



Coimisiún Thithe
an Oireachtais
Houses of the
Oireachtas Commission

*Minutes of Commission Meeting
Tuesday 5 February 2019*

1. The first meeting of the Commission of 2019 took place at 11.30 a.m. in Room 160, Leinster House.

2. **MEMBERS PRESENT**

Deputy Seán Ó Feargháil, Ceann Comhairle (Chairperson), Senator Paudie Coffey, Deputy Marcella Corcoran Kennedy, Senator Gerard P. Craughwell, Mr. Peter Finnegan, Secretary General, Deputy Martin Heydon and Deputy Catherine Murphy.

Apologies were received from Senator Denis O'Donovan, Cathaoirleach of the Seanad (Deputy Chairperson), Deputy Timmy Dooley and Senator Ned O'Sullivan.

3. **MINUTES OF PREVIOUS MEETING**

The minutes of the meeting of 11 December 2018 were agreed by the Commission.

4. **PROGRAMME OF STRUCTURAL AND UPGRADE WORKS FOR GEORGIAN LEINSTER HOUSE: STATUS REPORT ON THE PROGRAMME OF WORK**

The Commission received an update presentation from the Office of Public Works (OPW) on progress in relation to the programme of structural and upgrade works for Georgian Leinster House.

The Commission was briefed on the current status and progress of the project. Works are proceeding in accordance with the contract and updated programme for the project. The project continues to be on target for completion of the main construction works in April 2019. Strategies to advance the programme schedule, specifically to minimise the effect of potential construction work delays on the fit-out and reoccupation of the House, are being implemented. The Service is working with OPW in planning a series of related projects to prepare the House for reoccupation following completion of the construction project.

The Commission noted that a site visit was organised for 12 February during which the Commission will receive a briefing from OPW's on-site team and view progress of the work to date.

The Commission noted the update and thanked the OPW staff for their work.

5. ICT STRATEGY IMPLEMENTATION

Update on delivery of new ICT Services and Projects in 2019

The Commission was briefed on the status and progress of new ICT services and digital transformation projects currently underway. It noted that there continues to be progress in implementing the projects for delivery within their specified timeframes. The Commission also noted that measures have been put in place to resolve technical issues that were impacting on the work of members arising from the upgrade to new systems.

The Commission noted the ICT Projects Status Report.

6. DIGNITY AND RESPECT STATEMENT OF PRINCIPLES AND POLICY:

Amendments to the Dignity and Respect Policy

The Commission approved a number of amendments to the Dignity and Respect Policy as set out in the Appendix to these minutes. It also requested further information on the role of the External Adjudication Panel under the Policy and agreed to consider the additional information sought at the next meeting.

Update on implementation of the Dignity and Respect Statement of Principles and Policy

The Commission was briefed on actions planned to support the implementation of the Dignity and Respect Statement of Principles and Policy, as approved, in the parliamentary workplace. It noted that HR Services had organised a series of information seminars to communicate the new policy and related procedures to members and staff.

7. OUTLINE WORK PROGRAMME AND MEETING SCHEDULE 2019

The Commission noted an outline work programme and meetings schedule for 2019.

8. ANY OTHER BUSINESS

(i) Correspondence

The Commission noted the following:

- (a) Email from Deputy Bobby Aylward
- (b) Email from Deputy Éamon Ó Cuív
- (c) Letter from the Chairman of the Joint Committee on Climate Action
- (d) Letter from Senator Michelle Mulherin

(ii) Information Item

Houses of the Oireachtas Commission (Amendment) Act 2018

The Commission was briefed on the content of the Houses of the Oireachtas Commission (Amendment) Act 2019, enacted on 27 December 2018.

The Commission welcomed the enactment of the legislation and expressed its appreciation that the funding to meet the costs associated with the running of the Houses of the Oireachtas for the three year period 2019-2021, and a number of the amendments sought by the Commission, were included in the Act.

(iii) Dáil 100: Special Centenary Sitting

The Commission expressed appreciation to the Service for their work in organising the Dáil 100 Special Centenary Sitting.

The meeting adjourned at 12.50 p.m.

SEÁN Ó FEARGHAÍL, T.D.
Ceann Comhairle and Chairperson of the Commission

Dated:

APPENDIX

HOUSES OF THE OIREACHTAS DIGNITY AND RESPECT POLICY

For Members, Political Parties and the Political Staff

A. INTRODUCTION AND SCOPE OF THE POLICY

The Dignity and Respect Statement of Principles applies to all working in the Parliamentary Workplace.

This Dignity and Respect Policy is available to Members and Political Parties as employers to adopt to ensure that procedures for dealing with any issues arising under the Dignity and Respect Statement of Principles comply with relevant legal and standard codes of practice.

