

**DIGNITY & RESPECT, SEXUAL VIOLENCE & HARASSMENT – FORMAL COMPLAINTS INVESTIGATION PROCEDURE (EMPLOYEES)**

1. **Purpose of the Procedure**

## The University of Limerick is committed to the development and maintenance of a positive working environment in an atmosphere of respect, collaboration, openness, safety and equality, in which all employees have the right to be treated with dignity and respect. These procedures should be read in conjunction with *the Dignity and Respect Policy and Procedures for Students and Employees*,and the *Sexual Violence and Harassment (SVH) Policy for Students and Staff* (“the Policies”) which can be found here <https://www.ul.ie/policy-hub/>.

## Complaints of bullying, harassment, discrimination, sexual harassment and sexual violence will be treated seriously, objectively and with due regard for the rights and sensitivities of the person raising the issue,(referred to as *the complainant*) and the person against whom the issue is being raised, (referred to as *the respondent*.) All investigations are conducted by independent investigators.

## These procedures outline the steps involved in a formal investigation of a complaint of bullying, harassment, sexual harassment and sexual violence. A single investigation can be conducted for combined complaints of bullying, harassment, discrimination, sexual harassment and sexual violence if the complainant and respondent are the same individuals involved.

## This procedure has been developed, in accordance with the *Dignity and Respect Policy and Procedures for Students and Employees*,and the Sexual Violence and Harassment (SVH) Policy for Students and Staff (“The Policies”), to ensure there is a clearly defined procedure to bring formal complaints of inappropriate behaviour forward so they can be addressed fairly.

## **Scope**

## This Procedure applies to all formal complaints of bullying, harassment, discrimination, sexual harassment or sexual violence where the Respondent is a UL employee and where the complaint falls within the scope of “The Policies”.

## **Formal Approach**

## Formal Bullying and Harassment complaints should be made in line with the Formal Complaints Procedure of the *Dignity and Respect Policy and Procedures for Students and Employees* details of which can be found here: <https://www.ul.ie/policy-hub/>.

## Formal Sexual Harassment and Sexual Violence complaints should be made in line with section the *Sexual Violence and Harassment (SVH) Policy for Students and Staff* and the *Sexual Violence and Harassment (SVH) Procedure for Students and Staff* details of which can be found here: <https://www.ul.ie/policy-hub/>

## **Precautionary Measures**

## The University may decide that interim precautionary measures may be required to be put in place following the submission of a formal complaint pending the outcome of an investigation process. A precautionary measure is not a penalty or a sanction and does not indicate that it has been concluded that the person concerned has committed a breach of “The Policies”. Rather these precautionary measures may be put in place in the best interests of all parties involved including any witnesses. Any decision made in relation to any precautionary measures will be made by the Director, Human Resources. The complainant and respondent will be informed of the decision as it relates to them, in writing.

## Potential precautionary measures may include the following:

* Alternative line management structure;
* Voluntary no contact agreement;
* Require the respondent not to contact the complainant and/or certain witnesses.
* Alternative working arrangement, such as remote working, agreed change in working hours.
* Neutral suspension from work. The process for placing any employee on suspension will be in accordance with Section II – 1 - C of *Statute No. 4: Statute on Disciplinary Matters, Suspension, Termination and Capacity* (hereinafter, “Statute No. 4”), which can be found [Here](https://www.ul.ie/media/8700/download?inline)
* As an alternative to suspension, an employee may be given the option of taking voluntary leave.

**The above precautionary measures, are not exhaustive and do not amount to a penalisation or sanction on any of the parties concerned.**

## **Principles of the Formal Procedure**

## The objective of an investigation is to determine whether or not, on the balance of probabilities, the behaviours complained of occurred. Evidence and any witness statements will be relied on for this purpose.

## The Director of Human Resources or their nominee may nominate a Human Resources Representative for the purposes of administering the investigation process. The Human Resources Representative will have a co-ordinating, advisory and compliance role and will have no role in the investigation, apart from being a liaison person for the relevant parties and the investigator(s).

