



& CDVEC Craft Unions (e.g. TEEU, INPDU, UCATT and BATU)

Updated on 12 April 2011

Guidelines first implemented with effect from 2 November 2009

RE: Information that should be carefully noted with respect to the operation of the Codes of Practice for Dealing with Complaints of Bullying, Harassment and Sexual Harassment in VEC Workplaces (published 1 September 2009)

Since the publication of the aforementioned Codes of Practice, the Consultative Forum of IVEA and vocational sector trades union signatories to the Codes, have considered issues that have arisen from the operation of the Codes and have sought to try to respond thereto. In this regard, a number of operational changes to support the Codes have been agreed at national level and most particularly over the past two years.

This documentation seeks to encapsulate the principle changes agreed at national Consultative Forum level to support the operation of the published Codes.

You are asked to note that Codes of Practice as issued on 1 September 2006 continue to apply subject to a number of nationally agreed amendments/editions which are detailed overleaf and in the supporting documentation/correspondence.

Encl.: One document detailing the following:

- An executive summary of the principle changes, edits or supplementary supports to the operation of the Codes of Practice
- Guidelines for conducting Formal Procedure Stage 1 of the Codes
- **Updated correspondence dated 12 April 2011 from the Conciliation Service, Labour Relations Commission concerning the operation of Formal Procedure Stage 3 and contact details for the independent appeals officer under Stage 3**
- Panels of Investigative Officers and Chairpersons of CCCs



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Executive summary of the principle changes, edits or supplementary supports to the operation of the Codes of Practice

Please note, the Codes of Practice as issued on 1 September 2006 continue to apply subject to the following nationally agreed amendments/editions:

INFORMAL PROCEDURE

Item 1: Clarification of issues with respect to the operation of Informal Procedure Stage 2 concerning Resolution Facilitators and VEC Contact Persons:
[Confirmed in appendix CF1 which issued on 12 March 2008]

The use of/access to Resolution Facilitators from the VEC's own panel

It is the view of the Consultative Forum, that whilst there is no impediment to a trained Resolution Facilitator being engaged by a complainant in the school/centre/office/college in which s/he works, it might be preferable in practice, that the complainant would select a Resolution Facilitator from the VEC panel who works outside of the school/centre/office/college to that of the complainant.

The use of/access to Resolution Facilitators outside of the VEC's own panel or VEC scheme

It is the view of the Consultative Forum that in so far as possible, Resolution Facilitators should be drawn from the individual VEC's own trained panel of Resolution Facilitators. However, in certain exceptional circumstances, a trained Resolution Facilitator from another VEC (but only within the original cluster grouping) may be used e.g. where one/more the parties to a complaint are a member of the trained panel of VEC Resolution Facilitators. **Advice should be sought, by a complainant, from the Contact Person in the HR Department of the local VEC office to ascertain the appropriateness of contacting a Resolution Facilitator outside of the VEC's own panel.**

Support provided by the VEC Contact Person

The Forum requests that each VEC make appropriate practical arrangements for the appointment of a VEC Contact Person who would:

- Arrange facilitation meetings
- Forward the parties a copy of the Code/s and
- Provide a point of reference for the complainant and subject of the complaint under the informal stages of the Code.
- Provide contact details of trained Resolution Facilitators from the VEC panel
- Arrange for meeting room(s) and refreshments as required where meetings under the informal procedure would be conducted.

- Act as a link, through its HR Department, in the provision of expert help if required by the Resolution Facilitator.

Item 2 – Clarification with respect to Informal Procedure Stage 3 – role of the Deputy Principal

[Confirmed in appendix CF4 which issued on 12 March 2008]

Currently Informal Procedure stage 3 states the following:

“If the matter is unresolved at stages 1 or 2, or if the complainant and the Designated Facilitator¹ believe the behaviour complained of is such a nature that it should be reported immediately, they should approach the Deputy Principal in a school/college, or a member of the senior management team in a centre/office other than a school/college, requesting that the Deputy Principal or Senior Manager use his/her best offices to resolve the complaint through an informal process as in stage 2...etc.”