As employers, Members and Political Parties have particular legal responsibilities to protect their employees from bullying, harassment and sexual harassment. This Dignity and Respect Policy complies with all relevant legislation and Codes of Practice, summarised as follows:¹

- The Employment Equality Acts 1998 to 2015 place an obligation on all employers in Ireland to prevent harassment and sexual harassment in the workplace. Harassment on any of the following grounds – gender, civil status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller community – is a form of discrimination in relation to conditions of employment.
- The Safety, Health and Welfare at Work Act 2005 (as amended) provides that employers have a duty to prevent any improper conduct or behaviour which is likely to put the safety, health and welfare of employees at risk. It obliges Members and Political Parties as employers to ensure that reasonable steps are taken to ensure a work environment free of bullying, harassment or

¹ Up to and including September 2018. While care has been taken in the production of this document, those intending to use the template should make themselves fully aware of the legal requirement and the meaning of the clauses, and where necessary take specialist advice.

sexual harassment. This includes developing an anti-bullying policy, and dealing with established complaints of bullying in the workplace. It is recommended that in fulfilling these obligations, Members and Political Parties ensure that they and their staff are fully informed of the policy and procedures and arrange to attend an information seminar on these procedures. Employers are also required to deal with complaints as a priority issue.

- The Employment Equality Act 1998 (Code of Practice) (Harassment) Order 2012 (S.I. No. 208 of 2012) contains a number of obligations for employers, such as ensuring that policies and procedures are in place and are accessible to staff and ensuring that natural justice and impartiality are adhered to during investigations. It also sets out an obligation for employers to take reasonably practicable steps to prevent bullying, harassment or sexual harassment in the workplace, to reverse the effects of it, and to take reasonable steps to prevent its recurrence.

The resolution procedures of the Dignity and Respect Policy, once adopted by a Member or Political Party, apply to staff of the Member or Political Party who work in the Parliamentary Workplace. The Parliamentary Workplace includes Leinster House and its environs, constituency offices, meetings, conferences, training events, official travel, and work-related social occasions provided there is a sufficient link with the work of the Member and his/her employees.

Staff employed by a Member or Political Party (“Political Staff”) for the purposes of this policy include typical workers (i.e. full-time employees) and atypical workers including part-time workers, temporary workers, fixed-term workers, casual and seasonal workers. Provisions in this policy which refer to an “employee” shall also apply, where the context requires, to any person working with the Member as listed above.

The procedures of the Civil Service Dignity at Work Policy 2015 continue to apply to the conduct of staff of the Oireachtas Service.

There are many employers in the Parliamentary Community and each employer is obliged to have a policy to deal with established complaints of bullying in the workplace. All complaints will be dealt with under the policy that applies to the subject of the complaint (“the Respondent”). Where a complaint is against a non-employee, such as a contractor or political correspondent, the complaint should be made to the Respondent’s employer. The complaint should also be notified to the employer of the person making the complaint (“the Complainant”) as the employer has a duty to their own staff to provide a safe working environment. Bullying, harassment or sexual harassment by non-employees may result in suspension/non-renewal of services, exclusion from the premises or the imposition of other appropriate sanctions or referral to other appropriate bodies.

Respondent	Policy to be applied
Complaint against a Member of the Houses of the Oireachtas or Political Staff member	Dignity and Respect Policy

Complaint against staff of the Oireachtas Service	Dignity at Work 2015
Complaint against a non-employee such as a contractor/political correspondent	The Policy of the Employer of the contractor/political correspondent

Issues relating to security in Leinster House should be notified to the Superintendent of the Houses, or the Head Usher. Criminal allegations should be reported to An Garda Síochána.

B. OBJECTIVES OF THE POLICY

Everyone in the Houses of the Oireachtas strongly supports a culture of dignity and respect in the Parliamentary Workplace, in which bullying, harassment and sexual harassment are totally unacceptable forms of behaviour. Members and Political Parties, in adopting this Policy, confirm their commitment to encouraging and maintaining a positive and welcoming working environment in which all those working within the Parliamentary Community are treated with equality, dignity and respect.

No bullying, harassment or sexual harassment will be tolerated in the Parliamentary Workplace. In accordance with these values, the Member or Political Party expects that all employees will conduct themselves with normal standards of courtesy and consideration in the workplace, at work-related events, and when undertaking business on behalf of the Member.

Complaints of bullying, harassment or sexual harassment will be dealt with under this policy in a formal or informal manner, or by alternative means, as described below.

Complaints of bullying, harassment or sexual harassment will be treated with fairness, sensitivity and (as far as possible) confidentiality for all parties concerned. Any person accused of bullying, harassment or sexual harassment will be afforded natural justice and treated with fairness and sensitivity.

Everyone carries a personal responsibility for their own behaviour and for ensuring that their conduct is in accordance with the Dignity and Respect Statement of Principles and Policy. In addition, each person has a responsibility to report any instance of bullying, harassment or sexual harassment that they witness or that comes to their attention.

The Member or Political Party is committed to ensuring that all employees or other persons in the workplace are aware of the procedures for making complaints under this policy and that no individual should feel threatened or fearful of raising such issues in the work environment.

C. DEFINITIONS AND INTERPRETATION

The definitions and the types of behaviours that constitute bullying, harassment and sexual harassment are set out in legislation and are also available on the Health and Safety Authority website. They are copied below for ease of use of this policy.

