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SAMPLE DIGNITY AT WORK POLICY

PART A – INTRODUCTION, OBJECTIVES AND DEFINITIONS

[Name of firm] is committed to protecting the dignity of all those who work within the firm. In particular, we are committed to ensuring that our firm is free from any form of bullying, harassment or sexual harassment and that our work environment is conducive to providing a high quality legal service in an atmosphere of respect, safety and equality. All employees have the right to be treated with dignity and respect.

No bullying or harassment or sexual harassment within the firm or in connection with the work of the firm will be tolerated. Complaints of bullying or harassment may be dealt with either in a formal or an informal way, or by alternative means, as described below.

Complaints by employees or other persons in the workplace of bullying or harassment at work will be treated with fairness, sensitivity, respect and (as far as possible) confidentiality for all parties concerned. Any person accused of bullying or harassment will be afforded natural justice and treated with fairness and sensitivity.

Both the firm's management and its employees have responsibilities for creating and contributing to the maintenance of a work environment free from bullying and harassment. Employees also have an obligation to cooperate with the investigation of complaints of bullying or harassment in the firm. Managers and supervisors have a particular responsibility to implement this policy and to make every effort to ensure that bullying and harassment does not occur, particularly in work areas for which they are responsible. Managers and supervisors have an obligation to deal promptly and effectively with any incidents of bullying or harassment of which they are aware or ought to be aware.

Bullying, sexual harassment and harassment by employers, employees and non-employees such as clients, customers and business contacts will not be tolerated and could lead to disciplinary action (in the case of employees) and other sanctions, for example the suspension of contracts or services, or exclusions from premises (in the case of non-employees).

Bullying

Bullying at work is defined as repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work.

An isolated incident of the type of behaviour contemplated by this definition may be an

affront to dignity but as a once off incident, it is not considered to be bullying.

A key characteristic of bullying is that it usually takes place over a period of time. It is regular and persistent inappropriate behaviour which is specifically targeted at one employee or a group of employees. It may be perpetrated by someone in a position of authority, by employees against a manager or by employees at the same level.

The following is a non-exhaustive list of examples of types of behaviour that may constitute bullying:

- Exclusion with negative consequences. Hostility through sustained unfriendly conduct.
- Verbal abuse/insult, including shouting, use of obscene language and spreading malicious rumours.
- Being treated less favourably than colleagues.
- Intrusion – pestering, spying or stalking.
- Menacing behaviour.
- Intimidation.
- Aggression.
- Undermining behaviour.
- Excessive monitoring of work.
- Humiliation.
- Withholding work-related information.
- Repeatedly manipulating a person's job content and targets.
- Applying blame for things beyond the person's control.
- Constant humiliation, ridicule, belittling efforts.
- Inappropriate overruling of a person's authority, reducing a job to routine tasks well below the person's skills and capabilities without prior discussion or explanation.
- Use of social media to undermine or exclude colleagues.

Harassment

Harassment is any form of unwanted conduct related to any of the following grounds:

- gender
- civil status
- family status
- sexual orientation
- religious belief (or lack thereof)
- age
- disability
- race, colour, nationality or ethnic or national origin
- membership of the Traveller community

which has the purpose or effect of violating a person's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

Harassment may be targeted at one employee or a group of employees. Harassment

may consist of a single incident or repeated inappropriate behaviour. An act of harassment may occur outside the work premises or normal working hours provided the perpetrator was acting in the course of employment, for example, at a training course, conference or work-related social event. Harassment includes situations where the victim does not have the relevant characteristic but the harasser believes that the victim has that characteristic.

Many forms of behaviour, including spoken words, gestures or the display/circulation of words, pictures or other material, may constitute harassment. The following is a non-exhaustive list of examples of types of behaviour that constitute harassment:

- Verbal harassment – jokes, comments, ridicule or songs
- Written harassment – including faxes, text messages, emails or notices
- Physical harassment – jostling, shoving or any form of assault
- Intimidatory harassment – gestures, posturing or threatening poses
- Visual displays such as posters, emblems or badges
- Excessive monitoring of work
- Isolation or exclusion from social activities
- Unreasonably changing a person's job content or targets
- Pressure to behave in a manner that the employee thinks is inappropriate, for example being required to dress in a manner unsuited to a person's ethnic or religious background.
- Harassment through social media

Unlike with bullying, a single incident may constitute harassment.

