



## PROCESS FRAMEWORK FOR HANDLING A SEXUAL HARASSMENT COMPLAINT

In view of the multiple issues involved in handling such a complaint, it is recommended that you check your organisation's policy, process and procedure to ensure that the following issues are clearly catered for.

### Initial reporting

This is usually made by the victim/alleged victim. It is also possible that a bystander, colleague or other witness makes a report. The conversation might not be an official report, it might simply be a story told to someone about an incident which might be sexual harassment and has upset a person.

The critical issue at this point is NEVER DENY OR REJECT THE STORY AT THIS STAGE. DO NOT DISCOURAGE REPORTING. See the article elsewhere in the Toolkit on Victim Blaming, which discusses how easily victims can be discouraged from raising valid complaints. It is often the way in which the report is handled at this stage which creates employee perceptions of the prevailing organizational culture which may be to ignore sexual harassment claims or treat them dismissively.

### To whom might this report be made?

Although the person might choose to 'share' the story with someone in their family circle or friends outside work, it is the first internal report that we are concerned with here. The report might be made to any of all of the following:

- Someone in the HR department. Unfortunately, all too often the HR department is not sufficiently trusted for victims to feel comfortable reporting to just anyone in HR. For this reason, it can be a good idea to have a 'safe person' either inside or outside the HR department. This person must be someone who is highly trusted, well known in the organisation for independent thinking and complete confidentiality.
- A shop steward. As mentioned in the article on Building Awareness elsewhere in this Toolkit, unions are required by the Code of Good Practice to include the issue of sexual harassment in their education and training programmes for shop stewards. By agreement with the union, it might be sensible to have one of the shop stewards specifically designated to be a first responder, and communicate this to all employees.
- The line manager. There are major advantages to having line managers trained to deal with sexual harassment, in that he/she is best placed to sort out the conflict quickly and close to

its origin. However, many line managers do not feel comfortable dealing with this sort of issue, so they could be trained simply to acknowledge the report and refer to the designated person.

- An EAP call centre. Most, if not all, EAP providers will include responding to sexual harassment complaints in their service offerings, and in the service level agreement will agree how to take complaints forward if the EAP provider believes the complaint to be valid.
- An anonymous 'hot line'. Sometimes a hot line which is set up for ethics complaints might also be used for sexual harassment reporting. If so, ensure that your service level agreement caters for this and it is advertised to employees.
- A 'safe' person. See above discussion under the HR department.

## How should this 'first responder' proceed?

There are three important elements to the first response interaction with the victim (which might be telephonic or face to face):

- Hear the story in the victim's own words, giving appropriate emotional support. Make sure that the nature of the incident is clear (what, when, where), and that the identity of the perpetrator(s) is clear.
- Inform the victim of their rights and the various courses of action which are available to them with the advantages and disadvantages of each.
- Inform the victim of any emotional, counselling or other type of support which might be appropriate, including any workplace adjustments or leave to accommodate specific urgent issues.

The victim should be encouraged to take whatever time is necessary to make a considered choice on how to proceed, whether through an informal route or a formal route. Important note: some organisations at present only permit a formal route through the grievance/disciplinary procedure. This is contrary to the requirements of the Code of Good Practice and the organisation must have in place informal routes to resolve the issue.

The first responder should then either help the victim make any practical arrangements necessary or approach the appropriate manager or support person to make those arrangements on the victim's behalf.

The first responder must then refer the complaint to the Designated Person (see below).

It is clear from the above that the first responder must be trained to handle this interaction.

## Referral internally or externally

In addition to the first responders discussed above, the organisation must have a designated person who will be responsible for organising the victim's chosen method of conflict resolution. This person must have a higher-level skills set which would include informal mediation and initial investigation and must also have the means to engage external independent experts. If it is not possible to provide this internally then the EAP provider or external agency should be on standby. We will use the term Designated Person for this function.

## Proceeding with the complaint

The first critical function of this Designated Person is to ensure that the complaint is handled with urgency. Sexual harassment cases which are allowed to drag on always cause major complications for all concerned.

Usually an investigation will be necessary to establish the facts of the complaint in more detail than was obtained by the first responder. At some early point of the investigation it should be clear enough for the Designated Person to have another conversation with the victim as to whether he/she wishes to proceed with an informal or formal process for resolution. It is entirely the choice of the victim as to which route he/she chooses, but it must be noted that in certain severe cases, the organisation may have to follow a formal disciplinary route with the alleged perpetrator aside from any other route that the victim has chosen.

For further information on:

- alternative methods of investigation and inquiry, see the article on Inquisitorial vs Adversarial Approaches;
- informal routes, refer to the podcasts on Mediation and Restorative Justice;
- formal routes, refer to the article on whether or not to adapt your normal disciplinary process for sexual harassment cases, the podcast on Legal Conundrums and the article on Further Legal Conundrums;
- see also the summary of Legal Avenues regarding further referrals of complaints.

## Closing off the incident

Once the complaint has been resolved, informally or formally, it is important to make sure that any other employees who may have been directly or indirectly involved are appropriately communicated with so that the organisation can move forward without any 'baggage'. For a fuller treatment of this important and often neglected aspect, see the podcast and audio Powerpoint presentation on Dealing with the Fallout.

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