1. Bullying

Bullying at work is defined as repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work.

An isolated incident of the type of behaviour contemplated by this definition may be an affront to dignity, but as a once-off incident, it is not considered to be bullying.

A key characteristic of bullying is that it usually takes place over a period of time. It is *regular* and *persistent inappropriate behaviour* which is specifically targeted at one employee or a group of employees. It may be perpetrated by someone in a position of authority, by employees against a more senior member of staff, or by employees at the same level.

The following is a non-exhaustive list of examples of types of behaviour that may constitute bullying: -

- **Verbal:** personal insults, demeaning remarks, regular humiliation, often in front of others, nicknames, ridicule, threats;
- **Non-verbal or indirect:** exclusion with negative consequences, hostile attitude, spreading malicious rumours;
- **Abuse of power:** regular, excessive and inappropriate criticism, deliberately and maliciously withholding work-related information in order to undermine a colleague, repeatedly manipulating a person's job content and targets without due cause;
- **Physical:** aggressive behaviour, physical intimidation, unwelcome physical contact up to and including assault;
- **Communication technology:** insulting texts, emails, derogatory comments on social media.

2. Harassment

Harassment is any form of conduct or behaviour which is unwanted, unwelcome, and is intimidating, offensive, hostile or degrading to the recipient and which has the purpose or effect of violating a person's dignity on any one of the following grounds: -

- Gender
- Civil Status
- Family Status
- Sexual Orientation
- Religion
- Disability
- Age
- Race
- Membership of the Travelling Community.

Harassment may be targeted at one employee or a group of employees. Harassment may consist of repeated inappropriate behaviour or, unlike bullying, could involve one isolated or single incident. Harassment includes situations where the victim does not fall under the relevant ground, but the harasser believes that the victim has that characteristic.

The following is a non-exhaustive list of examples of types of behaviour that may constitute harassment:

- **Verbal harassment:** jokes, comments, ridicule or songs;
- **Written harassment:** emails, text messages, notices, or comments on social media;
- **Physical harassment:** jostling, shoving, or any form of assault;
- **Intimidating harassment:** gestures, posturing or threatening poses;
- **Visual displays such as posters, emblems or badges;**
- **Isolation or exclusion from social activities.**

3. Sexual Harassment

Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature which has the purpose or effect of violating a person's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

Sexual harassment may consist of a single incident, or repeated inappropriate behaviour.

The following is a non-exhaustive list of examples of types of behaviour that may constitute sexual harassment: -

- **Physical conduct of a sexual nature:** unwanted physical conduct such as unnecessary touching, patting or pinching or brushing against an employee's body, assault, and coercive sexual intercourse.
- **Verbal conduct of a sexual nature:** unwelcome sexual advances, propositions or pressure for sexual activity, continued suggestions for social activity outside the work place after it has been made clear that such suggestions are unwelcome, unwelcome or offensive flirtations, suggestive remarks, innuendos, or lewd comments.
- **Gender-based conduct:** including conduct that denigrates or ridicules or is intimidating or physically abusive of an employee because of his or her sex such as derogatory or degrading abuse or insults which are gender-related.

4. Intention

Bullying and harassment and sexual harassment are defined by the impact of the behaviour on the recipient rather than the intention of the perpetrator. The effect of the behaviour on the employee concerned is the relevant consideration, not the intention of the perpetrator. It is up to the employee to decide what behaviour is unwelcome irrespective of the attitude of others to the matter.

5. Management of Performance

It is the responsibility of managers and employers to manage performance effectively to achieve goals. Reasonable and essential discipline arising from the good management of an employee's performance at work does not amount to bullying or harassment. Fair, honest, and constructive criticism of an employee's performance, conduct or attendance imparted in a reasonable manner does not constitute bullying or harassment.

6. General Disputes

It is acknowledged that occasionally there may be disputes or disagreements between people working together which, although they can evoke strong feelings and result in a difficult working environment, may not match the definitions of bullying, harassment or sexual harassment as outlined above. While these disputes do not fall within the parameters of this policy, parties may seek to resolve issues by using mediation or facilitation.

7. Statutory Redress

This policy is in compliance with the relevant legislation and Codes of Practice and is designed to support employees in the resolution of complaints of bullying, harassment or sexual harassment. However, it does not prevent employees from exercising statutory entitlements under the Industrial Relations Acts 1946 to 2015, or the Employment Equality Acts 1998 to 2015.