Sexual harassment

Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature which has the purpose or effect of violating a person's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

Many forms of behaviour can constitute sexual harassment. It includes examples like those contained in the following list:

- Physical conduct of a sexual nature — This may include unwanted physical contact such as unnecessary touching, patting or pinching or brushing against another employee's body, assault and coercive sexual intercourse.
- Verbal conduct of a sexual nature — This includes unwelcome sexual advances, propositions or pressure for sexual activity, continued suggestions for social activity outside the work place after it has been made clear that such suggestions are unwelcome, unwanted or offensive flirtations, suggestive remarks, innuendos or lewd comments.
- Non-verbal conduct of a sexual nature — This may include the display of pornographic or sexually suggestive pictures, objects, written materials, emails, text-messages or faxes. It may also include leering, whistling or making sexually suggestive gestures.
- Gender-based conduct — This includes conduct that denigrates or ridicules or is intimidatory or physically abusive of an employee because of his or her sex such

as derogatory or degrading abuse or insults which are gender-related.

This list is illustrative rather than exhaustive. A single incident may constitute sexual harassment.

In this policy, the expression “bullying and/or harassment” should be read as including “bullying, harassment and/or sexual harassment”.

Intention irrelevant

The intention of the perpetrator of the sexual harassment or harassment is irrelevant. The fact that the perpetrator has no intention of sexually harassing or harassing the employee is no defence. The effect of the behaviour on the employee is what is relevant. It is up to the employee to decide what behaviour is unwelcome irrespective of the attitude of others to the matter

Reasonable discipline and management is not bullying or harassment

The reasonable and essential discipline arising from the good management of the performance of an employee at work does not amount to bullying or harassment. For example, an employee whose performance is continuously signaled at a level below required targets may feel threatened and insecure in their work but this in itself does not indicate bullying or harassment. Fair and constructive criticism of an employee’s performance, conduct or attendance does not constitute bullying.

Similarly, actions taken which can be justified as regards the safety, health and welfare of employees do not amount to bullying or harassment.

Bullying and/or harassment can exist in many situations

Provisions in this policy which refer to an “employee” shall also apply, where the context requires, to any person working within the firm, including [partners, the principal solicitor], trainee solicitors and temporary agency staff. Bullying/harassment by non-employees may result in the termination/non-renewal of business contracts, the suspension/non-renewal of services, exclusion from the premises or the imposition of other appropriate sanctions.

Bullying and/or harassment at work can involve people in many different work situations and at all levels:

- partner/manager/supervisor to employee;
- employee to partner/supervisor/manager;
- one employee to another (or group to group);
- customer or business contact to employee;
- employee/supervisor/manager/partner to customer/business contact.

All such situations are encompassed by this policy. This policy extends to behaviour which occurs outside the firm’s premises, such as at social functions or training events, provided there is a sufficient link with the work of the firm and its employees.

Preservation of rights and prevention of victimisation

Making a complaint under this policy will not affect an employee's statutory rights. No one will be victimised for making a complaint in good faith or for acting in good faith as a witness in an investigation.

Nothing in this policy limits the right of the firm to investigate any matter which may relate to bullying and/or harassment in circumstances other than where a complaint has been made. All employees continue to have an obligation to cooperate with any such investigation.¹

Designated contact person

[Insert name / job title] has been designated as the contact person in respect of this policy. In the event that any employee has any question or query about the operation of this policy or requires any clarification about it, they may approach the designated contact person for advice, which will be given in strictest confidence. Please note that speaking to the designated contact person is not the same as making a formal or informal complaint.²

Allocation of Responsibilities

Management and others in positions of authority have a particular responsibility to ensure that sexual harassment and harassment does not occur and that complaints are addressed speedily. In particular, management will:

- provide good example by treating all in the workplace with courtesy and respect
- promote awareness of the organisation's policy and complaints procedures
- be vigilant for signs of harassment and take action before a problem escalates
- respond sensitively to an employee who makes a complaint of harassment
- explain the procedures to be followed if a complaint of sexual harassment or harassment is made
- ensure that an alleged perpetrator is treated fairly
- ensure that an employee making a complaint is not victimised for doing so
- monitor and follow up the situation after a complaint is made so that sexual harassment or harassment does not recur.

This policy will be communicated effectively to all those potentially affected by it. Incidents of sexual harassment and harassment will be monitored and training provided. The policy will be reviewed on a regular basis in line with changes in the law, relevant

¹ In particular, where a firm has reasonable grounds for suspecting that bullying and/or harassment may have taken place, but where the victim may be in fear of making a complaint, firms should clearly understand that they nevertheless have a right (and probably a duty) to investigate and remedy the situation insofar as practicable, notwithstanding the difficulties presented by the lack of cooperation from the victim.