The Consultative Forum recognises that in the absence of appropriate training that a certain frailty exists in the wording as is currently presented. To seek to support VEC staff and management and specifically those who may engage the procedure under the Codes, the Consultative Forum has provided the following interpretation by way of clarification and assistance:

That in the absence of formal training, the role of the Deputy Principal in a school/college or member of the senior management team in a centre/office (under Informal Procedure Stage 3) should be:

- **To inform the parties to the complaint of their options**
- **To seek to put the parties in touch with the VEC Contact Person in the HR Department in the VEC’s administrative head office who will arrange, subject to the agreement of the parties to the complaint, for external structured mediation sessions to be provided.**
- **Importantly, the Deputy Principal/Senior Manager should not seek to replicate (in the absence of appropriate training), the function already undertaken by the trained VEC Resolution Facilitator.**

Item 3 - Provision for external mediation (prior to engaging the Formal Procedure)

[Confirmed in appendix CF3 which issued on 12 March 2008 and referenced under ‘Prevention’ in both Codes]

Provision is made for the parties, **by mutual agreement only**, to opt for the services of an external professional mediator. In the event that this is used, a professional mediator (selected by the HR Department of the VEC) will hold a series of structured sessions (3-4 max.) with the parties to the complaint a view to achieving a resolution of the complaint. This facility is available prior to engaging the Formal Procedure and does not prejudice an individual’s right to invoke the Formal Procedure. Mediators may be drawn from a list of approved mediators issued by the Mediators’ Institute of Ireland which can be accessed on <http://www.themii.ie/find-a-mediator.jsp> or from Mediation Forum Ireland which can be accessed on <http://mediationforumireland.com/index.php>

Again, as far as possible good practice recommends that complaints should try to be resolved at the earliest possible stage through an informal procedure.

¹ Designated Facilitator refers to a Resolution Facilitator trained through cluster training sessions organised by the Consultative Forum and conducted in October and November 2007.

FORMAL PROCEDURE

Item 4 – Clarification with respect to Formal Procedure Stage 1

[Confirmed by agreement of the parties to the Consultative Forum on 22 September 2009]

In circumstances where a Principal, Deputy Principal, or a person in a category of employment reporting directly to the CEO of the VEC, or a Head of Centre, is a party to the complaint, an allegation shall be investigated by a person nominated from the agreed national panel of Investigative Officers. A copy of the panel list is supplied again for reference in appended documentation.

With regard to the use of the agreed panel of Investigative Officers/Investigators under Formal Procedure Stage 1, the Consultative Forum has agreed that in order to maximise the full use of persons listed on the panel and in the interest of fairness to all parties who have nominated and so approved the listing, **that VECs are requested to rotate their use locally, of those Investigative Officers drawn from the list.** This would involve going to the next listed name from the last Investigative Officer used by the VEC and, contingent on availability and with reference to the practicalities of geographical distance, **selecting the next named Investigative Officer on the list.** Where, having gone through every name in sequential order on the list, arrangements are proving problematic due to the availability of the next listed Investigating Officer, arrangements should be made so that the last Investigative Officer would not be used directly again for the investigation currently at hand. This may mean that an alternative date/time (within the timeframes advised in the Codes) may need to be agreed with the Investigating Officer.

[Note, IVEA nominates from the panel in the event of a CEO being a party to an investigation]

Item 5 – Clarification with respect to Formal Procedure Stage 1

[Confirmed by agreement of the parties to the Consultative Forum on 22 July 2009]

With regard to the matter of the right of access of a subject of a complaint to a Stage 1 report/finding/s, the Codes do not provide explicitly that an Investigator's report/finding/s should be given to the parties, without the necessity to invoke an appeal to a Complaints Consideration Committee.

This position has now changed by agreement to the parties on the Consultative Forum:

VECs are so advised that Stage 1 reports/findings should be provided, regardless of the right of the subject of a complaint or a complainant to appeal to a Complaints' Consideration Committee.

**Approved nominees to the National Panel of Experts for investigating allegations
of sexual harassment and bullying and harassment against
Principals, Deputy Principals, Centre Heads and those in a category of
employment reporting directly to a CEO of a VEC.**

Approved by IVEA and sectoral unions on 26 February 2007
Implemented from 7 March 2007

Name & nominated by Contact Address Contact phone, email etc.