Complaints under the Employment Equality Act must normally be brought within 6 months of the most recent act of discrimination. If a complaint is referred to the Workplace Relations Commission (WRC) it will be assigned to an Adjudication Officer who will investigate the complaint by reference to the specific legislation. ~~If a person makes a complaint under the internal procedures as outlined below and also opts to make a complaint to the WRC, the internal procedures will be suspended pending the outcome of the WRC complaint and any appeal thereof as provided for in legislation~~

Contact details for the Workplace Relations Commission are as follows:

Adjudication Service

Workplace Relations Commission,
Lansdowne House
Lansdowne Road
Dublin 4
D04 A3A8

Tel: 01 6313380

D. DIGNITY AND RESPECT HELPLINE

The Dignity and Respect Helpline is the Designated Contact Person for anyone who has a concern under the Dignity and Respect Policy. The Dignity and Respect Helpline is available to advise on:

- The policy applicable to a Complainant;
- The behaviours that can constitute bullying, harassment and sexual harassment. A Helpline advisor will use the Self-Audit Checklist (**at Appendix A**) as a tool for the Complainant to consider;
- The supports available to a Complainant, such as the Workplace Support Programme and mediation services; and
- Information on the complaint process and how to contact the Complaint Recipient to initiate resolution procedures.

Advice provided by the Dignity and Respect Helpline is provided in the strictest confidence.

The staff employed to operate the Dignity and Respect Helpline are appropriately trained and are available to provide advice as set out above. Helpline staff have a listening brief; they do not get involved in any other way in the complaints procedure and do not act as an advocate for either party.

Speaking with the Dignity and Respect Helpline is not the same as making an informal or formal complaint. The Dignity and Respect Helpline aims to provide support and assistance and to ensure that individuals have all the information and advice they need should they wish to progress complaints on either an informal or a formal basis.

Dignity and Respect Helpline ph. 1800 313 638, email: dignityandrespect@healthassured.co.uk

E. SUPPORT AND ASSISTANCE FROM THE WORKPLACE SUPPORT PROGRAMME

Given the often personal nature of bullying, harassment or sexual harassment, it is fully recognised that individuals may wish to discuss concerns in total confidence in a safe environment, and with someone who is not involved in the situation.

An independent service, the Workplace Support Programme, provided by Inspire Workplaces, provides a workplace support programme for Members, their staff, and the staff of Political Parties. The services provided under the programme include a secure and confidential telephone helpline, telephone and face-to-face counselling sessions to a maximum of 6 counselling sessions per case, and a dedicated website/online support system providing topical health and well-being information.

The Workplace Support Programme offers support and assistance in a wide range of circumstances, including instances in which people feel they are suffering stress and/or distress as a result of bullying, harassment or sexual harassment in the workplace or as a result of a complaint made against them.

Utilising the services of the Workplace Support Programme will support and assist individuals in confidently raising concerns with the Member or person complained of in order to resolve the issue quickly and with a minimum of distress. You can call the confidential helpline any time for free, confidential and immediate support at **1800 201 346 [24/7 365 days a year]** The dedicated website/online support is available at www.inspirewellbeing.ie/workplaces. Please contact the Members' HR Unit for login details and password.

F. RESOLUTION PROCEDURES

An employee who believes they are being bullied, harassed or sexually harassed should, where possible, indicate directly to the person complained of that the behaviour in question is unacceptable.

If the employee believes that approach is not acceptable or has been unsuccessful, they should contact the Dignity and Respect Helpline for advice on how to seek resolution.

Following that, if they wish to make a complaint, they should contact the Complaint Recipient nominated by the Member or Political Party as their employer. The Member/Political Party will have nominated a Complaint Recipient who has had appropriate training and who is familiar with the procedures involved to deal with the complaint on behalf of the employer. A nominee may be provided from the Members' HR Unit to act as Complaint Recipient for independent Members and small Political Parties. The Dignity and Respect Helpline will have the contact details of the Complaint Recipients for each employer. *There may be particular circumstances in which a person can request to use the Members' HR Unit as Complaint Recipient to make a complaint and to draw down external investigation services, where they can demonstrate that party procedures would be inappropriate for their particular case.*

The Complaint Recipient will deal with the complaint and initiate resolution procedures e.g. drawing down mediation services through the Members' HR Unit or assigning a facilitator or investigator. The Complaint Recipient may provide a facilitator or investigator through the Political Party, or where appropriate, draw down such services through the Members' HR Unit.

A complaint may be resolved by:

1. Mediation (available at all stages to the parties),
2. The Informal Resolution Procedure, or
3. The Formal Complaint Procedure.

Complaints made under these procedures (whether informal, formal or otherwise), should be raised with the Complaint Recipient as soon as possible **but no later than six months** after the most recent event(s), unless there are extenuating circumstances that can be taken into consideration.

1. Resolving the Problem with Mediation

Mediation is an alternative method of resolving issues relating to bullying, harassment and sexual harassment. In mediation, the parties seek to arrive at a solution through mutual agreement, rather than through an investigation or decision. It can be used to achieve early intervention and resolution for any workplace conflict under this policy. Its fundamental objective is to resolve issues speedily and confidentially without recourse to formal investigation and with a minimum of conflict and distress for the parties involved.

Mediation provides a confidential opportunity for both the person who feels that they have been bullied, harassed or sexually harassed and the person accused of carrying out this inappropriate behaviour to discuss the matter and to reach an agreement on their continuing working relationship. It is a voluntary and independent process which cannot be imposed on the parties. It can only take place if both parties agree to participate and it can end at any stage if either party decides to withdraw from the process.

