etc.;
4. inappropriate physical contact ranging from unnecessary touching to physical assault or the threat of physical assault;
5. disability related harassment:

- Non-verbal (gestures, staring and offensive notes/letters),
  - verbal (language, jokes, comments, ridicule, nicknames, etc) or
  - physical (jostling, mistreating or assaulting);
6. racial related harassment:
- Physical conduct ranging from touching to serious assault,
  - verbal and written harassment through jokes, racist remarks and the like,
  - displays of racist graffiti or other offensive material based on race,
  - isolation or non-co-operation or exclusion from activities,
  - taunting regarding the colour of his/her skin,
  - taunting regarding type of dress associated with his/her culture.

## **WHAT IS MEDIATION?**

Mediation has proved a useful tool in resolving informal complaints of bullying and / or harassment. Parties must jointly agree to enter mediation. The Employing Authority will provide an agreed independent mediator who will have had no previous involvement with the issues. The mediator will, in the first instance, be drawn from resources internal to the authority or from another Employing Authority, or, exceptionally, from an external provider. The mediator will assist the disputing parties to reach a resolution of the issues. He/she will not impose any solution on the parties. The cost of the mediation will be met by the school. There will be no cost to the individual participants in the mediation process.

## **ACCESSING CONCILIATION AND EXTERNAL APPEAL**

It has been agreed that if a complainant is not satisfied with the application of the procedure he/she may avail of the conciliation services of the Labour Relations Agency. Should the conciliation process fail to resolve the procedural complaint the matter may be referred to an Appeal Committee convened by the Labour Relations Agency.

It is anticipated that most cases could and will be resolved before this stage is reached.

## **TRAINING**

All individuals (Principals and Boards of Governors) who are involved the management and investigation of complaints of bullying and /or harassment will be provided with appropriate training. This is to ensure a raising of awareness and a consistency of approach to the operation of the new policy and its associated procedures.

## **AWARENESS RAISING**

It has been agreed that all teaching staff will be provided with awareness raising within their own school. The purpose of this awareness raising is to:

- Highlight what constitutes bullying and/or harassment;
- Outline the effects of such behaviours;
- Advise teachers how they can deal with such behaviours, including how to access the new Policy, Code of Practice and Procedures; and
- Outline the commitment of the Board of Governors to deal with such matters seriously.

## **HOW DO I ACCESS THE NEW POLICY, CODE OF PRACTICE AND PROCEDURE?**

Your principal will provide you with a copy of the new Policy, Code of Practice and Procedure if you require it. Copies are also available from the employing authorities` and your trade union websites.

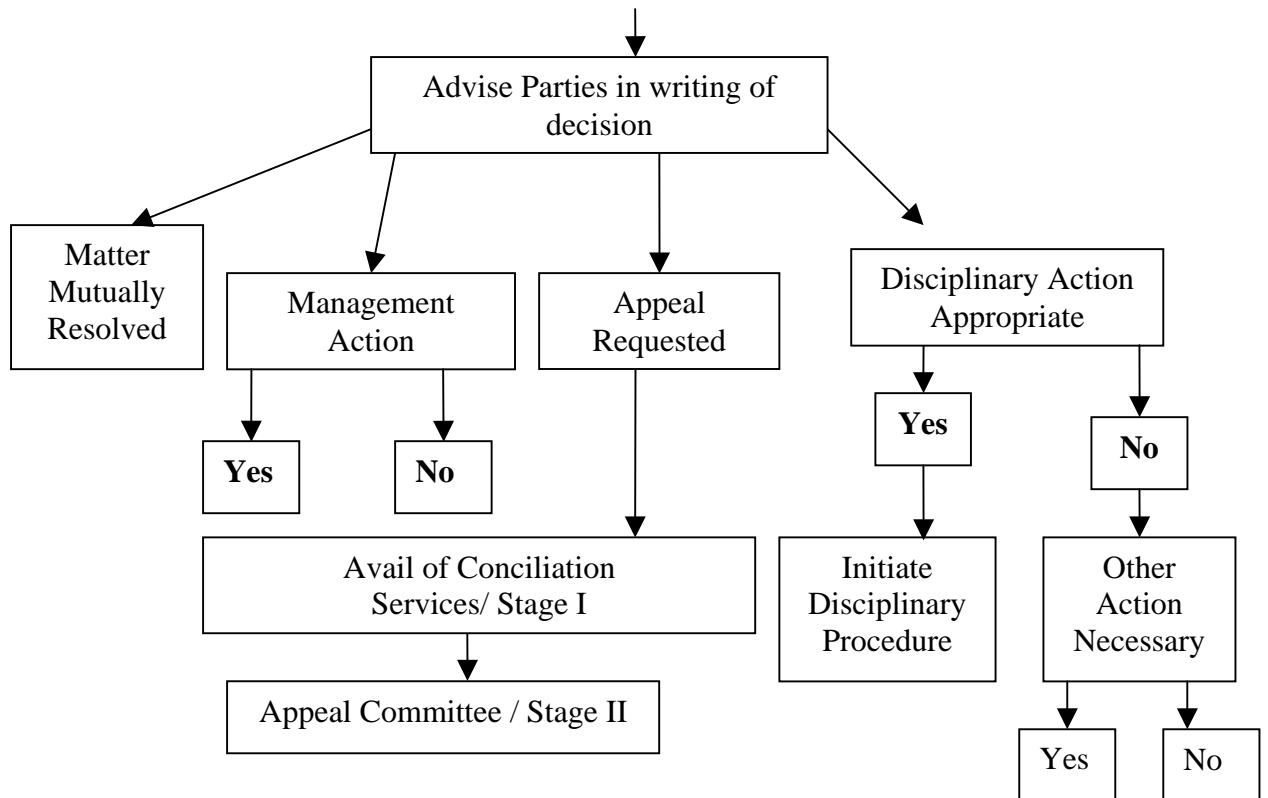
You have the right to be accompanied at all stages of an investigation and any subsequent procedural action by your Trade Union representative or a teaching colleague.

Two flowcharts are included with this guide which outline the process.

## **WHAT IS SOMEONE RAISES AN UNFOUNDED COMPLAINT AGAINST A TEACHER?**

The Policy, Code of Practice and Procedure state that an individual who raises a malicious or unfounded claim of bullying and/or harassment against a teacher may be subject to disciplinary proceedings.





**Appendix 1**

**Complaint of Bullying and / or Harassment**

**Do Parties wish to resolve the matter informally?**