² The HSA Code of Practice requires employers to make a contact person available to employees. That person may be internal or external to the firm but should have appropriate training for the role.

caselaw or other developments.

Statutory Redress

This policy is designed to support employees in the resolution of complaints of bullying/harassment. However, it does not prevent employees from exercising statutory entitlements under the Industrial Relations Acts, 1946 to 2015 or the Employment Equality Acts 1998 to 2015. Complaints under the Employment Equality Act must normally be brought within 6 months of the most recent act of discrimination.

PART B - DEALING WITH BULLYING AND HARASSMENT

1. LAW CARE

The Law Society has arranged with an independent organisation, LawCare, to provide a 365 day a year confidential helpline service for lawyers, their families and their staff. LawCare is a charitable organisation which offers support and assistance in a wide range of circumstances, including those where people feel they are suffering stress and/or distress as a result of bullying or harassment in the workplace.

LawCare's helpline number is 1800 991801 (Monday to Friday 9 am to 7.30 pm; weekends / Public Holidays 10 am to 4 pm). For further information about the range of situations in which LawCare offers support, please refer to www.lawcare.ie.

Very important: Speaking to LawCare is not the same as making a formal or informal complaint. LawCare provides support and assistance, but employees may still need to make a formal or informal complaint in order to resolve the problem in the context of which bullying or harassment may have occurred. Formal and informal complaints should be made by employees in the manner prescribed in this policy.

2. RESOLVING THE PROBLEM BY MEDIATION³

[Mediation is an alternative method of resolving issues relating to bullying and harassment. Mediation involves the parties seeking to arrive at a solution through mutual agreement, rather than through an investigation and decision.

Mediation provides a confidential opportunity for the person who feels that he/she has been bullied or harassed and the person accused of carrying out this inappropriate behaviour to discuss the matter and to reach an agreement on their continuing working relationship.

Mediation is conducted in private, and is directly between the parties concerned, with the support of a Mediator, who will act as an independent facilitator. Either party may withdraw from the process at any time by notifying the mediator, in writing, that they wish to do so.

If both parties agree to resolve the issue by mediation, the [managing partner/principal solicitor] will arrange the mediation process. An appropriate person, acceptable to both parties, from within or outside [the firm] will be assigned as mediator.

³ A draft section relating to mediation is included in this precedent policy for consideration by firms. Note that mediation is not required by the HSA Code of Practice on Bullying or S.I. No. 208/2012 - Employment Equality Act 1998 (Code of Practice) (Harassment) Order 2012, so firms may need to decide on whether to include a mediation option having regard to their size and circumstances.

If the mediation process results in an agreement acceptable to both parties, the mediator will draw up a written record of the terms of the settlement for signature by both parties.

If the matter is resolved by mediation no disciplinary action will be taken.

If mediation breaks down or fails to achieve its goal, the only other option is to have the matter resolved by investigation. It is important to note that a person assigned as mediator will not be involved in the investigation process arising from the same set of circumstances. Resolving the matter by investigation may also be considered if the employee concerned feels that it is inappropriate to resolve the matter by mediation.]

3. THE INFORMAL COMPLAINT PROCESS

Method of making an informal complaint

Any employee who believes he or she is being bullied should, where possible, indicate directly to the person complained of that the behaviour in question is unacceptable.

If the employee believes that approach is not suitable or has been unsuccessful, the employee may then make an informal complaint.

Informal complaints should be addressed to [insert name or title of a person to whom complaints should be directed, e.g. the principal solicitor, managing partner or head of human resources function].

It is preferable that an informal complaint is made in writing but it may also be verbal.

The firm will designate a person to handle the complaint. If the complaint was verbal, a written note of what is complained of will be taken by the designated person and a copy given to the complainant.

Procedure which will be followed

The designated person will establish the facts, the context and then the next course of action in dealing with the matter under the informal procedure.

(a) Where specific examples are given

If the complaint concerns bullying and/or harassment and includes specific examples of the behaviour complained of, the person complained against will be presented with the complaint and given a chance to respond.

After the response is received (or a reasonable period has elapsed without a response having been received) a method will be agreed to

progress the issue to resolution so that both parties can return to a harmonious working environment without bullying or harassment being a factor.

If the behaviour complained of does not concern bullying or harassment as defined, an alternative approach will be put in place and a rationale recorded.

(b) Where no specific examples are given

If no specific examples are provided, there is no complaint to be answered under this policy, though other means of protecting and repairing work-place relationships may be considered by the designated person.