Mediation is available at every step of the process through an independent mediation service procured by the Members' HR Unit. If both parties agree to resolve the issue by mediation, the Member/Party/Complaint Recipient will contact the Houses of the Oireachtas Members' HR Unit to arrange the mediation process.

If the mediation process results in an agreement acceptable to both parties, the mediator will draw up a written record of the terms of the agreement for signature by both parties.

If the matter is resolved by mediation, no further action will be taken.

2. The Informal Resolution Procedure

Introduction to Informal Resolution

An employee who believes they are being bullied, harassed or sexually harassed should, where possible, indicate directly to the person complained of that the behaviour in question is unacceptable. If the employee believes that this approach is not acceptable or has been unsuccessful, the employee may then make an informal complaint.

It is the preferred approach that complaints of bullying, harassment or sexual harassment are dealt with informally whenever possible. The informal approach does not propose to diminish the issue or the effect on individuals. Rather, the objective of the informal procedure is to allow scope for resolving issues quickly, effectively and with a minimum of distress to parties.

Informal resolution of a specific bullying allegation could include, for example, clarification of what bullying is, agreement to alter verbal style, agreement by the Respondent that the conduct will not be repeated, or an explanation to the Complainant of what occurred from the point of view of the Respondent which dispels the complaint.

It is preferable that an informal complaint is made in writing but it may also be verbal.

The informal complaint should be made to the Complaint Recipient, who will arrange for a facilitator to manage the informal resolution procedure. The Complaint Recipient will also notify the person against whom the complaint is being made (the “Respondent”) of the existence of the complaint and of the steps being taken to resolve the complaint.

Procedure To Be Followed

Any facilitator assigned to resolve a complaint informally under this policy will get to the facts, consider the context of the complaint and recommend the next course of action in dealing with the informal procedure.

(a) Where specific examples are given

If the complaint concerns bullying, harassment or sexual harassment and includes specific examples of the behaviour complained of, the person complained against will be presented with the complaint and given a chance to respond.

After the response is received (or a reasonable period as advised by the facilitator has elapsed without a response having been received) a method will be agreed to progress the issue to resolution so that both parties can return to a harmonious working environment without bullying, harassment or sexual harassment being a factor.

If the behaviour complained of does not concern bullying, harassment or sexual harassment as defined, an alternative approach will be put in place and a rationale recorded.

(b) Where no specific examples are given

If no specific examples are provided, there is no complaint to be answered under this policy, though other means of protecting or repairing workplace relationships may be considered by the facilitator to resolve the complaint.

The facilitator assigned to resolve the complaint will keep a record of all stages: the complaint, the meetings, the action agreed and the signed records of any agreement reached. The purpose of the records, which will not include detail of discussions, is to provide evidence that the complaint was dealt with in an appropriate manner.

All parties will maintain, insofar as possible, the confidentiality of the informal process. Breaches of confidentiality will be treated seriously.

Resolution

The primary aim of using the Informal Resolution Procedure is not to determine whether an actual violation of the Dignity at Work Statement of Principles and Policy has occurred, but rather, in a

non-confrontational way, to attempt to restore a working relationship between the parties such that the matter of concern can be resolved to the satisfaction of both parties.

3. The Formal Complaint Procedure

In cases where an employee believes the Informal Resolution Procedure or Mediation is not a suitable means of addressing his or her concern, or where the employee believes that their previous recourse to the Informal Resolution Procedure or Mediation has been unsatisfactory, the employee may make a formal complaint of bullying, harassment or sexual harassment.

~~In cases where an employee makes an informal complaint but the Complaint Recipient assigned to handle the complaint believes (because of the gravity of the subject matter of the complaint or for some other reason) that the Informal Complaint Procedure is inadequate to address the complaint, that complaint may, with the consent of the employee, be dealt with using the Formal Complaint Procedure.~~

Formal complaints should be made in writing and signed and dated. The complaint should be confined to precise details of alleged incidents of bullying, harassment or sexual harassment, including the dates of such incidents and the names of any witnesses. Failure to provide such an account of a formal complaint in writing may compromise the ability of the investigator to properly and appropriately investigate the complaint on a formal basis.

A Formal Complaint should be made to the Complaint Recipient, who will arrange for an independent investigator to investigate the complaint pursuant to the Formal Complaint Procedure. The Complaint Recipient will inform the person against whom the complaint is being made (the “Respondent”) of the existence of the complaint and that an investigator is to be appointed. A copy of the written complaint received will be provided to the Respondent at this time.

In all situations the independent investigator will be tasked with carrying out a thorough investigation of the complaint and providing a written report to the Complaint Recipient.

Investigation Procedure

The investigatory process may involve a process in which the investigator conducts interviews and take statements from relevant witnesses to establish the facts prior to completing his/her report. Alternatively, depending on the severity of the alleged complaint, the investigator may decide that a full oral hearing is needed which may, or may not, include provision for the cross examination of witnesses and legal representation. [Note: The Commission noted the legal advice and requested that the wording be reviewed.]