1. Mr John Dowling
8 The Close
Mount Merrion
Co. Dublin

2. Mr Niall Mooney
The Law Library
The Four Courts
Dublin 7
Ph: 01 - 8174901
(087) 2387623
01-8720622 (Law library)

3. Ms Pauline Marrian-Quinn
Irish School of Ecumenics
Trinity College Dublin
Bea House
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Dublin 6
Ph: 01-2601144
Fax: 01-2601158

4. Ms Ann-Hartnett O'Connor
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The Four Courts
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(087) 2906294
01-8720622 (Law library)

5. Mr Peter O'Leary
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7. Mr Michael McNamee
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Ph: 087 2386472

8. Mr Noel Devitt
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(087) 2874228
01-8720622 (Law library)

**Approved Nominees to Panels of Independent Chairpersons
(under Codes for Dealing with Complaints of Bullying, Harassment
and Sexual Harassment in VEC Workplaces)**

Implemented 2 August 2007

This is not a composite list and will be extended

Name	Address	Phone
Mr Sean McCann	Brosna 15 Castletown Drive Celbridge Co. Kildare	01-6271326 085 7725760
Mr Niall Bradley	42 The Village Green Road Newbridge Co. Kildare	087-2847929
Sr Eileen Randles	Loretto Education Centre Springfield Park Foxrock Dublin 18	2899956 Ext 21
Mr Eric Young	60 Kincora Court Clontarf Dublin 3 ercyoung@hotmail.com	087 2399539
Mr Pat Harvey	Hawthorn Heights Letterkenny Co. Donegal	074 9129950
Ms Catherine Byrne	5 Hunters Row Seapark Road Clontarf Dublin 3 katie@catherinebyrne.com	086 6184707



& CDVEC Craft Unions (e.g. TEEU, INPDU, UCATT and BATU)

Guidelines for Conducting Formal Procedure Stage 1 under the Codes of Practice for Dealing with Complaints of Bullying, Harassment and Sexual Harassment in VEC Workplaces (1 September 2006)

Guidelines issued to VECs on 2 November 2009

The aim of a workplace investigative process is to gather relevant evidence to determine whether or not an employee has misconducted him/herself. Whilst investigations are not an everyday occurrence in the workplace, once the need to carry one out arises, it must be conducted in a fair manner.

The requirement to act fairly has been confirmed:

- In a number of Court cases including the Supreme Court case, *Gallagher v Revenue Commissioners* (No.2) (1995) 1 I R 55, that the employer was “obliged to adopt fair and reasonable procedures”
- By Statutory Instrument e.g. 146/2000 and;
- Respective guidelines issued by state sponsored institutions.

Thus the obligation to conduct a fair investigation will ultimately be borne by an employer and the duly appointed Investigator.

A. Key principles underpinning the operation of Formal Procedure Stage 1

Key principles underpinning the operation of Formal Procedure Stage 1 include:

An employee who is party to an investigation is entitled to:

- 1. Be aware of the charges being made against him/her**
 - Such employees should be notified in writing of the allegations or charges being made against him/her
 - The written notification to the employee should set out the nature of the allegations
 - Statements to be furnished to both parties in advance of the hearing
 - The responses to those statements to be copied to both parties
 - The employee should receive copies of all relevant documents i.e. the written complaint, applicable policies and procedures and other information relevant to the matter which is to be relied on during the investigation - for example, any written statements obtained.
 - If during the course of an investigation the Investigator is presented with additional matters which constitute further allegations, the Investigator should notify the

party/parties concerned that new issues pertaining to him/her transpired during the course of the investigation and are being investigated.

- The individual/s concerned has/have to be given an adequate opportunity (following a recess/adjournment), to respond to these new allegations being made against him/her.

2. Answer any charges being made against him/her

- An employer must provide the subject of the complaint with the opportunity to respond to all allegations made against him/her
- Where the complainant employee presents an oral and written account of their allegations, the subject of the complaint must be provided with an opportunity to respond both orally and in writing. The Investigator will provide the subject of the complaint with the written complaint/s and an agreed record of any oral presentation/s made (including notes taken by him/her or the recording secretary at any oral presentation/s). Otherwise, the fairness of the process could be challenged on the basis that the subject of the complaint was not given an adequate opportunity to present a defence to the allegations.

