

**THE PUBLIC SERVICE:
GUIDELINES ON WHAT CONSTITUTES SEXUAL HARASSMENT AND ON
THE PROCEDURES TO BE ADOPTED IN CASES OF SEXUAL HARASSMENT¹**

1. *Introduction*

This document defines what is perceived as sexual harassment and stipulates the procedures that shall be adopted in cases of allegations of sexual harassment at work. These Guidelines are modelled on the publication by the National Commission for the Promotion of Equality for Men and Women on the same subject.

In terms of Article 9 of the Equality for Men and Women Act, (Chapter 456) it is a criminal offence for any person, whether a public officer or not, to sexually harass other persons. Sexual harassment is also prohibited in terms of Article 29 (3) of the Employment and Industrial Relations Act (Chapter 452).

These Guidelines apply to all the employees of the Public Service, whether employed full-time or part-time, and also to all persons engaged on contract, whether through the Public Service Commission or not, as well as to any students and trainees attached to the Public Service, during the period of such contract, attachment or traineeship.

2. *Declaration of Principles*

- a) The Public Service is an equal opportunity employer and as such it will not tolerate any form of sexual harassment at the workplace. Heads of

¹ Guidelines modelled on publication by the National Commission for the Promotion of Equality for Men and Women, which may be contacted at: 2 Cavalier Street Valletta Tel: 2590 3850 Fax: 2590 3851

Department and all employees are in duty bound to safeguard and uphold the precepts articulated in these Guidelines. Non-compliance with these precepts will lead to disciplinary or criminal proceedings.

- b) The Public Service strives to promote a dignified working environment and a harmonious relationship among its employees irrespective of their sex, which would lead to mutual respect, understanding and appreciation in the work environment. The Public Service believes that preventing sexual harassment is part of good management. The victim of sexual harassment may experience emotional stress, physical stress, and/or a negative change in job performance. If sexual harassment is not addressed, the Public Service may be negatively affected in terms of low morale amongst employees, a higher rate of absenteeism, job turnover and low job performance.
- c) Government believes that sexual harassment is an intolerable violation of the dignity of workers and that it may have a negative impact on the general well-being of employees and/or clients, as well as on the work environment.

3. *Aims*

These Guidelines aim to:

- Ensure that all employees and clients of the Public Service are treated with respect;
- Secure the dignity and personal development of all employees;
- Inform and educate employees on behaviour that is unacceptable since they must recognize that what is acceptable to one person may not be acceptable to another;

- Provide information on means of redress to the victims of sexual harassment at the workplace. No employee or client of the Public Service must fear that she or he will be victimised for bringing a complaint of sexual harassment whether the harassment comes from another employee or from a client of the Public Service. All sexual harassment claims will be treated very seriously and confidentially and all the necessary action will be taken to deal with the claim;
- Build a pro-active work environment that aims to prevent the occurrence of sexual harassment at the workplace.

4. *Definition of terms*

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. 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 at the place of work. 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.

5. *Procedures*

- The procedures outlined in the following sections are intended to serve as guidelines for both Heads of Department and employees on how sexual harassment cases should be tackled in a fair, consistent and expeditious way while ensuring standards of good practice, natural justice and utmost confidentiality.

- The procedures reflect the current standards of good practice and follow the basic precepts of natural justice, namely:
 - the indicated harasser should be informed of the alleged breach of good conduct against him/her;
 - the alleged harasser should be given the opportunity to state his/her case prior to the commencement of any disciplinary action.

The primary purpose of the procedural framework set out in these Guidelines is to deal with cases of sexual harassment in a constructive manner by providing employees with the possibility of improving their conduct. These procedures aim to achieve this by also indicating how minor breaches of the code of conduct can be dealt with informally (where the complainant agrees).

6. *Applicability*

These procedures apply to sexual harassment cases experienced by public officers, whether employed full-time or part-time, and also to all persons engaged on contract, whether through the Public Service Commission or not, as well as any students and trainees attached to the Public Service, during the period of such contract, attachment or traineeship.

