

APPENDIX 24 – HARASSMENT IN THE WORKPLACE

POLICY STATEMENT

NICVA is committed to creating a harmonious working environment in which individuals do not feel apprehensive because of their religious belief, political opinion, gender, marital or family status, sexual orientation, age or disability.

Intimidation or harassment in any form is unacceptable behaviour. NICVA recognises that all forms of harassment have the potential to adversely affect an employee's work and therefore undertakes to investigate complaints quickly, seriously and in complete confidence. It should be noted that it is the impact of the behaviour which is relevant and not the motive or intent behind it.

It is necessary to ensure an organisational environment where harassment will be recognised as totally unacceptable behaviour which may constitute gross misconduct necessitating disciplinary action. In addition, offences of sexual or religious harassment or intimidation may be unlawful under Fair Employment and Sex Discrimination legislation. Sex related harassment applies equally to sex based harassment perpetrated by another member of staff or a third party external to the organisation.

This policy identifies what constitutes harassment and outlines the method of dealing with this. Individual members of staff who feel they are being harassed, are advised to process complaints under this policy as it has been devised to ensure prompt handling of such issues.

Definition of Harassment

Harassment is unwanted conduct related to disability, marital or family status, gender, sexual orientation, race or ethnic origin, religious belief or political opinion affecting the dignity of women and men at work or creating an intimidating, hostile, humiliating, disturbing or offensive environment. This can include unwelcome physical, verbal or - non-verbal conduct, derogatory statements, displays or emblems, or discriminating remarks made by one or more persons in the workplace.

A woman may also be subject to sexual harassment were a person engages in unwanted conduct that is related to her sex or that of another person. This relates to a woman being treated less favourably on grounds of her sex because she is disliked and not because she is a woman. For example where male colleagues dislike a female colleague and put equipment on a high shelf to make it harder to reach. Such conduct may be sex related harassment on the basis that it is related to the woman's sex, because women are on average shorter than men and therefore this treatment is related to gender.

Such behaviour is unacceptable where it:

- (1) Is unwanted, unreasonable and offensive to the recipient.
- (2) Is used as the basis for an employment decision.

- (3) Creates a hostile working environment.
- (4) Causes humiliation, offence and/or distress.
- (5) Interferes with job performance or creates an unpleasant working environment.
- (6) Trivialises people as a group and emphasises their sexuality, marital or family status, religious beliefs, political opinions, disability, race or any other over their role as employees of NICVA.
- (7) Creates a physical environment which may impact detrimentally on a person in relation to their gender, age or disability.

Harassment may take many forms ranging from extreme forms such as violence and bullying to less obvious actions such as ignoring a fellow employee (see Appendix 24a for policy on Bullying). The following, though not an exhaustive list may constitute harassment:

- (1) Physical conduct ranging from touching to serious assault.
- (2) Verbal and written harassment through insensitive jokes, offensive language, gossip and slander, sectarian songs, threats and letters.
- (3) Visual displays of posters, graffiti, pornography, obscene gestures, flags, bunting, emblems or any other offensive behaviour.
- (4) Isolation or non co-operation at work, exclusion from social activity.
- (5) Coercion ranging from pressure for sexual favours, to pressure to participate in political/religious groups.
- (6) Intrusion by pestering, spying, following, etc.
- (7) Where an employee is subject to sustained sexual harassment from an external third party and were the employer fails to take practicable steps to protect that employee.

Complainant's Rights

All employees have the right to work in an environment which is free from any form of harassment. NICVA fully recognises the right of employees to complain about harassment should it occur. All complaints will be dealt with seriously, promptly and confidentially. A copy of the complaints procedure which has been agreed with the recognised trade union is described below.