3. Be represented

The complainant and the subject of the complaint has/have the right to be accompanied/represented at interview/s held during the investigation (this may include a family member, friend, colleague or trade union representative). It would not however be appropriate for such an accompanying person to be a witness who will also be interviewed or make a statement during the course of the investigation.

4. Have the investigation conducted by an impartial investigator:

- Meeting(s) will be arranged with the parties (either separately or jointly) with the Investigator chairing the meetings.
- Recesses should be granted on request.
- Adjournments should be granted if new evidence is presented.
- Detailed notes should be taken and retained.
- Both parties to the complaint may be permitted to question witnesses.
- Students may, with parental consent as appropriate, be interviewed as witnesses. In such circumstances, students may be accompanied by parent(s)/guardian(s).

- 5. Access to Information:** Where charges are being made against an employee they should be aware of their right of access to information ('data') held on them either electronically or on hard copy, in accordance with the provisions of the Data Protection Acts 1998-2003.

6. Maintenance of confidentiality throughout the process:

The Investigator must avoid discussing details of the investigation with any person, either within or outside of the workplace, other than those to whom she or he must speak with in the course of the investigation and the HR Manager of the VEC (given his/her role in the event that the complaint moves onto Formal Procedure stage 2).

During the course of the investigation, the Investigator(s) should not indicate her or his views with regard to the credibility or otherwise of the complaint itself, or, the evidence given by the complainant, the subject of the complaint or any witnesses.

The Investigator(s) should refuse to be drawn into any speculation with any party as to the likely outcome of the investigation. Due regard must be had at all stages of the investigation to the rights of the complainant, the person against whom a complaint was made and any witnesses - particularly, their constitutional right to the protection of their

good names - bearing in mind that a complaint is no more than an allegation unless and until the facts have been satisfactorily established by the investigation.

It is the responsibility of the Investigator to establish the circumstances and facts from interviews or witness statements. The Investigating Officer may need to interview other persons named in statements, or, re-interview persons previously interviewed.

If a person demands that information provided to an Investigating Officer remain confidential there is no legal duty to maintain confidentiality. Where the Investigating Officer is of the view that natural justice (such as each side being fully aware of the case being made against him or her) requires disclosure such obligation may override any undertaking of confidentiality. Investigators should be cognisant of the Data Protection Commissioners Guidelines [www.dataprotection.ie] in this regard.

B. Guidelines for conducting interview(s) with the parties to complaint and witnesses

B1. Interview/s with the complainant:

At the outset, the complainant should be informed that a copy of his/her statement will be furnished to the subject of the complaint.

The Investigator should begin the investigative process with a thorough interview of the complainant to ascertain the facts behind the complaint.

It is important that the Investigator indicate clearly to the complainant that s/he is not a counsellor. Where a complainant seeks counselling, s/he should be directed to the Employee Assistance Service.

It should also be clearly indicated to a complainant that the investigation must follow fair procedures mindful of the rights of the complainant and subject of the complaint.

In conducting the investigation, the Investigator should ascertain the following:

- How do you (the complainant), perceive you were bullied/harassed/sexually harassed?
- What precisely occurred?
- Who was involved?
- When the incident(s) occurred?
- Where the incident(s) occurred?
- Whether there were any witnesses to the event(s)?

The complainant should be requested not to discuss the case with any other party to the investigation.

B2. Interview with the subject of the complaint:

At the outset, the subject of the complaint should be informed that a copy of his/her statement will be furnished to the complainant.

The Investigator(s) should hold a thorough interview with the subject of the complaint has been made.

It is important that the Investigator indicate clearly to the subject of the complaint that s/he is not a counsellor. Where counselling is sought she or he should be directed to the Employee Assistance Service.