In either case, line managers will be kept informed, as appropriate, about the process in train.

The designated person will keep a record of all stages: the complaint, the first meeting, action agreed and signed records of the final meeting. The purpose of the records, which will not include detail of discussions, is to provide evidence that the complaint was dealt with in an appropriate manner.

All parties will maintain, insofar as possible, the confidentiality of the informal process. Breaches of confidentiality will be treated as a serious disciplinary matter.

Resolution

When resolution is found through informal procedures, both parties will be given support or periodical reviews, as appropriate. These may include counseling or other appropriate interventions.

Where a complaint is not upheld and is found not to have been made in good faith, the complainant will be subject to disciplinary action.

4. THE FORMAL COMPLAINT PROCEDURE

In cases where an employee believes an informal complaint is not a suitable means of addressing his or her concern, or where the employee believes that their previous recourse to the informal complaint procedure has been unsatisfactory, the employee may make a formal complaint of bullying and/or harassment.

In cases where an employee makes an informal complaint but where the firm's management believes (because of the gravity of the subject matter of the complaint or for some other reason) that the informal complaint procedure is inadequate to address the complaint, that complaint may, with the consent of the employee, be dealt with using the formal complaint procedure.

Method of making a formal complaint

Formal complaints should be made in writing and signed and dated. The complaint should be confined to precise details of alleged incidents of bullying or harassment, including the dates of such incidents and the names of any witnesses.

Formal complaints should be addressed to [insert name or title of a person to whom complaints should be directed].

On receipt of a formal complaint, an investigator will be designated by the firm's management. In exceptional circumstances, if either party has an objection to the designated investigator, the firm's management may designate an alternative investigator. An objection to the designated investigator must be made in writing to the firm's management and must clearly outline the grounds of the objection.

Complaints in writing

Where a formal complaint is made but the complainant declines to submit a written statement, then a written record will be made of the complaint by the designated investigator. The complainant will be asked to sign this record.

In the event that the complainant refuses to sign this record, the complainant will be made aware that the ability of the firm to investigate the complaint on a formal basis may be compromised by any failure by the complainant to cooperate with the firm's procedures. Efforts will be made to clarify this issue before any further steps are taken.⁴

The complainant will be advised of the aims and objectives of the formal process, the procedures and time-frame involved, and the possible outcomes. He or she will be assured of support as required throughout the process. He or she will be given a copy of this policy.

Procedure which will be followed

The investigation will be governed by terms of reference which will include the following provisions:

- a provision to the effect that the investigation will be conducted in accordance with this policy;
- an indicative time-frame for the completion of the investigation;
- provisions relating to the scope of the investigation, indicating that the investigator will consider whether the complaint falls within the definition of bullying or harassment at work and whether the complaint has been upheld.

⁴ Note that a refusal to sign such a record will not necessarily remove the obligation of an employer to investigate a complaint. Any such situation should be carefully considered by reference to the individual circumstances.

The person complained against will be notified in writing that an allegation of bullying or harassment has been made against him or her. He or she will be advised of the aims and objectives of the formal process and procedures and time frame involved and the possible outcomes. He or she will be assured of support as required throughout the process. A meeting will be organised at which he or she is given a copy of the complaint in full and any relevant documents including this policy.

The investigator will meet with the complainant and the person complained against and any witnesses or relevant persons with a view to establishing the facts. The complainant and the person complained against will both be entitled to be accompanied by an appropriate representative. This may be by a Firm colleague of their choice **[or a legal representative from outside the Firm]**⁵. Where appropriate, persons involved in the investigation (not necessarily limited to the person complained against) will need to be given the opportunity to put questions to other witnesses.⁶

All interviews with parties and witnesses will be conducted sensitively and with due respect to the rights of all concerned. The investigation will be conducted on a confidential basis, insofar as that is possible.

Statements from all parties and witnesses will be reduced to writing. Copies of the record of their statements will be given to and agreed with those who make statements to the investigator.

During the investigation

All parties will continue to work normally during the investigation unless directed otherwise. The firm's management will make every effort to ensure the protection of all involved in the investigation.

The parties to the complaint should not communicate regarding the complaint.

⁵ **FOR INFORMATION, NOT FOR INCLUSION IN TEMPLATE POLICY:** Many employers operate policies whereby legal representatives are not permitted to represent employees in internal processes. Some decisions of the courts indicate that employees have a right to legal representation in internal processes that may lead to disciplinary sanctions; other decisions are less clear. Any firm wishing to exclude an employee's right to legal representation in internal proceedings should consider the relevant case-law, including the decision of the Supreme Court in *Burns and Hartigan v Governor of Castlereagh Prison* [2009] ELR 109 and the decision of the High Court *Lyons v Longford Westmeath Education and Training Board* [2017] IEHC 272.

