

People & Standards Division
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1. Introduction

1.1 Rationale

Government is committed towards the wellbeing of employees by providing and maintaining an inclusive and productive work environment, which promotes equality, diversity, mutual respect, integrity and professional conduct.

Wellbeing at the workplace is equally important to both employers and employees alike, and everyone is responsible for sustaining an inclusive work environment and ensuring wellbeing at the workplace. In this regard, the policy entitled 'Employee Wellbeing: A Harassment and Bullying free Workplace' has been formulated

Harassment and bullying are actions which disrupt equality and wellbeing at the workplace. These actions are known to have serious consequences for employers, as well as employees. They can negatively affect people's health, work performance and overall success. In this light, harassment and bullying should be regarded as a workplace health and safety matter, and therefore, should be treated seriously and responsibly.

The **Occupational Health and Safety Act (Cap. 424)** places responsibility on employers to ensure the health and safety of all employees, including their psychological and emotional wellbeing. In this respect, Government is committed to prevent harassment and bullying at the workplace, as well as provide a supportive work environment, within the Public Administration, to those going through or recovering from such experiences. On the basis of this understanding, harassment and bullying are not tolerated during work, work-related functions such as conferences, or at social gatherings, including activities organised after work.

These guidelines are aimed at providing the necessary tools to facilitate management's responsibility to prevent and correct identified offensive behaviour, as well as employees' responsibility to help create a positive, safe and inclusive work environment.

It is important to underline that non-compliance with policy guidelines is regarded as an offence which carries liability to disciplinary and/or criminal proceedings.

1.2 Applicability

The provisions of this policy apply to all Public Officers, as well as all service providers, students and trainees, during the period of contract, attachment or traineeship with the Public Service.

The provisions of this policy also apply to clients and service users who have contact with the Public Service for any reason whatsoever.

1.3 Guiding Principles

The aim of this policy is to build a proactive work environment, based on equality. It aims at preventing occurrences of harassment and bullying in the Public Administration. In this view, this policy will:

- define what constitutes harassment and bullying;
- identify the rights and responsibilities of employees in relation to this policy;
- establish measures to prevent and stop harassment and bullying;
- provide professional, timely, confidential, impartial, fair and effective processes when dealing with harassment and bullying; and
- preserve the dignity and self-respect of all parties.

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2. HARASSMENT AND BULLYING

2.1 Definitions of Terms

Harassment is the offensive, belittling or threatening behaviour directed at an individual worker or a group of workers, which occurs with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. This unwanted behaviour may include, and is not limited to, spoken words, gestures or the production, display or circulation of written words, pictures or other material.

Article 29 of the **Employment and Industrial Relations Act (Cap. 452)** and Subsidiary Legislation 456.01 (**Access to Goods and Services and their Supply (Equal Treatment) Regulations**) legislate against harassment based on gender and sexual harassment. Apart from harassment based on gender and sexual harassment, harassment can also be based on race, ethnic background or gender identity, colour, religion or belief, sexual orientation or disability Issues.

Sexual harassment is unwelcome behaviour of a sexual nature or other sex-based conduct affecting the dignity of women and men at the workplace, or during official duty outside the place of work or natural extensions thereof, such as whilst giving or being given a lift to and from work or engaging in social activities organised by the directorate. A workplace is considered to be any place where working relationships exist or where employer/employee relationships exist. Sexual harassment takes many forms, from relatively mild sexual comments to actual physical violence.

The following may be considered as falling under the term sexual harassment:

- **Physical conduct of a sexual nature:** commonly regarded as meaning unwanted physical conduct ranging from unnecessary touching, patting or pinching or intentional brushing against another employee's body, to assault, and to coercing sexual intercourse. Recourse to such coercive conduct could lead to the institution of criminal charges.
- **Verbal conduct of a sexual nature:** this may include unwelcome sexual advances, propositions or pressure for sexual activity; continued suggestions for social activity outside the workplace after it has been made clear that such suggestions are unwelcome; offensive flirtations, suggestive remarks, insensitive jokes, innuendoes or lewd/obscene comments.
- **Non-verbal conduct of a sexual nature:** this includes the display whether by electronic or any other means, of pornographic or sexually suggestive pictures, objects or written materials, and making sexually suggestive gestures.
- **Sex-based conduct:** conduct that denigrates or ridicules or is intimidatory or physically abusive of an employee's gender, such as derogatory or degrading abuse or insults that are gender related and offensive comments about appearance or dress. Such conduct can create an offensive working environment for the recipient.
- **Sexual blackmail (abuse of authority):** conduct where an employee's refusal of, or submission to, unwanted sexual behaviour is used as a basis for a decision which affects that employee's access to employment, continued employment, training, promotion opportunities and other forms of compensation. This form of behaviour involves abuse

of authority when somebody holding direct or indirect (that is capable of influencing) supervisory or managerial authority, threatens, influences, or actually takes an employment decision affecting the person harassed.