7. *Training*

- All employees are to be informed of these guidelines through formal and informal training programmes. It is intended that the Staff Development Organisation will provide and/or facilitate such training. These training programmes are meant to explain the Guidelines, the legal implications, and how assistance can be obtained even from

outside the employees' department, if the victims feel better safeguarded that way. Employees will further be informed that they may also seek assistance from the relative trade union/employee representative when the employee decides to treat the matter in a formal way.

- The training programmes are to stress that complaints related to sexual harassment are to be treated very seriously. All employees of the Public Service are entitled to adequate, regular, and ongoing training on the prevention of sexual harassment at work to ensure that these Guidelines are adhered to at all times.

8. *Advice and assistance*

- Employees who are victims of sexual harassment may refer their complaints to the National Commission for the Promotion of Equality for Men and Women (NCPE). Employees may also, if they wish, seek the advice of the Head of Department, or a person of trust, even if he/she is not a public officer². The advice will indicate to the victim of harassment, possible courses of action, depending on the severity of the case, such as, for example, whether to lodge a formal or informal complaint. When the harasser is the Head of Department, advice should be sought from the next higher authority that is, if the Head is a Director, the harasser should seek advice from the Director General or Permanent Secretary.
- It is the duty of Heads of Department to establish and maintain workplaces free of sexual harassment. Should any sexual harassment be taking place, any employee, not being the harassed person, is in duty

² Counselling services may be obtained from the relevant entities including 'Agenzija Apogg'

bound to bring this to the attention of the Head of Department responsible for the alleged victim, in order that the Head may offer support to such victims. Before taking any action, the Head of Department shall ask the alleged victim of the harassment whether he/she wishes the matter to be treated in a formal or informal way. The Head of Department may, if the victim of the harassment wishes, also seek advice of NCPE.

9. *Dealing with sexual harassment informally*

- Although sexual harassment is considered to be a serious offence, the victim may choose to deal with the matter informally. A victim of sexual harassment may take informal action by approaching the harasser and trying to resolve issues without resorting to the submission of a formal complaint to the Head of Department. This is done, primarily, by making it clear to the harasser that his/her behaviour is unacceptable and must stop. Such informal action is intended to avoid redress through formal procedures that may lead to disciplinary proceedings depending on the severity of the alleged offence. Whilst informal action may be appropriate in some instances, it remains within the rights of victim of sexual harassment to seek redress through the formal procedures outlined in these Guidelines.
- Where the complainant feels too embarrassed to approach the harasser, the former may ask a colleague, a friend, or a family member to raise the issue informally with the harasser.
- The employee implicated by the complainant as the harasser is also entitled to assistance by a colleague, a friend, or a family member.
- When a complaint is dealt with informally, there is no time limit for resolving the issue. However, if a formal complaint is lodged, the time limits referred to in paragraph 11 hereof shall apply.

- When a Head of Department receives a report by the supervisory officer in terms of Regulation 5 (1) of the Public Service Commission (Disciplinary Procedure) Regulations, 1999, hereinafter referred to as the PSC Disciplinary Regulations, he/she shall, in the first instance, ask the victim whether he/she wishes to proceed informally in terms of these guidelines or formally in terms of the PSC Disciplinary Regulations and the Head of Department shall proceed accordingly.

10. *Formal complaints*

- Clients and employees who are victims of sexual harassment may lodge a formal complaint, either without first resorting to the informal procedure mentioned at Section 9 above, or if the informal approach is resorted to but fails. In cases of serious harassment, employees are advised to lodge a formal complaint. When a formal complaint is lodged, both parties may seek assistance from any person of their choice.
- The complaint should be made in writing and shall include:
 - the name of the person making the complaint
 - the name of the alleged harasser
 - the nature of the alleged harassment
 - date/s and time/s when the alleged harassment occurred
 - name/s of witnesses to the alleged incident/s
 - any action taken by the complainant to stop the alleged harassment
- The complaint must be signed by the complainant and should be sent under confidential cover, in terms of Regulation 5 (2) of the PSC Disciplinary Regulations, hereinafter referred to as the PSC Regulations, to the Head of Department responsible for the alleged harasser. When

the harasser is a Head of Department (or a Director), the complaint should be addressed to the next level supervisor.

