

## Guidelines for Investigating Complaints of Harassment

If English is the complainant or respondent second language, or the respondent is from a different culture a there is likely to be a communication problem, the complainant or respondent should be asked whether they will need an interpreter or someone with a knowledge of the other culture to assist with the interviewing.

### *Interviewing the Complainant*

1. Reassure the complainant that the organisation takes the complaint seriously and it will conduct a full and impartial investigation into the complaint. Explain that the organisation will ensure that the complainant will not suffer any retaliation or any harm as a result of the complaint.
2. Explain the process:
  - a. That you will be interviewing the respondent and anyone else who may be able to give relevant information.
  - b. Advise who will make a decision on the complaint.
  - c. What the possible consequences are for each party.
3. Inform the complainant of the options available (Personal grievance, Police, Human Rights). The Investigator should check that the complainant wishes to proceed with a formal investigation.
4. Explain that role of the Investigator is to be impartial, and is to obtain as much information as possible from him/her to be able to establish independently that the complaint has substance. Some of the questioning may make the complainant think that the Investigator doubts his/her complaint. The Investigator needs to stress that it is their role to know as fully as possible the details of the harassment.
5. When interviewing the complainant, the Investigator should ask the complainant to provide a summary of the complaint. After the Investigator has a general picture of what has happened, they should then commence asking specific questions in order to get details of the complaint.
6. The Investigator should ask open rather than closed or leading questions. Open questions often begin with who, where, when, what, and how? Closed question only require a Yes/No answer, and leading questions suggest or pre-empt an answer. For example:

<b>Ask (Open Questions)</b>	<b>Do Not Ask (Closed /Leading Questions)</b>
Q. Could you explain what happened? A. X touched me.	Q. Did X touch you? A. Yes
Q. Where did X touch you? A. X touched me on my leg and breast.	Q. Did X touch you on the breast? A. Yes.

7. The Investigator should ensure that he complainant has provided the following details:
  - b. The name of the alleged harasser or other means of identification and his/her position in the organisation.
  - c. Previous interactions (if any) with the alleged harasser.
  - d. Each incident and dates, times and locations of each incident. It may be helpful to draw a diagram of the organisation to show where each incident occurred and the respective position of the complainant and alleged harasser. For example, X approached Y from the back, or X stood by her side.

- e. The complainant's reaction to the harassment. Did he/she say or do anything in response? (Note: that statute explicitly states that the complainant is not obliged to tell the alleged harasser that his/her behaviour is unwelcome and offensive). Why did the complainant react the particular way they did? The questions should be asked in a neutral and non-accusatory manner.
- f. How the complainant felt immediately after the incident and then later?
- g. Any witness or potential witness – other staff or clients present or who were likely to be in the vicinity and who might have witnessed or heard what happened.
- h. Did the complainant tell anyone about any of the incidents? If so, what exactly was said, when and to whom? If not, ask why. There may be good reasons why the complainant did not say anything and conclusion should not be drawn from the fact that the complainant did not report the behaviour. The Investigator should be careful to phrase the question in a neutral manner.
- i. If there was any delay between the incident and telling anyone else, what was the reason for the delay? Again, there may be good reasons for the complainants not telling anyone or for the delay in telling someone.
- j. Did the complainant make any written record of the behaviour? eg diary notes or letters to people. Can these be obtained?
- k. Ask whether the complainant knows of anyone else who has been allegedly harassed by the same person. Have they ever heard or been told anything? This will include statements from any other employee who said they had been harassed, eyewitness accounts of the alleged harasser harassing another person, or statements made by other people.
- l. The interactions that the complainant had in the past with the alleged harasser. The social interaction (if any) that they had. Whether they were ever in a relationship.
- m. The effect (if any) that the behaviour has had on the complainant's work or learning environment, performance, morale or health?
- n. Whether the complainant sought professional help for the effects of the behaviour? If the complainant visited a doctor or counsellor, ask the complainant for written permission to obtain records or permission to speak to them about the consultation.
- o. Ask the complainant what person/s he/she thinks it would be useful for the Investigator to speak to determine the facts of the case.
- p. If there are any inconsistent statements, ask the complainant to explain the inconsistency/clarify the statement.
- q. At the conclusion of the interview, the complainant should have the opportunity to review the notes. The notes should be legible, or word-processed preceding the interview. If lengthy, the complainant may require sometime reviewing the notes, and clarifying any points. The complainant should sign the statement if they believe it to be a true account of what they reported to the Investigator.
- r. The Investigator should advise the complainant that it is important to get a full statement at the first interview and ask whether there is anything else that he / she can think of. Ask the complainant to contact you as soon as possible if he/she has any new information to add.
- s. Advise the complainant that she/he is not to speak to any possible witnesses.
- t. Advise the complainant that the investigation will be conducted in private and should not be discussed with any one other than a support person.

