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Workplace Dignity & Respect - Harassment and Sexual Harassment Policy

1) Policy Statement

The University encourages the promotion of a learning, working and social environment where all staff and students work positively and harmoniously together. All staff and students have the right to be treated with dignity and respect in their day to day dealings in the University. NUI Galway believes that the University environment should give all staff and students the freedom to do their work, research and study without having to suffer harassment or sexual harassment in the University environment. Harassment or sexual harassment is not a trivial matter. Harassment or sexual harassment by staff members or students will not be tolerated by the University. Harassment or sexual harassment by non-staff or non-students including vendors, agency workers, contractors or sub-contractors, under both the supervision and control of the University, on staff or students, will not be tolerated and may lead to the imposition of sanctions, including termination of contracts.

This policy exists as NUI Galway is of the view that harassment or sexual harassment is a particularly insidious form of discrimination.

All allegations of harassment or sexual harassment will be dealt with in a fair, sensitive and confidential manner as far as possible.

2) Aim of this Policy

The aim of this policy is to eliminate all forms of harassment or sexual harassment, to raise awareness of the effects of such behaviour on individuals in the working and learning environment and to promote a climate in which staff members and students feel able to raise complaints of harassment or sexual harassment without fear of victimisation. It is also the aim of this policy to safeguard against victimisation of individuals who make a complaint of harassment or sexual harassment, who give evidence in proceedings or otherwise support a complainant.

3) Responsibility

It is the responsibility of Heads of Schools and other units to lead by example by treating all staff and students with dignity and respect. The promotion of awareness of this policy and associated procedures will be the responsibility of Heads of Schools and other units, who will be assisted in this by the Human Resources Office through training and awareness activities. It is the responsibility of all Heads of Schools and other units to remain vigilant for signs of harassment and to take action before a problem escalates where possible. All staff and students can contribute to achieving an environment free of harassment and sexual harassment through cooperation with management and trade union strategies. This policy will be communicated to all concerned through the Human Resources Office website and related activities, including but not limited to training activities.

4) What is Harassment and Sexual Harassment?

4a) Harassment is any form of unwanted verbal, non-verbal or physical conduct related to any of the discriminatory grounds (other than gender) which are age, family status, civil status, sexual orientation, nationality, religious belief, disability, or membership of the traveller community.

Examples of Harassment (not an exhaustive list)

- Suggestive remarks, insults, gestures, jokes or unwanted physical contact
- The use of or the circulation of pornographic or other offensive material
- (refer to section 4)
- Written harassment, including text messages, emails, notices, letters
- It can be ageist, sectarian or racial in form or in undertone
- It can offend because of a person's disability

4b) Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature. Same sex sexual harassment is also covered by legislation.

Examples of Sexual Harassment (not an exhaustive list)

- Physical – Unnecessary touching, pinching, or brushing against another; assault; coercing sexual intercourse; indecent exposure.
- Verbal – Unwelcome sexual advances, demands for sexual favours, suggestive remarks, innuendoes or lewd comments.
- Non-verbal – Displays of pornographic, or sexually suggestive pictures and objects (refer to section 4); leering, whistling or sexually suggestive gestures.

4c) Effects of Harassment or Sexual Harassment (list not exhaustive)

In both cases it is conduct which has the effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. In both cases the unwanted conduct may include acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material (refer to section 4). It is the responsibility of each individual to decide what behaviour is unwelcome. This decision should be made without reference to others' opinions or attitudes to the matter. The

impact of harassment and sexual harassment can be devastating, and it can threaten a person's job security or create an intimidating working or studying environment. It can also affect health and personal life generally and have a dramatic influence on a person's demeanour.

5) Allegations of Harassment based on the Content or Presentation of Teaching Materials, Artistic Exhibition or Performances and Related Matters

It is recognised that those teaching certain subjects such as languages and literature, law, biological or social sciences and medicine must occasionally present and discuss material relating to sex and sexuality, and that students may sometimes find this material embarrassing or upsetting. While teachers are under an obligation not to be gratuitously offensive, they must be protected from unfair allegations of harassment based on the subject matter being discussed. Likewise, it is important that members of the University community have access to art exhibitions, dramatic and cinematic productions, and discussion and debate on a wide range of political, cultural and social issues. However, it should be noted that the material per se may not be offensive, but the manner in which it is discussed may be. University policy does not permit the gratuitous use of pornographic or other offensive material.

It is recognised that a balance must be struck between preserving the freedoms of expression and intellectual enquiry so vital in a University community and ensuring that those freedoms are not so abused as to leave members of the University feeling sexually or otherwise harassed. Accordingly, it is recommended that any investigation of a complaint of harassment based on the content of academic instruction or of any cultural or social event of the kinds mentioned, should proceed on the assumption that the material or event in question did not amount to sexual harassment. The complainant should be required to present strong evidence to rebut this presumption.