The above list is not an exhaustive list and should not be considered as such.

Bullying occurs when an individual experiences persistent negative behaviour, ranging from negative verbal comments to negative physical contact, which could psychologically, emotionally or physically hurt or isolate that person at the workplace. It usually involves repeated incidents, or a pattern of behaviour intended to intimidate, offend, degrade or humiliate a particular person or group of people. It may also be described as the assertion of power through aggression.

Cyber-bullying involves the sending or posting of harmful, cruel or offensive texts or images by e-mail, internet, social networking websites or other digital communication devices.

Mobbing is a type of bullying behaviour carried out by a group, rather than an individual. Mobbing is the bullying and/or social isolation of a person through collective unjustified accusations, humiliation, general harassment or emotional abuse. Although attributed to group behaviour, mobbing behaviour includes instances whereby an individual within the group engages in such behaviour as insulting or playing practical jokes on the victim.

2.2 Difference between Harassment and Bullying

Harassment and Bullying are closely interlinked. They both involve behaviour which harms, intimidates, threatens, victimises, undermines, offends, degrades or humiliates. Furthermore, harassment can even be part of a bullying scenario.

Harassment	Bullying
Harassment is linked to discrimination and tends to focus on sex or family responsibilities, race, ethnic background or gender identity, colour, religion or belief, sexual orientation or disability.	For the bully, anyone will do (irrespective of gender, race etc), especially if the bully feels threatened in some way. The focus is often on competence, or rather, the alleged lack of competence of the bullied person.
Victims of harassment usually identify and recognise harassment.	Few victims recognise bullying and they may not realise it for weeks or months.
Tends to reveal itself through the use of recognised offensive language.	Few victims recognise bullying and they may not realise it for weeks or months.
Often occurs to attract peer approvals, bravado, etc.	Tends to be secret, behind closed doors and with no witnesses.
Takes place both in and out of work.	Takes place largely at work.
The harasser often lacks self-discipline.	The bully is driven by envy (of abilities) and jealousy (of relationships).
The harasser often perceives the victim as vulnerable to harassment.	The bully often perceives the victim as a threat that must first be controlled and dominated and, if that doesn't work, eliminated.

The following is a list of factors which constitute Harassment and Bullying, followed by a list of examples of effects of Harassment and Bullying. Both lists below are not exhaustive and should not be considered as such. Furthermore, some types of workplace harassment and bullying constitute a criminal offence. If one experiences violence, assault and/or stalking, these offences are to be reported directly to the police.

2.3 What constitutes Harassment and Bullying?

- spreading malicious e-mails or texts, rumours, gossip, or innuendos that are not true;
- offensive remarks about a person's attire or appearance, race, gender, marital status, family responsibilities, disability, religion or belief, sexual orientation, gender identity or age;
- excluding or isolating someone at the workplace or at official work events and/or activities;
- intimidating a person;
- public ridicule;
- tampering with a person's personal belongings or work equipment;
- yelling or using abusive or intimidating language;
- physically abusing or threatening abuse;
- intrusion by pestering, spying or stalking;
- deliberately taking undue credit for the work of another employee;
- removing areas of responsibility without a valid cause;
- giving meaningless tasks – creating a feeling of uselessness;
- belittling a person's opinions;
- continuously criticising a person;
- assigning unreasonable duties or workloads which are unfavourable to one person (in a way that creates unnecessary pressure);
- regularly establishing impossible deadlines that will set up the individual to fail;
- intentionally withholding necessary information or giving the wrong information;
- blocking applications for training, vacation leave or promotion without a valid reason;

2.4 Examples of Effects of Harassment and Bullying

Harassment	Bullying
<ul style="list-style-type: none"> • Fear • Anger • Feelings of frustration and/or helplessness • Increased sense of vulnerability • Loss of confidence • Low motivation and morale • Poor concentration • Increased levels of stress • Panic or anxiety • Loss of appetite/sleep • Physical distress - stomach pains / headaches • Family tension • Depression 	<ul style="list-style-type: none"> • Increased stress • Increased absenteeism • Increased staff turnover • 'Blame the victim' mentality • Poor employee relations • Overall tensed working environment • Increased risk for accidents / incidents • Inability to perform duties effectively • Reduced quality of service • Reduced customer satisfaction • Reduction in productivity • Damage to corporate image • Increased costs for employee support