This procedure does not replace or detract from the rights of employees to pursue a complaint under the sex discrimination/race relations/disability discrimination legislation to an industrial tribunal in the case of sexual harassment/racial harassment/harassment on grounds of disability, and under the fair employment legislation to the Fair

Employment Tribunal in the case of sectarian harassment. A complaint must be lodged within three months from the date of the alleged act of sex, disability or racial discrimination. For religious or political discrimination, a complaint must be lodged within three months from the date when the person first knew, or might reasonably be expected to have first known, of the act of discrimination or within six months from the date the act occurred, whichever is earlier.

Every effort will be made to ensure that employees making complaints and others, who give evidence or information in connection with the complaint, will not be victimised. Victimisation is discrimination contrary to the Disability Discrimination Act 1995, the Fair Employment and Treatment (Northern Ireland) Order 1998, the Race Relations (Northern Ireland) Order 1997 and the Sex Discrimination (Northern Ireland) Order 1976. Any complaint of victimisation will be dealt with seriously, promptly and confidentially. Victimisation will result in disciplinary action and may warrant dismissal.

Employee Responsibilities

All employees have a responsibility to help to ensure a working environment in which the dignity of employees is respected. Everyone must comply with this policy and employees should be aware of the serious and genuine problems which harassment can cause and ensure that their behaviour to colleagues and users of NICVA services/facilities does not cause offence and could not in any way be considered to be harassment. Employees should discourage harassment by making it clear that they find such behaviour unacceptable and by supporting colleagues who suffer such treatment and are considering making a complaint. They should alert a member of management or their line manager to any incident of harassment, internal or external to enable the organisation to deal with the matter.

Management Responsibilities

The Management Group and other line managers have a duty to implement this policy and to make every effort to ensure that harassment does not occur, particularly in work areas for which they are responsible. They have responsibility for any incidents of harassment of which they are made aware or which they observe. If harassment does occur, they must effectively deal with the situation. Line managers must:

- (1) Be responsive and supportive to any member of staff who makes an allegation of harassment whether internally or externally, provide clear advice on the procedure to be adopted, maintain confidentiality and seek to ensure that there is no further problem of harassment or victimisation after a complaint has been resolved.
- (2) Set a good example by treating all staff and users of NICVA services/facilities with dignity and respect.
- (3) Be alert to unacceptable behaviour and take appropriate action.
- (4) Ensure that staff know how to raise harassment problems.

NICVA's Responsibilities

NICVA will ensure that adequate resources are made available to promote respect and dignity in the workplace and to deal effectively with complaints of harassment. This policy and procedure will be communicated effectively to all employees and NICVA will ensure that all employees and line managers are aware of their responsibilities. Training will be provided periodically.

The organisation will ensure, where possible, that employees can raise complaints, should they wish, with someone of their own gender, religion or race, or who is aware of disability issues. All complaints of harassment will be dealt with promptly, seriously and confidentially.

Review

NICVA will monitor all incidents of harassment and will review the effectiveness of this policy and procedure as necessary.

Procedure for Dealing with Complaints of Alleged Harassment

Any employee who believes that they have suffered any form of harassment is entitled to raise the matter through the following grievance procedure. This procedure does not replace or detract from an individual's statutory rights under sex discrimination, fair employment, disability discrimination or race relations legislation.

Sex Harassment by a Third Party

Many NICVA employees are in contact with third parties as part of their working environment. Where there has been a reported incident of sex related harassment NICVA will informally approach the alleged harasser or their employer to make it clear to the person(s) that the behaviour in question is offensive and is not welcome and should be stopped.

Where there have been two prior reported incidents of sex related harassment (which are not necessarily perpetrated by the same person). The relevant Director assisted by the Human Resources Manager, will investigate the incident and take steps to ensure contact is avoided between the alleged harasser(s) and the staff member. Where it is felt that the employee has suffered harassment, NICVA will make a formal complaint and report the incident to the employer (if appropriate) of the third party; and or halt any contact with the third party indefinitely or until the matter has been satisfactorily resolved. Where the alleged harassment is particularly serious, or constitutes assault the Chief Executive will report the matter to the police.