It is emphasised that this recommendation is not intended to render teachers and organisers of social and cultural events immune from complaint or censure. It is merely advocating that, in view of the important competing values involved, an allegation of harassment should, in such circumstances, be grounded on cogent evidence. Finally, it should be noted that, in so far as teachers are concerned, this recommendation applies only to the presentation of materials for academic purposes. Any allegation that a teacher has harassed a student or group of students, whether in class or elsewhere, shall be dealt with in accordance with the procedures described.

6) Monitoring and Review

Reported incidents of Harassment and Sexual Harassment will be monitored to evaluate the effectiveness of the Harassment and Sexual Harassment Policy. The policy will be reviewed in line with relevant legislative developments as appropriate.

Harassment and Sexual Harassment Procedure

1. Scope

This procedure applies where a staff member is alleged to have harassed or sexually harassed another staff member or a student, or where a student is alleged to have harassed or sexually harassed another student or a staff member.

This procedure applies to the conduct of all University staff members (including full time, part time, permanent and temporary employees) and students, as well as to the conduct of all vendors, contractors and sub-contractors under both the supervision and control of the University with respect to any conduct that arises out of an individual's employment at NUI Galway or a student's studies.

With regard to staff members, it applies to conduct on authorised presence at the workplace or to such place considered to be the work place. (Examples of this include official field work, official work related social events, official work in another part of NUI Galway campus not normally attended by the individual. This list is not exhaustive.)

With regard to students, this procedure applies **only** to areas of University operations and programmes.

All staff and students should be aware that harassment or sexual harassment, which affects the dignity of people, is unacceptable and can be grounds for disciplinary action.

NUI Galway provides a mediation service to enable individuals to resolve interpersonal disputes at the earliest opportunity in an informal manner. For further information please consult the University's Mediation Policy which is available on the Human Resources website.

2. What to do if you consider yourself to be the victim of Harassment or Sexual Harassment

Staff members or students (complainant) who feel they are being harassed or sexually harassed by a staff member or student (alleged perpetrator) have two options available to them. They can choose either the Formal or Informal option. This procedure covers both of these options and is outlined clearly below.

2.1. Where can I get advice?

Advice on the invocation of the procedure may be obtained from any source of the individual's preference. The following are some examples of where such advice is available:

Advice **for staff** is available from

- Employee Assistance Programme

- Equality Manager or any member of the Human Resources Office
- Trade Union
- Colleague

Advice **for students** is available from

- Contact Person¹
- Equality Manager - Human Resources Office
- Students' Union
- Head of School or Dean of College

Advice on the details of their own particular issue, in advance of notifying the University, may be obtained from the following sources:

Advice **for staff** is available from

- Employee Assistance Programme,
- Trade Union
- A source of their choice not within NUI Galway.

This does not preclude staff approaching NUI Galway colleagues who are their own personal friends if they so wish. In these circumstances both friends must agree before discussing any details of the allegation that the entire discussion and its contents are completely confidential to both of them. They must also agree that the advisor is not acting as an employee of NUI Galway but rather as a personal friend.

Where both parties do not agree to these conditions at the outset, the details of the case should not be discussed at all. If the details are discussed in the absence of such an agreement then the person who hears the complaint is obliged to bring the case to the attention of the Equality Officer²

Advice **for students** is available from

- Contact Person¹
- Students' Union
- A source of their choice not within NUI Galway.

Anyone can become the victim of harassment or sexual harassment at some point in their life. Those who harass can, at other times also be victims themselves, redirecting their anger to someone more vulnerable than themselves. Harassment and sexual harassment can cause severe consequences both short and long term. It is important that those involved seek appropriate support. Free and confidential help for staff is provided by the Employee Assistance Programme and for students by the Counselling Service. This is separate from any other additional action which the person(s) concerned may choose to take through the formal/informal procedures outlined herewith.

3. Procedure

Where the details of a complaint made by a staff member are brought to the attention of NUI Galway management (i.e. the Human Resources Office, Heads of Schools/Deans of College, Supervisors etc.), either orally or in writing, it will automatically be processed through the formal procedure. This is to ensure that NUI Galway exercises its duty of care to all of its employees. Where the details of a complaint made by a student are brought to the attention of a member of NUI Galway staff (other than a designated contact person) either

orally or in writing it is then considered to be in the Formal procedure. The University will immediately instigate the formal process to ensure that the rights of both the complainant and the alleged perpetrator(s) are safeguarded.

3.1. Informal Procedure

Staff members or students (complainant) who believe they have been harassed or sexually harassed by a staff member or student (alleged perpetrator) and wish to attempt to resolve it informally should explain the following clearly to the alleged perpetrator(s):

- Details of the behaviour in question.
- The fact that it is unwelcome and offensive to them.
- The harmful effects it is having on them.
- That it is contrary to University policy.