2.5 Behaviours which do not relate to Harassment or Bullying

It is acknowledged that there may be times when an individual experiences stress or discomfort at the workplace, which is not related to harassment or bullying. What may be considered harassment or bullying by one person may be considered firm management by another. It is these 'grey' areas that cause most problems. Therefore, unless there is evidence that demonstrates a pattern of humiliating, offensive, or intimidating behaviour, as described earlier, or there is evidence of one incident having severe negative impact, then such situations may not necessarily constitute a basis for complaint in terms of this policy. In light of this understanding, harassment and bullying would not include the following:

- The exercise of the proper supervision of employees. This may include:
 - performance reviews, that is, the constructive and fair criticism of an employee's performance or behaviour at work, as well as
 - the direction, counselling and disciplinary action where necessary, provided that these are conducted in a respectful, consistent and professional manner that does not compromise the employee's dignity.
- Social interactions, jokes and bantering, as long as these are respectful, mutually acceptable, and do not impact negatively on others in the work environment.
- Disagreements, misunderstandings, miscommunication and/or conflict situations, provided that the ethical behaviour of the individuals involved remains professional and respectful.

Despite the fact that the examples listed above may not demonstrate a breach of this policy, nevertheless, it is fundamental to ensure that appropriate measures are taken to address any issue of concern, so as to keep in line with the guiding principles of this policy.

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3. Procedures

3.1 What should management do?

When a Director / Head of Department receives a complaint in terms of Regulation 5(1) of the **Public Service Commission (Disciplinary Procedure) Regulations, 2017**, hereinafter referred to as the PSC Disciplinary Regulations, s/he shall, in the first instance, ask the complainant whether s/he wishes to proceed informally in terms of these guidelines or formally in terms of the PSC Disciplinary Regulations, and the Director / Head of Department shall proceed accordingly.

3.2 Dealing with Harassment and Bullying Informally

An alleged victim has the option of taking informal action by approaching the alleged harasser / bully and trying to resolve issues without resorting to the submission of a formal complaint to the Director / Head of Department. Some people may not be aware that their behaviour is offensive, and an informal discussion can lead to a better understanding and agreement that such behaviour has to stop. Nevertheless, it is important that the alleged victim makes it clear to the alleged harasser / bully that his/her behaviour is unacceptable and must stop. Taking this approach may be a good way to reach a quick solution.

In many cases, the alleged victim may raise the problem with the alleged harasser / bully immediately after the incident, stating clearly that the behaviour is unacceptable. A record of the action taken should be kept by the alleged victim.

If the alleged victim feels awkward with approaching the alleged harasser / bully alone, one can seek support from a work colleague, a superior, or the Employee Support Programme to raise the complaint informally with the alleged harasser.

Within an informal process, efforts should focus on:

- Reaching a mutually agreeable solution for all parties concerned;
- Ensuring that all parties concerned understand and accept their responsibilities for maintaining appropriate and professional behaviour at the workplace;
- Ensuring that any inappropriate behaviour with regard to harassment or bullying has ceased.

When a complaint is dealt with informally, there is no specified time limit for resolving the issue. Furthermore, no formal written records are filed at this stage by the Department. However, each person involved should keep documentation of discussions, outcomes and actions taken, if any.

If the matter is resolved through the informal process, no further action is required. However, if no solution is reached through this process, the employee may voluntarily opt to file a formal complaint.

3.3 Dealing with Harassment and Bullying Formally

Alleged victims of harassment and bullying may lodge a formal complaint, either without first resorting to an informal procedure, as mentioned in the preceding section, or if the informal approach has not yielded a successful outcome.

The alleged victim must outline his/her complaint in writing, giving full details of the incident/s and any action to date. Details shall include:

- The name of the person making the complaint;
- The name of the alleged harasser / bully;
- The nature of the alleged offence;
- Date/s and time/s when the alleged offence/s occurred;
- The place where the alleged incident/s happened;
- Name/s of witness/es to the alleged incident/s;
- Any action taken by the complainant to stop the alleged offence/s, and;
- Whether the incident/s was/were reported to management.