Any investigation conducted under this procedure will be governed by Terms of Reference which will be provided to the person making the complaint (the “Complainant”) and the Respondent by the investigator. The Terms of Reference will include the following provisions at a minimum: -

- That the investigation will be conducted in accordance with this policy;
- An indicative timeframe for the completion of the investigation;
- The scope of the investigation;
- That the investigator will be charged to investigate whether the complaint, on the balance of probabilities, has been upheld and whether it falls within the definition of bullying, harassment or sexual harassment at work as defined in this policy; and
- That the investigation will take account of the rights of the parties including adherence to natural/constitutional law rights and the principles of fair procedures. In this regard the investigator must consider, depending on the severity of the case and the prevailing law at the time, whether the option of cross-examination of the Complainant should be made available to the Respondent and whether legal representation should be allowed during the investigation process.

The investigator will provide the Respondent with a copy of the written complaint and any relevant documents, including this policy. The Complainant and the Respondent will also be informed by the investigator of the aims and objectives of the formal process, procedures and methodology that will be used, the timeframe involved, and the possible outcomes. The Complainant and Respondent will be assured of support as required through the process. Failure by either party to co-operate with the investigation will be taken into account by the investigator in their findings.

Where the investigator considers that a hearing is not required in conducting the investigation, the investigator will meet with the Complainant and the Respondent and any witnesses or relevant persons, with a view to establishing the facts.

- The Complainant and the Respondent will both be entitled to be accompanied by an appropriate representative – i.e. a colleague, union representative or family member.
- All meetings with parties and witnesses will be conducted sensitively and with due respect to the rights of all concerned. The investigation will be conducted on a confidential basis, insofar as possible.
- Statements from all parties and witnesses will be committed to writing. Copies of the record of statements will be given to those who make statements to the investigator and to the parties to the complaint

In all cases, the parties will maintain, insofar as possible, the confidentiality of the process. Breaches of confidentiality will be treated seriously.

During the Investigation

All parties will continue to work normally during the investigation unless directed otherwise. The employer will make every effort to ensure the protection of all those involved in the investigation.

The parties to the complaint should not communicate regarding the complaint.

Conclusion of Investigation

The objectives of the investigation will be to ascertain whether or not, on the balance of probabilities:

- (a) The behaviour complained of occurred and, if so,
- (b) Whether or not that behaviour amounted to bullying, harassment or sexual harassment as defined in this policy.

The investigation will be completed as quickly as practicable, preferably within the indicated time frame. The investigator will submit a draft report to the Complainant and the Respondent which will include conclusions. The Complainant and the Respondent will be given an opportunity to make a final written submission on the content of the report prior to finalisation. Any observations in the final written submission by the Complainant or the Respondent will be noted in the final report. The final report will be provided to the Complainant, Respondent and the Complaint Recipient who will arrange for next steps as detailed below.

~~The investigation will be completed as quickly as practicable, preferably within the indicated time frame. The investigator will submit a report to the Complaint Recipient which report will include conclusions. The Complainant and the Respondent will be given a copy of the investigator's report as soon as practicable and, in any event, before a decision is taken on any further course of action.~~

Resolution Where the Respondent is an Employee

Action Where Complaint is Upheld

If a complaint is upheld, the matter will be treated as a disciplinary issue and the employer will follow the appropriate disciplinary procedures in line with fair procedures and natural justice, consistent with the standards of the WRC Code of Practice for Grievance and Disciplinary Procedures (Code of Practice 5, August 2006), which appends S.I. 146 of 2000 – Industrial Relations Act 1990 Code of Practice on Grievance and Disciplinary Procedures (Declaration) Order 2000.

The employer may also take other appropriate action to support and protect the Complainant and/or to ensure that similar situations do not arise in the future.

Action Where Complaint is Not Upheld

If the complaint is not upheld but the Complainant is found to have acted in good faith, the employer may take measures to support both the Complainant and the Respondent. This will include the making

of appropriate efforts to ensure that those with knowledge of the complaint are made aware of the finding that it was not upheld.

Where a complaint is not upheld and is found not to have been made in good faith, the Complainant may be the subject of disciplinary action. The employer may follow the appropriate disciplinary procedures in line with fair procedures and natural justice and consistent with the standards of the WRC Code of Practice for Grievance and Disciplinary Procedures (Code of Practice 5, August 2006).

Resolution Where the Respondent is a Member of the Houses of the Oireachtas [Note: The Commission requested consideration of an appeals mechanism at this stage in the process]

Action Where Complaint is Upheld (External Adjudication Panel)

If a complaint is upheld, the matter will be referred to a Panel of External Adjudicators (the “External Adjudication Panel”) appointed by the Houses of the Oireachtas. The role of the External Adjudication Panel will be to review the investigation process and to make recommendations on sanctions. The External Adjudication Panel will review the investigation procedure and determine whether:

1. The provisions of the Dignity and Respect Policy were followed.
2. All relevant facts were ascertained.
3. All relevant facts were considered in a reasonable manner.
4. If there are any mitigating factors that should be considered.