It should also be clearly indicated to a person against whom a complaint has been made that the investigation must follow fair procedures mindful of the rights of both the person against whom the complaint has been made and the complainant. The person against whom the complaint has been made must be:

- Advised in sufficient detail on the allegations against him or her and given a copy of the complainant's written statement in advance of the interview;
- Given an opportunity to answer the allegations in writing, if she or he so wishes, to the complaints made - this may be done in advance of any interview;
- Given an opportunity to comment on the alleged incident(s) from her/his perspective and to comment on the detailed statement of the complainant;
- Asked whether there were any witnesses to the alleged events.
- Requested not to discuss the case with any other party to the investigation.
- S/he has a right to be accompanied/represented at interviews held during the investigation (this may include a family member, friend or trade union representative). However, it would not be appropriate for such an accompanying person to be a witness who will also be interviewed or making a statement during the course of the investigation.
- Again, the subject of the complainant should be informed that a copy of his/her statement will be furnished to the complainant. The crucial factor is that each side must know the other party's case.
- Any new information submitted over the course of investigation meeting/s should be put to the relevant parties

B3. Interviews with witnesses:

At the outset, witnesses should be advised that a copy of his/her statement/s will be furnished to the parties to the complaint.

In setting the background to the complaint, witnesses should only be given sufficient information to allow the investigating officer determine what occurred in relation to the allegation.

Witnesses may be accompanied/represented at interviews held during the investigation (this may include a family member, friend or trade union representative). However, it would not be appropriate for such an accompanying person to be a party to the investigation or another witness who will also be interviewed or making a statement during the course of the investigation. In addition, witnesses should be informed that they are not to discuss the case with any other party.

Witnesses should be asked:

- What precisely occurred?
- Who was involved?
- When the incident(s) occurred?
- Where the incident(s) occurred?
- Whether there were any other witnesses to the event(s)?

The complainant and the person against whom the complaint has been made should be given an opportunity to comment on the statements, if any, made by witnesses.

Witness Conflicting Accounts: Where the investigator is faced with two conflicting accounts of the alleged incident and where no witnesses are available or where their evidence is not persuasive, the case rests upon which version of events the investigator considers the more

credible. In this connection, it is important to pay attention to the details of the evidence and the consistency of the story presented by each side.

Victimisation: Should the investigating officer(s) or any person become aware that any attempt has been made to persuade the complainant or any witness to drop the case or change her or his evidence, the matter should be reported immediately to the HR Manager of the VEC. Any such interference will be regarded as a serious breach of discipline. Any attempt at interference or victimisation in the case of harassment or sexual harassment may also constitute an offence under the Employment Equality Acts 1998 and 2004.

B4. On completion of the investigation:

When the interviews have been completed, the Investigator shall conclude his/her written report. This report shall include the conclusions of the investigator on the credibility or otherwise of the allegations.

The report of the investigation should detail:

- The facts as reported arising from the investigation
- Whether resolution has been achieved between the parties
- If not, whether the allegation is... **upheld, unfounded, or, unfounded and malicious and on what basis the finding was achieved.**

If the matter is resolved – the Principal/Head of Centre writes within 10 working days following the investigation meeting, to the parties confirming that the matter is concluded.

In all other cases – the Investigator:

- Writes to parties within 10 working days of the investigation meeting, indicating whether the allegation is deemed following investigation, to be (i) upheld, (ii) unfounded or (iii) unfounded and malicious and on what basis the finding was achieved. A copy of the finding and supporting rationale and a copy of the full Investigating Officer's report should be furnished to the parties.
- Correspondence should also indicate to the respective parties, that either party/parties have an opportunity to appeal the report done by the Principal/Head of Centre as Investigating Officer within (15 working days) onto Formal Procedure stage 2 – the Complaints' Consideration Committee (CCC). Advice should be furnished that appeals should be lodged, in writing, with the Head of HR or Administration in the VEC and not the CEO.
- In cases where allegations have been made against more than one person, a separate finding, in writing, should issue in respect of each person against whom the allegation is made.

C. Terms of Reference in respect of an investigation

1. The scope of the investigation will cover the specific allegation(s) made against the named employee(s) and will address any matter that arises out of or in connection with the nature of the investigation.
2. The investigation will be carried out within the remit of the *Codes of Practice for Dealing with Complaints of Bullying, Harassment and Sexual Harassment in VEC Workplaces (published 1 September 2006)*. Any determination/findings of bullying, harassment or sexual harassment will conform to the definition of Bullying/Harassment/Sexual Harassment as contained in these procedures.
3. No allegations which have been previously been investigated can form part of this current investigation.