⁶ **FOR INFORMATION, NOT FOR INCLUSION IN TEMPLATE POLICY:** The precise circumstances in which employees are entitled to be offered the right to cross-examine witnesses in internal processes are unclear. Any firm wishing to exclude or limit an employee's right to cross-examine witnesses in internal proceedings should consider the relevant case-law, including the decision of the Supreme Court in *Rowland v An Post* [2017] IESC 20 and the decision of the High Court *Lyons v Longford Westmeath Education and Training Board* [2017] IEHC 272.

Any effort by any employee to intimidate or otherwise influence any complainant or witness during the course of an investigation will be regarded as a disciplinary matter.

Conclusion of investigation

The objective of an investigation will be to ascertain whether or not, on the balance of probabilities:

- (a) the behaviour complained of occurred and, if so,
- (b) whether or not that behaviour amounted to bullying and/or harassment as defined.

It will be open to the designated investigator to determine that behaviour occurred which did not amount to bullying or harassment but which was inappropriate in some other way. In that event, separate disciplinary action may follow.

The investigation will be completed as quickly as practicable, preferably within the indicated time-frame. The investigator will submit a report to the firm's management, which report will include conclusions. The complainant and the person complained against will be given a copy of the report as soon as practicable by the firm's management and given an opportunity to comment, within a prescribed period of time, before the firm's management decides on any further course of action.

The firm's management will decide the action which is to be taken arising from the report in light of the investigator's report and any comments made by the parties. The firm's management will then, in writing, inform the complainant and the person complained against of the next steps which are to occur.

Action where the complaint is upheld

If a complaint is upheld, the matter will be treated as a serious disciplinary issue and the firm will follow the appropriate disciplinary procedures. If the perpetrator is not an employee (for example, if he or she is a client) other appropriate measures will be taken.

The firm may also take other appropriate action to support and protect the victim and or to ensure that similar situations do not arise in future.

Action where complaint is not upheld

If the complaint is not upheld but the complainant is found to have acted in good faith, the firm may take appropriate measures to support both the complainant and the person complained against. This will include the making of appropriate efforts to ensure that anyone with knowledge of the complaint is made aware of the finding that it was not upheld.

Where a complaint is not upheld and is found not to have been made in good

faith, the complainant will be the subject of disciplinary action.

Appeals⁷

[Option 1:

If either party is dissatisfied with the outcome of the formal complaints procedure, they may lodge an appeal within 7 days of receipt of notification of the outcome of the process.

The reasons for the appeal should be outlined in writing to the firm's management. The appeal will be heard by another person, of at least the same level of seniority as the original investigator. The appeal will focus only on the aspect of the case cited by the appellant as being the subject of the appeal.

The grounds of the appeal and any outcome and methodology employed will be appended to the investigation file.]

[Option 2:

Prior to the commencement of the formal complaint procedure, the firm will make provision for any appeal procedure which may need to be available in case the parties are dissatisfied with the outcome of the formal complaint procedure. Any such appeal procedure will be appropriate to the circumstances of the individual case.]

Resolution

Both parties will be given appropriate support and periodical reviews, insofar as is reasonable, after the formal process has been concluded.

5. EXTERNAL INVESTIGATION

In any situation where, by reason of the size of the firm, seniority of a complainant or a person complained against, or for any other reason, it is not appropriate for a formal complaint, informal complaint or appeal to be investigated by an employee of the firm, then the firm reserves the right to appoint an appropriate external person to carry out the investigation. Any such external person will carry out his or her functions in accordance with the provisions of this policy and the firm will give appropriate effect to the findings of such an external person.

⁷ The HSA Code of Practice imposes a requirement to provide for some form of appeals mechanism for formal complaints of bullying. It says: "Within the formal system, an appeals process for both parties should be in place" and goes on to prescribe how that process should operate. It then says: "Very small and micro organisations will need to consider at the outset of the formal process how they would manage a request for appeal and this may require outside independent support." Two options of compliance are suggested in this section – firms may choose one or the other depending on the size and circumstances of the firm.

This policy is valid from [DATE]. It may be amended from time to time at the discretion of the firm's management.

Signed on behalf of [name of firm]: _____
Principal solicitor / managing partner⁸

⁸ The HSA Code of Practice directs that "a [bullying] policy document should be written, dated and signed by a responsible person at senior management level."