The External Adjudication Panel will review the original documentation, meeting the relevant parties, reporting on their conclusions and making recommendations on sanctions. The External Adjudication Panel can give examples of specific sanctions that they recommend be applied to the Member, including the issuing of a formal apology, attendance at compulsory training, or having it made public that a finding was made against a Member (with consent of Complainant).

The final report of the External Adjudication Panel will then be provided to the Complaint Recipient to facilitate the implementation of the sanction. In the case of a member of a political party, the Complaint Recipient will provide this report to the Member, the Complainant and to the Party Whip to progress implementation of the recommended sanctions. In the case of an Independent Member, the Complaint Recipient will provide this report to the Member and the Complainant for implementation of the recommended sanctions.

G. VEXATIOUS OR MALICIOUS COMPLAINTS

In the interests of all, any malicious or vexatious complaints will be treated seriously and may lead to disciplinary action against the Complainant.

Victimisation or retaliation against a Complainant, witnesses or any other party by an employee can constitute a serious disciplinary offence, depending on the circumstances of the individual case, which may result in disciplinary action up to and including dismissal following due process.

H. FOI AND DATA PROTECTION

Information in relation to complaints is personal information. Both parties to a complaint should be advised of the position in relation to records, noting that provisions of the Freedom of the Information Acts and the Data Protection Acts will apply.

This policy is valid from February 2019. It may be amended from time to time at the discretion of the Houses of the Oireachtas Commission.

APPENDIX A: SELF-AUDIT CHECKLISTS

The self-audit checklists below, adapted from the Civil Service Dignity at Work Policy 2015, are useful tools for both Complainant and Respondent to consider when making a complaint or dealing with a complaint under the Dignity and Respect Policy.

Self-Audit Checklist for the Complainant

Experiences of bullying, harassment, and sexual harassment can be difficult to define and explain to third parties. Recalling incidents of this nature may be quite troubling, frustrating or upsetting. Summarising these events or experiences into a complaint which can be fully understood by others can be a difficult exercise.

Therefore, completing the following checklist may assist individuals to reflect upon their situation and determine what they have experienced and whether it may fall into the category of bullying, harassment or sexual harassment as defined previously in this policy.

The following is for personal use, and will not be recorded or reviewed by any other party unless you as an individual choose to disclose it. While respecting the confidential nature of the process, you may wish to share this information with any/all of the following before taking a complaint: a trusted friend, colleague, union representative, your Member, Party Administrator, or a counsellor through the Workplace Support Programme.

The individual may wish to consider the following:

- Have I read the *Dignity and Respect Statement of Principles and Policy* as a basis for considering my options?
- Does the behaviour I am concerned about match the definitions of bullying, harassment or sexual harassment as set out in this policy?
- How has the behaviour I have experienced affected me?
- Do I consider the behaviour I experienced to be offensive, humiliating, intimidating, or threatening?
- If considered to be bullying, has the behaviour I am concerned about been repeated?
- Was the behaviour I am concerned about part of the normal disciplinary or performance management procedures? Was the feedback given in an appropriate and respectful manner?
- If I do not believe my experience can be defined as bullying, harassment or sexual harassment, may the behaviour be considered to be general workplace conflict and if so,

have I explored the options available to me for resolution of these issues?

- Can I resolve the situation or stop the behaviour by speaking to the person directly, and requesting that they stop this behaviour?
- Have I discussed the situation and options with someone I trust?
- If I cannot approach the individual personally, can I ask my Member/the Party Administrator/a trusted colleague to do so on my behalf?
- If I am unable to discuss the matter directly with the person concerned, could I discuss the matter with another appropriate person such as the Member/Party Administrator?
- Were there any witnesses to the alleged behaviour?
- Have I kept a record of the behaviour or incident(s), including times, places, and names of witnesses?
- Am I prepared to engage in dialogue and other efforts to resolve the situation, such as mediation?
- Would I benefit from contacting the Workplace Support Programme?

Self-Audit Checklist for the Respondent

Accusations regarding bullying, harassment or sexual harassment can be as stressful for the person(s) complained of, or potential witnesses, as for the Complainant. It may be beneficial to complete the following checklist, which may help you to reflect upon your situation, define the problem and to consider whether any of your behaviours might be perceived as bullying, harassment or sexual harassment.

The checklist is a tool for your personal reflection and is not recorded or reviewed by any other person unless you choose to disclose it. You may wish to share this information with a trusted friend, colleague, union representative, Member, Administrator, or through the Workplace Support Programme in order to evaluate your options as set out in this policy.

In considering options to resolve your current situation you may wish to consider the following:

- Have I read the Dignity and Respect Statement of Principles and Policy as a basis for defining bullying, harassment, and sexual harassment?
- Could my behaviour which has been complained of be viewed as humiliating, intimidating or threatening?