4. During the course of the investigation the parties to the complaint, witnesses and any person who has information in their possession may be interviewed.
5. The investigation will require the co-operation of the parties directly involved in the provision of evidence related to the allegation(s).
6. The investigation and its findings will be treated with confidentiality,
7. Where parties to the investigation are being interviewed their representative(s) whether trade union, work colleague, or other person may accompany them at all meetings.
8. The investigation will take into consideration documentation and statements gathered during the currency of the investigation.

D. Protocol for conducting an investigation

- a. Meet complainant
- b. Agree note of meeting with complainant
- c. Meet complainant's witnesses
- d. Forward agreed note of meeting together with evidence/documentation to the subject of the complainant
- e. Meet the subject of the complaint
- f. Agree note of the meeting with the subject of the complaint
- g. Meet the subject of the complainant's witnesses
- h. Forward agreed note of meeting together with evidence/documentation to the complainant
- i. Meet complainant in relation to matters arising which require further clarification.
- j. Meet the subject of the complaint in relation to matters arising which require further clarification.
- k. As appropriate to determining the facts of the allegation, the Investigating Officer may need to interview other persons named in statements referenced during the course of investigation meetings or indeed re-interview anyone previously interviewed (over the course of investigation meeting/s) with a view to determining a finding on the validity or not, of the allegation of bullying, harassment or sexual harassment.
- l. Any new information submitted over the course of investigation meeting/s should be put to the relevant parties
- m. As appropriate, discretionary meetings may be undertaken jointly with the parties with a view to resolving the complaint
- n. Close investigation
- o. Write report
- p. Issue finding and the basis for it, in a full report to the parties to the complaint. Advise that appeals may be lodged in writing within 15 working days with the Head of HR or Administration in the VEC.
- q. The time limits provided for under this stage of the investigative procedure may be extended where there is good reason for doing so or be extended by agreement between the parties and the Investigating Officer concerned.

It is essential that detailed notes should be taken at all stages and these notes should be made available to the parties concerned at the appropriate stage.

It is recommended that a recording secretary accompany the Investigator at investigation meetings.

-END-



**The Labour Relations
Commission**

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Note: The following correspondence is effective from 12 April 2011

Formal Procedure Stage 2

“The decision of the Complaints Consideration Committee (CCC) will be referred to the Chief Executive Officer of the VEC for consideration and decision. This measure will complete the internal process set out in this procedure.

The CEO’s decision will be conveyed by registered post to the parties within 10 working days. The CEO will set out the right of appeal to the independent third party and supply contact details for same.

Formal Procedure Stage 3 – Appeal to an Independent Third Party

Following on from the completion of the internal process, an aggrieved party will have the right of appeal to an independent third party. This appeal should be lodged, in writing, within 15 working days.

The decision of the independent third party will be referred to the CEO (for implementation)”.

And arising from that, I would suggest that the following general guiding principles apply to appeals under Formal Procedure Stage 3

General guiding principles on appeals under Formal Procedure Stage 3

It is open to either party to a complaint of bullying, harassment and/or sexual harassment to appeal the decision from Formal Procedure Stage 2 to Formal Procedure Stage 3 which will be heard by me, as the LRC nominee, and agreed between the IVEA, the VEC National Partnership Forum and vocational sector trade unions including: TUI, IMPACT, ASTI, SIPTU, UNITE and members of the CDVEC Craft Union Group.

1. Who is the Appeals Officer/the Independent Third Party in this appeal hearing?

The Code advises that the CEO of the VEC under FP stage 2 “will advise the right of appeal to an independent third party”. For the purposes of this appeal, this person will be a sitting member of the Labour Relations Commission’s Conciliation Service and agreed between IVEA and the union representing the appellant.