- If the complainant, and/or the alleged harasser are victimized by other colleagues because of their actual or alleged behaviour, the latter are liable to disciplinary action.

11. *Preliminary Investigations of Formal Complaints*

- The Head of Department shall, as early as possible after the receipt of a formal complaint, initiate a preliminary investigation. The Head of Department shall keep a copy of the formal complaint in a confidential file.
- Should the Head of Department decide to carry out a preliminary investigation, he may do so through an 'ad hoc panel' composed of at least two (2) persons, a male and a female or, if the alleged offence is one of a homosexual nature, by at least two persons of the same sex as that of the alleged harasser and victim. As provided for in Section 5 (2) of the PSC Disciplinary Regulations, the preliminary investigation shall be concluded not later than fifteen (15) working days from the receipt by the Head of Department of the formal complaint. On the conclusion of the preliminary investigation, the Head of Department shall send under confidential cover to the complainant and to the alleged harasser a copy of the report showing the outcome of the investigation and indicating any further action being contemplated, if any.
- Both the complainant and the alleged harasser shall have the right to be accompanied at the preliminary investigation by a person of their choice.

- A witness is at liberty to submit a written statement instead of appearing before the person/s conducting the preliminary investigation. Copies of statements made by the witnesses shall be made available to the alleged harasser and to the complainant. Witnesses are encouraged to appear at the preliminary investigation if requested by either party. The Public Service acknowledges that some 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. Witnesses are to be assured that victimization due to giving evidence will not be permitted.

- The harasser shall be given the opportunity to defend her/himself during the preliminary investigation:

- If, from the preliminary investigation, there is reasonable suspicion that the harassment has actually taken place, disciplinary action shall be initiated within the time-frames laid down in the PSC Disciplinary Regulations;

- If it results from the preliminary investigation that the case is not proven, all documents related to the case shall be destroyed, in accordance with the Public Service HR Retention Policy which was adopted in compliance with the Data Protection Act. All preliminary investigations shall be held without prejudice to any criminal action that the alleged victim may decide to initiate.

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

12. *Disciplinary hearings/measures in sexual harassment cases*

- If the preliminary investigation reveals that there are sufficient grounds for disciplinary action, the formal procedures outlined in the PSC Disciplinary Regulations, shall be followed, when the harasser is a public officer. Where the harasser is not a public officer (that is engaged on contract but not through the Public Service Commission or a trainee or a student attached to the Public Service), the Head of Department shall appoint an “ad hoc panel” to consider the case which can lead to the person’s termination of engagement.
- As sexual harassment can also constitute a criminal offence, Heads of Department are to consult the Attorney General, in the case of public officers, as provided in the PSC Disciplinary Regulations, before deciding whether to institute criminal or disciplinary proceedings. In the case of persons on contract (not engaged through the Public Service Commission), or trainees or students attached to the Public Service, the advice of the Attorney General should also be obtained before appointing the “ad hoc panel” mentioned above.
- Sexual harassment by an employee constitutes a serious offence and may lead to dismissal.
- Heads of Department are to ensure that there is no victimisation or retaliation against a complainant and, if the complaint is upheld, Heads of Department should ensure that the harassment stops. If the disciplinary proceedings do not result in dismissal or termination of engagement, it may be desirable, if not necessary, to transfer the harasser elsewhere even within the same Department or section. If the harasser is on a performance agreement and is transferred, he/she may be required to relinquish his/her position and revert to his/her substantive grade. In that case, the necessary procedure, through the Public Service Commission, must be followed to terminate the

performance agreement. In such cases, the complainant shall be given the choice, if he/she wishes, of whether to remain in the same post or be relocated elsewhere.

- Appeals may be submitted in accordance with the provisions of the PSC Disciplinary Regulations. In the case of persons on contract (not engaged through the Public Service Commission) or trainees or students, appeals may be made to the next higher authority.

- Where the alleged harasser is not a public officer, the procedures and time frames established by the PSC Disciplinary Regulations shall, as far as is practicable, apply.

13. *Conclusion*

This document aims to further the process of gender equality. It is evidence of the commitment of Government towards treating both male and female employees with equal dignity. No effort should be spared to circulating these Guidelines to all employees, and to ensuring that its provisions are enforced.