The complaint must be signed by the complainant and should be sent under confidential cover, in terms of Regulation 5(3) of the PSC Disciplinary Regulations 2017, to the Director / Head of Department responsible for the alleged harasser / bully. When the alleged harasser / bully is the alleged victim's Director / Head of Department, the complaint should be addressed to the next higher authority.

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3.4 Preliminary Investigations of Formal Complaints

3.4.1 The Preliminary Investigation

Upon receipt of the complaint, the Director / Head of Department shall conduct a preliminary investigation, promptly and objectively, to determine if the matter falls under the scope of this policy and if a formal investigation is the appropriate tool with which to address the complaint. The Director / Head of Department shall keep a copy of the formal complaint in a confidential file.

The Director / Head of Department should consider all the circumstances before reaching a conclusion. It is important to follow a fair procedure and that both the complainant and the alleged harasser / bully are treated fairly. In this regard, the alleged harasser should immediately be provided with a copy of the written complaint and be given ten (10) working days to respond to the complaint and the allegations made against him/her.

If the alleged harasser admits, no investigations will be carried out and disciplinary action will be taken accordingly. Furthermore, the Director / Head of Department may, after considering the reply of the alleged harasser, decide not to proceed with the preliminary investigation in cases where allegations:

1. do not constitute harassment or bullying as defined in section 2.1 of this policy; and
2. allegations are made after the lapse of six (6) months as per section 5(3) of the **PSC Disciplinary Regulations**.

In cases where the Director / Head of Department decides not to proceed with an investigation process, the decision, together with a justified reason, should be communicated to the complainant and the alleged harasser / bully in writing. The complainant shall have ten (10) working days, commencing from the date of receipt, to appeal in writing to the next higher authority. After consulting the parties concerned, the next higher authority shall come to a decision as to whether a preliminary investigation is to be carried out or otherwise.

On the other hand, if the alleged harasser denies or fails to reply within the stipulated ten (10) working days, a preliminary investigation panel shall be appointed to investigate cases of harassment / bullying. The panel will be composed of the Director / Head of Department or his/her delegate as chairperson and at least two (2) other members, including a male and a female; one (1) of the members must be a legal expert in order to provide legal advice and one (1) of the members must be a psychologist in order to aid with the assessment of the claim. The panel will be appointed from a list of persons held in each Ministry by the respective Permanent Secretary. This list will be composed of current or retired public officers and legal and psychological experts. None of the members of the panel must be colleagues or relatives (up to the 3rd degree) of the alleged harasser / bully or the alleged victim. The composition of the panel should be immediately communicated to the alleged harasser / bully and the complainant. Should the alleged harasser / bully or the complainant requests a change in the composition of the panel, this should include a justifiable reason.

All preliminary investigations shall be held without prejudice to any legal redress / criminal action that may be instituted against the alleged harasser / bully / alleged victim.

3.4.2 Proceedings of the Preliminary Investigation

Both the complainant and the alleged harasser / bully shall have the right to be assisted by a person of their choice at the preliminary investigation.

The complainant shall be given the opportunity to explain the alleged incident/s fully. On the same lines, the alleged harasser / bully shall be given the opportunity to defend him/herself during the preliminary investigation.

Witnesses are encouraged to appear at the preliminary investigation if requested by either party or by the panel. It is acknowledged that certain witnesses may be reluctant to do so. In these circumstances, the person/s conducting the preliminary investigation will, if necessary, adjourn the hearing to ask supplementary questions to the witnesses in private, not in the presence of the alleged harasser / bully or the alleged victim, but in the presence of their representatives. Witnesses are to be assured that victimisation, as a result of evidence provided, will not be permitted. A serious approach will be taken on attempts by any of the parties in the case, to influence witnesses. Witnesses may, voluntarily, submit a written statement instead of appearing before the panel conducting the preliminary investigation. Copies of statements made by witnesses shall be made available to the alleged harasser / bully and to the

complainant, who shall both be given the opportunity to ask questions during a hearing of the preliminary investigation.

During the investigation, any alleged tampering of evidence will be duly investigated. Furthermore, any legal issues are to be interpreted by legal persons and not by generalist staff.

The preliminary investigation shall be concluded by not later than fifteen (15) working days from the date of the receipt of a reply from the harasser / bully or from the lapse of the ten (10) working days on which the harasser / bully should have replied, whichever is the earlier. On the conclusion of the preliminary investigation, the Director / Head of Department shall send, under confidential cover to the complainant and to the alleged harasser / bully, a copy of the report showing the outcome of the investigation and indicating any further action being contemplated.