Informal Stage

This stage is appropriate where the employee simply wants the behaviour to stop, where the harassment is not serious or where it has not been repeated. Employees can seek to resolve matters informally by:

- (1) Approaching the alleged harasser directly making it clear to the person(s) harassing the employee that the behaviour in question is offensive, is not welcome and should be stopped.
 - (2) Approaching the alleged harasser with the support of a colleague or a trade union representative.
- (1) Approaching the alleged harasser with the support of a line manager.

If it is too difficult or embarrassing to do this personally, employees may request a line manager or the Human Resources Officer or Union Representative to approach the alleged harasser on their behalf. Where an employee seeks the support of a line manager they will be sensitively informed that their role at the informal stage can only be one of support or assistance. The employee will be advised that:

- (1) A formal investigation and possible disciplinary action can only take place if the complaint is investigated under the formal procedure.
- (2) A written record of the action taken will be made to assist with any formal proceedings which may arise if the behaviour does not stop. Failure to maintain such a record will not invalidate proceedings at the formal stage.

All reported incidents of harassment will be monitored and in the event of any patterns emerging management may wish to initiate its own formal investigation and take remedial action where this proves to be necessary. Additionally, there may be situations where the seriousness of a complaint warrants formal proceedings.

Formal Stage

The formal procedure is appropriate if the harassment is serious, if the person making the complaint prefers this, or if the harassment continues after the informal procedures have been used.

A Director will have designated responsibility for all proceedings at the formal stage. However individuals may raise complaints with any member of the Management Group. NICVA recognises the benefit of having a complaint investigated by a member of staff of the same gender, religion or race as the complainant or who has knowledge of disability issues (depending on the nature of the complaint) and where practicable this will be our practice. Managers carrying out, assisting with or recording investigations at the formal stage should not be connected in any way with the allegation which has been made. The Human Resources Officer will assist throughout the procedure and will attend or conduct all meetings and maintain a written record of all proceedings including the investigation and any outcome.

Investigation Under the Formal Procedure

The following procedure details time limits for the completion of each stage of the procedure. If any of these time limits are not possible then both parties will be informed of the revised timescale. The procedure will be completed within 20 working days of the

complaint having been received. Where this is not possible the procedure will be completed as soon as practicable.

Making a Complaint

Individuals should make a complaint in writing to a Director or designated person as soon as is reasonably practicable, this will not preclude the investigation of a complaint made verbally. The complaint will be acknowledged and a meeting will be arranged with the complainant within three working days.

Avoiding Contact Between Complainant and Alleged Harasser

The issue of avoiding contact between complainant and the alleged harasser must be considered before action is taken to inform the alleged harasser of the complaint. The manager will take appropriate action concerning avoiding contact following discussion with the complainant, including the possibility of relocation if appropriate. Both parties should also be advised that there should be no communication between them, directly or indirectly, in relation to the complaint.

In cases of serious harassment, consideration will be given to precautionary suspension in accordance with NICVA's disciplinary procedure to enable the investigation to proceed. An individual facing suspension will be formally advised as appropriate and will have the right of representation by a trade union representative or work colleague.

Initial Meeting with the Complainant

The Director or designated person will meet the complainant to:

- (1) Clarify and formally record the nature of the complaint and that it is being handled under the formal procedure.
- (2) Advise the complainant of his/her statutory rights and time limits under the appropriate legislation.
- (3) Ensure that the complainant is aware of the next stages of the procedure.
- (4) Advise that the complainant has the right to be accompanied and/or represented at the investigatory meeting by a trade union representative or work colleague.

Informing the Alleged Harasser

The Director or designated person will meet with the alleged harasser and:

- (1) Outline the nature of the complaint.
- (2) Confirm that it is being handled under the formal procedure.
- (3) Ensure that the individual is aware of the next stages of the procedure.

- (4) Advise that the alleged harasser has the right to be accompanied and/or represented at the next stage of the procedure by a trade union representative or work colleague.

