



POLICY NAME:	Harassment and Bullying Policy
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DATE OF LAST REVIEW:	1 December 2007
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AMENDMENTS TO THIS REVIEW:	In May 2008, “Director of Corporate Services” replaced the wording “Director of Administration” and “Scottish Government” replaced the wording “Scottish Government.”
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DATE OF NEXT REVIEW:	1 December 2010
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IMPACT ASSESSMENT:	
- FINANCIAL	None
- HUMAN RESOURCE	None
- RISK	None
- EQUAL OPPORTUNITIES	None

FEEDBACK:



HARASSMENT AND BULLYING POLICY

The Scottish Criminal Cases Review Commission (“the Commission”) has a policy on sexual and racial harassment, which aims to ensure that employees are aware of their rights and responsibilities, and to ensure that the Commission complies with the law. This Procedure applies to all employees full-time or part-time. This procedure also applies to both male and female employees, notwithstanding the fact that the policy makes reference to male employees only.

Background

All employees have a right to be treated with dignity and respect at work and therefore any form of harassment is insulting and demeaning to the recipient. Such harassment will include issues based on gender, race, disability, sexual orientation, membership of a Trades Union and religious beliefs. Sexual and racial harassment is unlawful and will not be tolerated within the Commission. Staff have a positive duty to establish and maintain a workplace that is free from any form of harassment. All staff should be aware that appropriate disciplinary action, which could include dismissal, will be taken against any employee found guilty of harassment. Harassers could be held individually financially liable for their actions.

Sexual Harassment

This is unacceptable conduct based on a person’s sex, which is unreasonable, unwanted and unwelcome. It is conduct that a person finds offensive and which causes him to feel threatened, humiliated or patronised or which creates a working environment, which an employee finds threatening, or intimidating. Behaviour or comments need not be directed towards a particular individual for it to become offensive to that individual.

Unwanted sexual attention is harassment if it continues after an employee has made it clear that such conduct is unacceptable. However, there have been cases at Industrial Tribunals when it has been held that one incident can be enough to constitute sexual harassment. Most people who are sexually harassed are women but men too can be sexually harassed. This procedure is open to both sexes.

Examples of action that may constitute sexual harassment are:

- Unwanted physical contact e.g. patting or pinching of another person’s body.
- Demands for sexual favours in return for career advancement.
- Unwelcome sexual advances or propositions.
- Offensive flirtations.
- Suggestive remarks, innuendos or lewd comments.
- Displays of sexually suggestive pin-ups of calendars.
- Derogatory remarks or offensive comments about appearance or dress.
- Sexual assault.
- Sexist patronising behaviour.

- Intrusion by pestering, spying or following.

The list is by way of example only and is not exhaustive.

Since 1 October 2005 there has been a freestanding statutory definition of sexual harassment which came into force under the Employment Equality (Sex Discrimination) Regulations 2005. This brings UK legislation into line with the requirements of an EC Directive which required implementation by 5 October 2005. It also brings the definition of sexual harassment in line with the existing definitions for harassment on the grounds of race, religion or belief, sexual orientation and disability.

Sexual harassment is now defined as arising in broadly three different situations:

Firstly, by example, a woman will be able to bring a claim for sexual harassment if, on the grounds of her sex, a man engages in unwanted conduct that has the purpose or effect of violating her dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment. This therefore means that a woman can pursue a claim for sexual harassment even if the man did not intend to harass her with his behaviour, provided that this is its effect. The conduct need not be of a sexual nature, although it must be on the grounds of her sex. This might cover, for example, an employee who circulates explicit pictures by email, in a manner where the woman cannot help but see them. It could also cover an employee who constantly criticises a woman working part-time, saying that she "isn't up to the job because of her child care arrangements".

The second category provides that it will be sexual harassment, for example, for a man to engage in any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that has the purpose or effect of violating a woman's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this category, it is irrelevant whether the behaviour by the man was because of the woman's sex, provided that the woman is affected in the specified way. The conduct in this category must, however, be sexual. The type of conduct which could fall within this category could include inappropriate sexual advances made by a man against a female co-worker, where those advances are unwanted, or comments made to a woman about her appearance, for example suggesting that she should wear short skirts to a meeting to "win clients".

Thirdly, it will be sexual harassment if a man, on the grounds of a woman's rejection of or submission to unwanted conduct of a kind mentioned in above, treats her less favourably than he would treat her had she not rejected, or submitted to, the conduct. This category plainly protects a woman who has rejected the sort of sexual advances outlined above from any adverse treatment as a result of her refusing those advances. A woman could not therefore be refused a promotion or a pay rise as a result of refusing these types of advances.

Racial Harassment

This is verbal or physical conduct of a racial nature affecting the dignity or well being of individuals. That is any conduct that a person finds offensive and which causes him or her to feel threatened, humiliated, intimidated or makes them feel insecure in the working environment.

Examples of action that may constitute racial harassment are:

- Insults or ridicule of a racial nature.
- The circulation or display of racially offensive material.
- Indulging in racist jokes.
- Isolating or ignoring colleagues of a different race to you.

The list is by way of example only and is not exhaustive.

Dealing with Harassment

Where an employee believes they have been subjected to harassment a number of courses of action are open to them. These come under the headings of "Informal" or "Formal".

• **Informal Action**

It is understood that employees may be unwilling to make a formal complaint of harassment. This may be for a variety of reasons:

- Fear that others will consider the complaint is trivial.
- Fear of retaliation/victimisation.
- Fear that the complaint will not be taken seriously and that no action will be taken.

Rather than face these possibilities, victims of harassment may choose to leave matters unresolved and continue to suffer in silence. To do so invariably results in stress and loss of performance.

Whenever possible a victim of harassment should ask the harasser to stop or make it clear that the behaviour is unwelcome. If it is too difficult or embarrassing for the victim to do so, the initial approach may be made by a third party i.e. another work colleague or confidante.

It is emphasised that any action taken will be complainant led and no pressure will be brought to bear to force a complainant into commencing more formal action. It is however, recommended that should the informal approach fail formal action is considered.

• **Formal Action**

Formal action can take four forms and is a matter for individual choice:

- Invoking the Commission grievance procedure.
- making a formal complaint regarding an individual's behaviour under the Commission's discipline code.
- Instituting criminal proceedings.
- In cases where the allegation relates to sexual or racial harassment, instituting proceedings against the individual at an Industrial Tribunal.

The Commission will undertake investigations of formal complaints of harassment either through the Commission's grievance or discipline code, dependant on the wishes of the victim. All matters will be investigated as quickly as possible and with sensitivity.

Both the complainant and the person complained against have the right to be accompanied at any stage of the investigation by a representative or some other person of their choice.

Personal Responsibility

The senior staff have a particular responsibility to prevent harassment occurring, but all members of staff have a role to play in helping to create a climate at work in which harassment is unacceptable. They can contribute to preventing any form of harassment through an awareness of and sensitivity towards the issues. They can ensure that those standards of conduct for themselves and others do not cause offence. By discouraging harassment and supporting colleagues who suffer such treatment and are considering making a complaint, members of staff are making it clear that they find such behaviour unacceptable.

Grievances Related to Harassment Policy

Any employee who is dissatisfied with any decision made in respect of this harassment policy should instigate the Commission's formal grievance procedure.

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