If both parties are employed in the same department / directorate and during the preliminary investigation the case appears to involve serious misconduct, and there are cogent reasons to separate the parties concerned, the department may consider relocating either party for the duration of the investigation/proceedings.

3.5 Following the Preliminary Investigation

3.5.1 Proven cases

If from the preliminary investigation it results that there is reasonable indication that the harassment / bullying actually took place and the Director / Head of Department considers that the alleged offence:

- a) is an offence under the PSC Disciplinary Regulations which does not constitute a criminal offence, the Director / Head of Department shall initiate disciplinary proceedings against the alleged harasser / bully, in terms of **PSC Disciplinary Regulations, 2017**, within the time-frames laid down in such Regulations. In such a case, the charge shall be classified as a serious offence, which may potentially lead to dismissal;
- b) is clearly and unambiguously a criminal offence, the Director / Head of Department shall immediately report the alleged offence to the police to be investigated under criminal law;

If, however, the Director / Head of Department is in doubt whether the alleged offence is a disciplinary offence or a criminal offence, the Director / Head of Department shall consult the Attorney General for advice, as provided in **Regulation 13 (1) of the PSC Disciplinary Regulations, 2017**.

Where the alleged harasser / bully is not a public officer but is engaged on contract not through the Public Service Commission, a service provider, a client, a trainee or a student attached to the Public Service, the Director / Head of Department shall appoint an 'ad hoc panel' to investigate the case which may lead to the person's termination of engagement or service and/or report to the police authorities as the case may require. The provisions and timeframes established in the **PSC Disciplinary Regulations, 2017**, shall, as far as practicable, apply. If the Director / Head of Department is in doubt whether the alleged offence is one which is of a disciplinary or criminal nature, the advice of the Attorney General shall be sought before appointing the 'ad hoc panel' mentioned above.

In proven cases, all documents are to be retained in accordance with the **Public Service HR Retention Policy** which was adopted in compliance with the **Data Protection Act** for retention of papers in disciplinary / criminal cases.

3.5.2 Non-Proven cases

If from the preliminary investigation it results that the case is not proven, all documents related to the case held in the disciplinary file shall be disposed of, in accordance with the Public Service HR Retention Policy concerning disciplinary cases. In light of the potential initiation of proceedings at a later stage, all documents concerning the preliminary investigation should be retained up to the period prescribed by the Laws of Malta. In all cases documents should be handled according to the **Data Protection – Human Resources Corporate Procedures for disciplinary cases**.

Employees, who unjustly accuse colleagues or raise malicious or frivolous complaints, will themselves become liable to disciplinary / criminal proceedings.

3.6 Disciplinary hearings / measures in harassment / bullying cases

Directors / Heads of Department are to ensure that there is no victimisation or retaliation against a complainant and witnesses (if any) and, if the complaint is upheld, Directors / Heads of Department should ensure that the harassment / bullying stops.

Appeals on Disciplinary cases related to bullying / harassment may be submitted in accordance with the PSC **Disciplinary Regulations, 2017** as the case may be.

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4. Additional Information

4.1 Retention of Document

The related documents are to be retained in line with the **retention policy for HR documents** as required by the **Data Protection Act**.

4.2 Confidentiality, Advice and Support

Harassment and bullying are sensitive issues. In this light, confidentiality should be maintained as far as possible, to respect the privacy of all parties concerned and to ensure that any matters are dealt with sensitively and effectively. Any breach of confidentiality may result in disciplinary action against those concerned.

Employees, who believe they are experiencing harassment or bullying, are advised to note and record each incident without delay. Details may include: date, time, place where the incident happened, name of the harasser / bully, name of witnesses (if any), what actually happened, the feelings sensed, action taken at the time and whether the incident was reported to management.

Furthermore, employees (the alleged victim as well as the alleged harasser / bully) are encouraged to discuss the situation with a person of trust such as a colleague, superior/s, the Occupational Health and Safety Authority (OHSA) and/or the National Commission for the Promotion of Equality (NCPE) for confidential advice and guidance in accordance with this policy. If the person you seek advice or support from is involved in the investigation, then you should seek advice from another source - either the next higher authority or from an external source. Advice should outline all possible courses of action, including the possibility to lodge an informal or formal complaint. The alleged victim should then decide which course of action s/he would like to take, depending on the severity of the case.

The Employee Support Programme (ESP) is also available, for confidential support and counselling. Its aim is to identify and respond to the needs of employees experiencing personal, emotional and/or behavioural problems which are interfering with their work-life balance (further information on the ESP is available on the People and Standards Division website).