- Is it possible that the tone or volume of my voice or my body language could ever be perceived as offensive, humiliating, intimidating or threatening?
- Could my communication or management style ever be perceived as offensive, humiliating, intimidating or threatening by someone else?
- When I feel angry, stressed or anxious, could my feelings be exhibited in a way that others might find offensive, humiliating, intimidating or threatening?
- Could the way in which I provide feedback on people's work, or monitor their performance, ever be perceived as overly critical or excessive by someone else?
- Have I excluded a particular employee from information or meetings that are essential to enable them to carry out their role?
- Could targets or deadlines I have set be perceived by others as impossible?
- Having read the policy, could my behaviour be perceived as matching the definitions of bullying, harassment or sexual harassment?
- Is it possible that my behaviour towards the Complainant has been repeated?
- Do I have any records of previous interactions I have had with the Complainant?
- Was the behaviour that has been perceived as bullying, harassment or sexual harassment part of the normal disciplinary or performance feedback procedure?
- Have I discussed the situation and options with someone I trust, and might I benefit from doing so?
- Would I benefit from contacting the Workplace Support Programme?

Appendix B

Dignity and Respect Policy - Guidelines for Management of Records under the Dignity and Respect Policy

Requirements under the Freedom of Information Act 2014

Most complaints under the Dignity and Respect Policy will be handled by the Political Party or Member who will hold the relevant records and who are not public bodies and therefore not subject to the obligations of Freedom of Information Act 2014. However, where a Member or party draws down consultancy services or advice through the Houses of the Oireachtas Service, the Service would be responsible for any records created through procuring the services and they would be subject to the requirements of public sector bodies under the Freedom of Information Act. The following would apply to these records:

- The role of the Service in the management of a complaint is in a gatekeeping capacity only in order to procure and process payment for HR consultancy services. Correspondence to the Members' HR Unit regarding a complaint should be restricted to the request to draw down the services and should not include details of the complaint.
- Whilst the Service is subject to the requirements of the Freedom of Information Act, personal information is exempt from release, subject to conditions set out in the legislation. Any records received regarding a complaint or advice given regarding same would be deemed by the Service to be sensitive personal information which would not be subject to release under the Act.
- Records of public moneys spent on HR Consultancy in order to manage complaints would be subject to release under the Freedom of Information Act and any statistics maintained on number of complaints escalated to the Members' HR Unit would also be subject to release under the Act. Any such release would be redacted to ensure that no personal information of an identifiable person would be released.

Requirements under the General Data Protection Regulation (GDPR)

The Houses of the Oireachtas Service, Members and political parties are all subject to requirements under the GDPR as data controllers. A controller must ensure that it is in a position to demonstrate that the processing of personal data for which it is responsible is in compliance with the Data Protection Act 2018 and in particular with subsections (1) to (8) of section 71 of that Act.

Training and resources are being provided to all Members and Staff on their obligations under GDPR but the following should be noted in managing and maintaining records of complaints under the Dignity and Respect Policy:

- *“Personal data’ means any information relating to an identified or identifiable natural person (data subject); an identifiable natural person is one who can be identified directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identify of that natural person;*

~~Personal data means data, whether held electronically or manually, relating to a living individual who is or can be identified, either from the data or from the data in conjunction with other information in, or likely to come into, the possession of the data controller.~~

- Records regarding a complaint of bullying, harassment or sexual harassment will contain personal data of both the Complainant and the Respondent and will often contain sensitive personal data such as sickness and injury records.
- In order to manage complaints under the Dignity and Respect Policy, Members and political parties will be required to process personal and often sensitive personal, data of their staff and of Members.
- This information should be obtained and processed fairly.
- The information should only be used and disclosed in ways compatible with the purpose for which it is collected i.e. the management or investigation of a complaint under the Dignity and Respect Policy.
- Appropriate security measures should be taken against unauthorised access to, or alteration, disclosure or destruction of the data and against its accidental loss or destruction.
- Personal data should not be retained for longer than is necessary. Due to the fact that a person making a complaint continues to have the right to pursue a case in the WRC or in the Courts both during and following the processing of a complaint, it is recommended that records are held for seven years and destroyed thereafter.
- Both the Complainant and the Respondent are entitled to exercise their rights to access their personal data on request. Members and political parties should have procedures in place to ensure that these rights can be exercised.
- Where the records relating to a data subject request include correspondence with a solicitor or barrister, the Member or party should confirm with the solicitor or barrister whether the correspondence has legal privilege and is therefore exempt from release.

- Complaint Recipients should make records of all stages of the handling of a complaint. These records should not include comprehensive details of what was discussed but just that discussions took place in order to provide evidence of all attempts at resolution.
- Investigators managing informal and formal complaints should ensure that all notes of meetings, written complaints and responses, witness reports, etc., are shared with both Complainant and Respondent to ensure fairness and transparency, and ensure that both parties are notified from the beginning of this.

If there are any queries regarding the appropriate mechanisms for a controller in processing personal data under this Policy, these should be addressed to dpqueries@oireachtas.ie or Jennifer McGrath, Data Protection Officer, at 6184712.