It may be the case that the alleged perpetrator(s) does not realise that they are perceived to be behaving in a manner, which is affecting the individual.

Where the complainant finds it difficult to communicate directly with the alleged perpetrator(s), they should be accompanied by a third party, for example a friend, colleague, trade union representative or students' union representative as appropriate, or a contact person (students only). This person's role will be to provide moral support to the complainant while they are making their issues known to the alleged perpetrator(s). It is not their role to make the complaint on behalf of the complainant; however where it is evident that the complainant is having difficulty in presenting their issues the person accompanying them will be free to assist in the presentation. The alleged perpetrator(s) should be made aware at the time the meeting is being arranged that the complainant will be accompanied at this meeting.

The alleged perpetrator(s) has the right to also be accompanied by a third party, for example a friend, colleague, trade union representative or students' union representative. The complainant should be made aware of this again at the time the meeting is being arranged.

If at this point the alleged perpetrator(s) agrees a solution with the complainant the remedial actions should be clearly identified and agreed by both parties. This will allow both parties to monitor the situation going forward. Both parties could agree notes in order to remove ambiguity later. The objective of the informal procedure is to allow both parties agree a framework where they will be able to continue to interact in a professional manner.

If this fails to resolve the issue or if either party wishes to have the matter dealt with formally they are entitled to refer the issue for processing through the formal procedure.

If at any point in the informal procedure both parties agree to enter the University Mediation Process they are free to do so. They should contact the Mediation service directly in accordance with the Mediation Policy. Should this fail they are free to use the informal or formal process should they so wish.

3.2. Formal Procedure

3.2.1. Alleged Harassment by a Student

Staff members or students who believe they have been harassed or sexually harassed **by a student** and wish to have the complaint resolved using the formal procedure are required to address a formal written complaint to the Secretary for Academic Affairs² who will deal with the complaint under the existing 'University Code of Conduct'.

3.2.2. Alleged Harassment by a Member of Staff

Staff members or students who believe they have been harassed or sexually harassed **by a staff member** and wish to have the complaint resolved using the formal procedure will be required to do the following:

- Outline the details of their complaint in writing, to the Equality Officer² giving as much detail as possible. Ideally this should include times, dates and events that have occurred if possible.
- Co-operate fully with the investigation if it proceeds to that stage.

Where a complainant makes an oral complaint they will then have 14 days to present their case and evidence in writing to the Equality Officer². This should outline the grounds on which their complaint is based. The complainant should be aware that a copy of this will be given to the alleged perpetrator(s) in keeping with the *principles of natural justice* http://www.nuigalway.ie/hr/documents/natural_justice.pdf.

The alleged perpetrator(s) will not be informed of the oral complaint until after the 14th day, at which time they will be given a copy of the written complaint or a copy of the letter issued by the Equality Office in relation to the failure to provide the written complaint as described below.

Failure to present the case in writing will result in the University considering the complaint withdrawn fully and without foundation. The Equality Office will inform the complainant and the alleged perpetrator(s) of this in writing. If a complainant continues to make oral allegations without substantiating them this may be considered malicious by the University and disciplinary action may be taken in line with standard disciplinary procedures.

After receiving the written allegation the alleged perpetrator(s) will have the following options available to them:

- Respond to the allegations in writing to the Equality Officer² within 21 days of the date of receipt.
- Request that the Equality Officer² instigate a formal investigation.
- Ignore the allegations. In this instance the Equality Officer² will instigate a formal investigation after the 21 days have elapsed.

The Equality Officer² will forward the response to the complainant who will then have 7 days to examine it and indicate to the Equality Officer whether it resolves the issues or not. If it does then the Equality Officer will inform both parties in writing that the issue is resolved and the University now considers the matter closed.

3.2.3. Formal Investigation Process

If the matter remains unresolved at this stage the Equality Officer² will instigate a thorough, impartial and objective investigation of the written complaint by an investigation team. This team will comprise of two or more persons as determined by the Equality Officer² in consultation with appropriate University Management and the parties to the case.

The first stage of any investigation will include the issuance by the Equality Officer² of a set of Terms of Reference to both parties and to the investigating team, which will reflect the individual nature of each complaint but shall specify the following:

- That the investigation will be conducted in accordance with the Harassment and Sexual Harassment Procedure;
- The scope of the investigation;
- The timescale within which the investigation will be completed.

The investigators may set time limits for completion of various stages of the procedure to ensure the overall timescale is adhered to.

Both parties will be given copies of all relevant documentation prior to and during the investigation process, i.e.