### ***Notifying the Respondent (Alleged Harasser)***

1. Arrange to have a preliminary meeting with the respondent as soon as possible after interviewing the complainant.
2. Advise the respondent that a complaint of harassment has been made against him/her. Give a summary of the complaint and then cite each specific allegation. Do not give the

respondent an information which is not an allegation against them and which is to be used by you to test the respective stories, the names of any potential witnesses eg that A may have seen the incident from the stairs or the complainant old B straight after the incident.

3. Advise that the complaint is being treated seriously and that a formal investigation will be undertaken and a full interview with the respondent will be held shortly. Advise the respondent that he /she may bring a legal adviser or support person to the interview.
4. Inform the respondent that the investigation process is confidential but that some witnesses and people involved in the process will also know some information about the complaint.
5. Assure the respondent the investigation will be conducted impartially and fairly and no opinion formed until after the investigation is completed.
6. Advise what will happen and explain the likely consequences if the complaint is upheld. Arrange an interview within a reasonable time. Remind the respondent that they may bring a support person to the interview.
7. Check with the respondent whether he/she is in need of any assistance such as counselling.

### ***Interim Measures***

Depending on the nature of the complaint, it may be prudent to provide interim measures to alleviate the situation until the matter can be resolved. For example, if the complainant and respondent are working closely, the respondent could be moved to another area, or suspended on full pay if required. This could prevent any retaliation or disruption to the work environment due to any animosity/difficulty or between parties, or where the complainant may suffer further stress and or victimisation by the presence of the respondent.

Interim measures should be discussed with the respondent before any decision is made. It should also be noted that the action does not mean that the organisation has upheld the complaint, but rather to provide interim relief while awaiting a full investigation and determination of the outcome of the issue.

### ***Interviewing the Respondent***

1. Advise that the organisation takes the complaint seriously and will conduct a full and impartial investigation into the complaint.
2. Explain that your role is that of an impartial investigator and to obtain as much information as possible to be able to establish whether the complaint has substance.
3. Explain the process:
  - a. That you have interviewed the complainant
  - b. You will be interviewing anyone else who may be able to provide relevant information
  - c. Advise who will make a decision on the complaint.
  - d. What the possible consequences are for each party
4. Ask the respondent to describe the details of the relationship between him/herself and the complainant and the interactions they had. Ask if there is anything he/she wants to say about the complaint.
5. Go through the details of the allegations, one at a time. If there are any defences put forward, get detailed accounts of these.

6. Get the respondent to explain his/her conduct. Ask the respondent if there is any written record or documentary information, which would prove useful information.
7. Ask the respondent if there were any people around at the time/s the alleged incident/s occurred.
8. Ask the respondent what person he/she thinks it would be useful for the investigator to speak with to help establish the truth.
9. Advise the respondent that it is important to get a full response at the first interview. Ask whether there is anything else he or she can think of. Ask the respondent to contact you as soon as possible if they have any new information to add.
10. Inform the respondent that he/she will be asked to comment on any new material presented during the investigation.
11. Tell the respondent that they are not to speak to any possible witnesses.
12. Tell the respondent the investigation will be conducted in private and the complaint should not be discussed with anyone other than a support person.
13. Where the respondent refuses to respond to any of the allegations, tell the respondent that this may reflect adversely in him/her.
14. Give the respondent an opportunity to confer with an adviser if it appears that the respondent requires time to consider his/her response.
15. If there are inconsistent statements, ask the respondent for an explanation.

**Note:** the respondent should not be able to comment or make judgement on any sexual experience or reputation that the complainant may have had, except if it relates to false complaints of harassment. The Human Rights Commission and the Employment Relations Act both state that experience or sexual reputation is irrelevant.