Contact details for this individual are as follows:

Ms Mairead Daly
Industrial Relations Officer
Conciliation Service
Labour Relations Commission
Tom Johnson House, Haddington Road
Dublin 4

Phone: 6136700/6136728
Fax: 6136742
Email: mairead.daly@deti.ie

2. What constitutes grounds for an appeal?

Importantly, it is not the role of the Appeals Officer (ITP) to re-investigate the original claim of bullying, harassment or sexual harassment or incidents giving rise to that claim. Rather, s/he will review the appeal on the grounds presented by the appellant and the response by the VEC concerned. In this regard, examples of appeal grounds may include:

- (a) The provisions of the agreed procedures were not adhered to
- (b) At the time, all the relevant facts were not ascertained
- (c) At the time, all the relevant facts were not considered or were not considered reasonably
- (d) The appellant concerned was not afforded a reasonable opportunity to answer the allegation
- (e) The finding is not supported by the evidence
- (f) The general principles of procedural fairness were not applied.
- (g) And other ground/s for appeal as may be permitted by the Appeals Officer/Independent Third Party in line with good practice.

3. Activating an appeal

In activating an appeal, the appellant should lodge the appeal, in writing, within 15 working days, directly with the agreed nominee specified above as the Appeals Officer/ Independent Third Party under Formal Procedure Stage 3.

Appeal grounds should be clearly stated and specific. Supporting examples should be provided under the appeal grounds and where more than one appeal ground is specified, supporting examples should be provided for each appeal ground.

Copies of all supporting documentation concerned to the appeal grounds only, should be furnished, marked '**Private & Confidential**' and sent by **registered post** to the following person/s:

- (1) To the Appeals Officer (*Specify address*)
- (2) To the Chief Executive Officer of the VEC (*Specify address*)

4. Responding to appeal documentation

On receipt of the appeal and supporting appeal ground/s' documentation, the VEC should:

- (1) Submit its response to the appeal (as far as possible under each of the stated grounds of appeal) and any supporting documentation, to the Appeal Officer/Independent Third Party concerned.
- (2) A copy of the response and supporting documentation should simultaneously be sent to the appellant.

All documentation sent should be forwarded by **registered post, marked 'Private and Confidential' and in the name of the addressee concerned.**

This submission/forwarding of this documentation should take place no longer than 15 working days from the postal date receipt by the VEC of the appeal documentation.

In line with the principles of procedural fairness and in support of the provision of an appeal under Formal Procedure Stage 3 of the Codes of Practice as developed for use in VECs (and issued on 1 September 2006), a review of the papers to the appeal by the Appeals Officer, will result in the arrangement of an appeal hearing date where the appellant (and his/her representatives) and the VEC (and its representatives), and others as may be determined by the Appeals Officer, will be requested to attend an appeal hearing on a specified date determined by the Appeals Officer.

In such circumstance, the Appeals Officer will deal directly with a nominated person in the administrative offices of the VEC (e.g. the HR Manager/senior VEC management official) to arrange a date, time and venue for the appeal hearing. It will be the responsibility of this nominated person (in the VEC) having consulted with the Appeals Officer, to make all necessary practical arrangements for the hearing on the specified date including advising the parties to the appeal (in writing and/or by phone) of the details of the date, time and venue arranged.

5. How an appeal hearing generally operates

The overall objective is to hear the appeal against the findings of the bullying, harassment or sexual harassment case investigated in the specific VEC. The appeal hearing process is informal and non-legalistic in its practice. The parties are free to represent themselves or be represented by trade unions or by employer organisations. The nature of appeal hearings are such that legal representation is not required.

The appellant (and his/her representative/s) are provided with an opportunity to speak to their written statements of appeal.

The VEC (and their representative/s) are provided with an opportunity to speak to their written response.

Both parties are provided with an opportunity to comment on and ask questions on the statements under the appeal grounds stated by the other party/parties to the appeal.

The Appeals Officer, acting as Chairperson, may also wish to ask some questions of one or both parties.

Again, the appeal hearing will not be a review of the investigation but a consideration of the stated grounds of appeal.

6. Finding/s/Decision arising from an appeal

The Appeals Officer shall deliver his/her finding/s/decision in writing to the parties to the appeal within 20 working days of the date of the appeal hearing.

This concludes the provision for external referral provided under the procedure.

Matters arising from the decision of the Appeals Officer shall be referred to the CEO of the VEC for implementation.

Yours sincerely

Mairead Daly