- Complaint
- Written response from the alleged perpetrator(s)
- Witness statements (if any)

The investigation will include separate interviews with both the complainant and the alleged perpetrator(s). Both parties should be informed that they have the right to bring a union representative or students' union representative as appropriate or a colleague with them should they desire in accordance with the Principles of Natural Justice. They should also be made aware that they have the right to have their statements confirmed to them either at the end of the interview or in writing prior to the report being compiled. Both the complainant and the alleged perpetrator(s) may provide details of witnesses or any other person whom they feel could assist in the investigation.

The investigation team will write to all witnesses to inform them of the following:

- That an investigation is being conducted into an allegation being made by [*Name of Complainant*] against [*Name of alleged perpetrator(s)*] under the Harassment and Sexual Harassment Procedure.
- They are being called as witnesses and that they are not otherwise involved, nor are any allegations being made against them.
- They have the right to bring a union representative or students' union representative as appropriate or a colleague with them should they desire. (Principles of Natural Justice)
- They have the right to have their witness statements confirmed to them either at the end of the interview or in writing prior to the report being compiled.
- They will not receive a copy of the report or be made aware of the findings in their role as a witness. This does not exclude staff being made aware of issues in their role as line manager etc. as deemed appropriate.

The terms of reference will also be included.

At the conclusion of the investigation a report outlining whether or not the complaint has been upheld and which may make recommendations on appropriate actions to be undertaken, will be issued to the Equality Officer². This report will be forwarded to both the complainant and the alleged perpetrator(s) not later than 21 days after the final interview takes place.

Where the complaint is upheld then the alleged perpetrator(s) will be subject to the disciplinary procedure within the University. The Disciplinary Procedure will then become the relevant procedure for the further processing of the complaint. A staff member against whom a disciplinary finding is made has the right to appeal against the disciplinary decision as provided for under the University disciplinary procedure.

4. Mediation

If at any stage both parties agree to opt out of the Formal Procedure and seek to resolve their differences through the University's mediation process they are free to do so. Both the complainant and the alleged perpetrator(s) will be required to write to the Equality Officer² indicating that they wish to enter the University's Mediation process and that the formal Harassment and Sexual Harassment Procedure be ceased.

At this point the case will be deemed to be closed and resolved for the purposes of the University Harassment and Sexual Harassment Procedure. The Harassment and Sexual Harassment Procedure will not be available to either party for these allegations once the mediation option has been taken. Where the complainant makes new allegations not already made they will be free to access the Harassment and Sexual Harassment Procedure as a completely new case and be considered as such.

Throughout the investigation and following its conclusion, counselling and support is available to both the complainant and the alleged perpetrator(s). The impact of harassment and sexual harassment and the stressful nature of a disciplinary procedure may leave either party feeling insecure, resentful or bitter. Counselling is available through the Employee Assistance Programme (staff only) or Counselling Service (students only) which can provide the necessary support to deal with these issues. It can also assist re-integration back into the workplace and the student environment.

5. Complaints involving individuals other than staff members or students

Where a staff member or student makes a complaint of harassment or sexual harassment which has been perpetrated by an individual other than a staff member or student (eg. vendor, agency worker, contractor or sub-contractor) under both the supervision and control of the University, they should refer to the Equality Manager for further information.

6. Victimisation

Where an individual makes a complaint in good faith, gives evidence in proceedings or gives notice of intention to do so, they will not be victimised or subject to sanction. Victimisation as a result of making harassment or sexual harassment allegations will be regarded as a serious breach of discipline and will result in a formal investigation.

This investigation may result in disciplinary action being taken which may include dismissal.

7. False Complaints

If, following investigation, a complaint is found to be untrue and malicious or reckless, the relevant disciplinary procedure may be invoked against an individual who is found to have been acting in a reckless or malicious manner or has knowingly abused the University Policy on Harassment and Sexual Harassment.

8. Appeal

All parties shall have the right to appeal. This appeal should be furnished in writing to the Equality Officer² within ten working days of the outcome being issued to them, setting out the grounds on which the appeal is being lodged.

9. Referral

Using either the informal or formal complaints procedure as outlined above in no way affects an individual's statutory rights under the Employment Equality Act.

Refer to <http://www.irishstatutebook.ie/2004/en/act/pub/0024/index.html>

¹ The choice of contact person should be guided by two main criteria – accessibility and confidentiality. Contact persons must be accessible both in terms of their personal approach to relations with students and in terms of their location and availability. It is also essential that they be capable of maintaining the highest level of confidentiality in respect of their dealings with complainants. The Training and Development Officer will arrange appropriate training on the inter-personal, social and legal dimensions of the issues involved. A list of the contact persons is available on the Equality website

http://www.nuigalway.ie/administration_services/equality/documents/current_list_of_contact_persons.pdf

² In the event that the named individual has a conflict of interest in a case the matter will be dealt with in the first instance by an alternative member of staff at the next level of Management, who does not have such a conflict. Where this is not possible, the matter will be dealt with by a member of staff at the same level as a minimum, who does not have such a conflict.