### ***Interviewing Witnesses and Further Investigation***

1. Interviewing people whose names have been provided by the parties if they appear to have relevant information. People who may have relevant information include:
  - a. Eye witnesses
  - b. People who overheard the incidents complained of
  - c. People the complainant had spoken to about the incidents anyone who had complained about being subjected to harassment by the respondent
  - d. Doctors, counsellors occupational health nurse who can attest to any complaints made and any stress-related problems associated with the harassment.
2. Interview any other persons whom you think may have relevant information.
3. Do not give witnesses any details the allegations – just say you are investigating the complaint and believe they may have relevant information.
4. Ask if witnesses know what the complaint is about. Ask for details of what they know. Ask how they know, who told them? Do not comment on the correctness of their information.
5. If the person has been cited as a eyewitness to an incident, ask the witness a general question about whether they saw any incident at a particular time/date/place, for example, *Did you see any incident between x and y on a particular date?* If yes, *describe.* If no – *were you by the photocopier last Wednesday? Did you see x and y there?* If yes - *can you recall any conversation between x and y?* If no - *Did you hear x*

say... to y on Wednesday at the photocopier? Record the questions you asked as well as the answers. How far was the witness in relation to the complainant and respondent? Did the witness see things clearly?

6. If the person being interviewed is one who the complainant had spoken to about the behaviour either directly or indirectly, ask specific details about time, date, and full content of the conversation, ask about the demeanour of the complainant.
7. If the persons are said to have been subjected to similar incidents by the respondent, also the person to describe any incidents concerning the respondent, also the person to describe any incidents concerning the respondent. Again, ask open-ended questions. Follow a similar line of questioning to that of the complainant, particularly those questions relating to the specific behaviours of the incident.
8. Ask what the relationships are between the witness and both the complainant and the respondent.
9. If other motives have been raised for the complainant making the complaint such as retaliation because of a warning or an attempt to hide poor work performance, look into those matters. If the complainant's performance is an issue, check whether this has always been the case. Obtain copies of performance reviews (legal????), for example, the performance issues might have started at the same time that the alleged incidents took place and might be related to distress at the behaviour. Similarly, when was the warning given? If the warning coincided with the alleged incidents, there are two scenarios. One is that the complaint is in retaliation; the other was that the warning was due to the rejection of the respondent's advances. Look at the relationship of the two people and speak to people who have observed this.
10. In instances where records are relevant and the investigator has requested documents, the investigator should speak to the author's of those reports if practicable.

### ***Writing the Investigation Report***

Write up the report based on the interviews that have been conducted. The report should only include information from statements made that are relevant to the allegations. All information from people interviewed that is not relevant to the investigation should be omitted from the report.

Analyse the legal requirements needed to provide harassment against the evidence that has been obtained from the interviews. After assessing the evidence (as guided by the guidelines below), the investigation must state their conclusion as to whether or not harassment has occurred.

The investigator may wish to make a recommendation as to what actions should be followed. However any decision on actions to be taken will be made by the Chief Executive (in consultation with the Manager Human Resources).

### ***Evaluating Evidence***

The investigator must assess the evidence in terms of its relevance and its value in either confirming or rejecting the allegations.

#### ***Best Evidence***

The best evidence is direct corroborative evidence from eyewitnesses or people who have personal knowledge of an issue. Harassment, by its nature, often takes place when there is no one else around. It is legitimate to use other relevant evidence.

#### ***Prior Consistent Complaint***

Evidence that could be considered is evidence of a prior consistent statement such as evidence of a recent complaint. This is normally evidence from the complainant that she/he complained to another person and also evidence from the other person that the complaint was

made and reasonable consistent statement on the central facts has been made. The complaint to the other party need not be detailed. Evidence of a recent complaint can show consistence between the complainants conduct at the time of the incidents and his/her conduct at the time of investigation. It can support the complainant's credibility, but in itself cannot be taken as the truth. The absence of a complaint or a delay in complaining may sometimes go toward credibility. If there has been a significant delay in making a complaint., various factors will have to be taken into account such as the age , nature and personality of the complainant, the complainant's relationship with people to who s/he could have complained and any other relevant factors.

#### *Similar Fact Evidence*

Similar fact evidence is evidence of incidents of similar behaviour by the respondent towards other employees. It can show a pattern of conduct. It can also show a strong similarity between the respondents conduct towards others and the conduct towards the complainant. This evidence, if any, will strengthen the likelihood that the incidents occurred, but cannot, on its own, be treated as evidence that the complainant was subjected to the behaviour.

#### *Evidence of State of Mind*

If the complainant was distressed, agitated or showing a stress reaction in any way this also tends to support the truth of the allegation but on its own does not.

#### *Credibility of Complainant and Respondent*

Have they evaded questions, contradicted themselves in answers, or refused to answer relevant points? Have they given credible responses to apparent contradictions? Be aware that there can be a variety of reactions to stress and because someone appears very upset doesn't not strengthen credibility over someone who is not.