Following this meeting the Director or designated person will write to the alleged harasser outlining the nature of the complaint and setting a date for a formal meeting to be held within five working days of the formal complaint being received.

Whilst the Director or designated person will seek to resolve the matter as quickly as possible, the meetings with all involved need not necessarily follow immediately after each other. Every effort will be made to hold all necessary meetings within ten working days of the date the formal complaint was received. Where this is not practicable the complainant and the alleged harasser will be so advised.

The purpose of these meetings is to establish the facts. All those giving information to the Director or designated person 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 to the investigation subject to any statutory requirements.

STEP 1: Meeting with person alleging harassment

The Director or designated person will meet with the person alleging harassment and consider both what they have to say and any other related matter. The person alleging harassment will have the right to be accompanied and/or represented by their trade union representatives or work colleague as appropriate.

STEP 2: Meeting with alleged harasser

The Director or designated person will meet the alleged harasser and hear what they have to say about the alleged incident(s) and any other related matter. The alleged harasser will have the right to be accompanied and/or represented by their trade union representative or work colleague as appropriate. This will not be the same person who accompanies and/or represents the complainant.

STEP 3: Meeting with anyone who can assist with the investigation

The Director or designated person will meet with anyone who can assist with the investigation. This may include line managers and co-workers and may also include anyone who observed the complainant's demeanour immediately before and after the alleged incident(s) or any colleague with whom the complainant discussed the alleged incident(s). Each individual will be asked to outline what happened. The alleged harasser and the complainant will have the right to specify particular people who may provide evidence.

The Director or designated person will meet the line managers of both the complainant and the alleged harasser to establish if there has been any history of previous conflict between them and/or with other parties.

The Director or designated person may then wish to have further meetings to clarify or gain additional information.

STEP 4: Reporting of facts and action

The Director will then prepare a report outlining the facts, indicating their findings, whether a case of harassment is substantiated and whether NICVA's disciplinary procedure should be invoked or some other action taken. Where disciplinary action/or other action may be deemed appropriate the report will be forwarded to the appropriate disciplining officer/line manager who will initiate the disciplinary process.

STEP 5: Disciplinary action

All documents pertaining to the case will be made available should disciplinary action become apparent (refer to Disciplinary Policy and Procedure – Appendix 26).

STEP 6: Communicating the decision

Having made a decision this will be communicated in writing to both the person against whom the complaint was made and the complainant.

Action on Completion of an Investigation

(1) Redeployment if disciplinary action is taken

Where a complaint has been upheld the complainant may wish to avoid any further contact with the harasser. Should the harasser remain in employment with the organisation and where it is agreed that further contact between the individuals concerned would be unacceptable, every effort will be made to facilitate this wish. Consideration should always be given to relocating the harasser in the first instance and where transfer of the complainant occurs it should not lead to any disadvantage to them.

(2) Redeployment where disciplinary action has not been taken

Even where a complaint is not upheld or, for example, where the evidence is inconclusive, consideration may still be given where practical to the voluntary transfer of one of the employees concerned.

Appeals

At any stage in the disciplinary process, an employee may appeal against any of the above disciplinary decisions. If an employee wishes to exercise the right of appeal, they must do so in writing within five working days of receiving confirmation of disciplinary action.

Training and Counselling

Training and/or counselling will be offered to the person who has been harassed and to the harasser. Where a complaint has not been upheld, training and/or counselling may also be offered. This will be provided by a trained member of staff or by an external provider, as appropriate and as agreed with the recognised Trade Union.

Further Meetings

The Human Resources Officer or designated person will meet the individual who has alleged harassment on a regular basis to offer support and to ensure that no harassment or victimisation has occurred. This action will be undertaken even where a complaint has not been upheld.

The manager of the harasser will be responsible for ensuring that the harasser is made fully aware of NICVA's policies on equal opportunities and harassment and of the law relating to these matters.