##  Those involved in supporting or administrating the investigation will not be connected in any way with the complaint itself. Should any role holder specified as playing a part in these procedures be themselves subject to these procedures, the President will nominate an appropriate person to assume the relevant authority in their place. Should the President be the subject of a complaint, these procedures will be appropriately adapted by the Governing Authority to enable the application of due process.

## The investigation will be carried out in a timely manner with due respect to the rights of both the complainant and the respondent and will, in so far as is reasonably practicable, be carried out with the minimum of delay, consistent with fairness and due process to both parties. Timelines as set out in the procedures /terms of reference should be adhered to.

## It is a requirement that all parties involved maintain confidentiality. Information is, however, subject to any limits or disclosure requirements imposed by law, by this procedure or by the Freedom of Information Acts and the Data Protection Acts.

## All parties are obliged to co-operate and make themselves available as a matter of priority to ensure that the investigation can be completed within a reasonable timeframe.

## The nature of the allegations may mean that it is necessary to notify legal or regulatory authorities, which as a consequence might require the University to comply with an investigation led by a legal or regulatory body, which may take precedence over this procedure. This procedure may continue in parallel or may have to be suspended and continued later.

## Every effort will be made to take precautionary measures that are deemed reasonable and necessary where instances are reported to enable issues to be addressed and to support individuals involved.

# 6. Procedures for Investigation

#### The appointment of independent investigators

#### An independent internal investigation committee or an external independent investigator shall be appointed to conduct all formal investigations. The investigator(s) shall not be connected in any way with the complainant, the respondent or the subject matter of the complaint. The investigator(s) may be an internal or external appointment. The objective of the investigation is to ascertain the facts relating to the alleged incidents and to make a finding, based on the balance of probabilities as to whether the complaint is upheld in whole or in part or is dismissed.

#### Both the complainant and respondent will be provided with the relevant details of selected investigator(s), which will include their contact details.

* 1. **The Investigation Process**
		1. The investigator(s) will issue terms of reference to the complainant and respondent, which will be developed in accordance with this procedure. The terms of reference will outline proposed timelines of the investigation, which should be adhered to by all parties. If it is not possible to adhere to the proposed timelines for whatever reason, this reason will be communicated to both the complainant and respondent.
		2. The investigator(s) will determine the appropriate means of recording investigation meetings and this will be communicated to the complainant, respondent, or any witness in advance of the meeting.
		3. Statements taken during the investigation process including those of witnesses will be provided to both the complainant and respondent to ensure fairness and transparency. The complainant and respondent will be given an opportunity to respond to the statements.
		4. The investigator(s) will request, collate, and look objectively at all evidence pertinent to the complaint.
		5. Parties involved in the investigation have the right to be accompanied during a formal investigation meeting. Employees may be accompanied in a support capacity by a work colleague, Unite trade union official or family member or friend.
		6. Witnesses that are called to participate in an investigation, that are associated with UL may be accompanied by work colleague/ Unite trade union official.
		7. The advice and assistance of an outside expert will be available to the Investigator(s) if deemed necessary by the University.
		8. The University will provide reasonable accommodations during an investigation process to ensure the process is accessible for all parties. A translator will be provided where required.
		9. During an investigation process, parties should be given at least 5 working days’ notice of the requirement to attend any meetings unless there is agreement to a shorter notice period between the investigator(s) and the relevant party. Where parties are required to confirm their own statement or respond in writing to another party statement, this should be done within 5 working days.
		10. In the normal course of an investigation, the investigator(s) will meet with the complainant in the first instance. The respondent will be provided with a copy of the complainant’s statement and will be given a full opportunity to respond.
		11. Both the complainant and the respondent will be given a fair opportunity to state their position in relation to the allegations made before any conclusions are reached.
		12. Both the complainant and respondent may nominate witnesses that are relevant to the investigation to the investigator(s). The investigator(s) alone shall decide who they deem appropriate to interview, and/or request statements from, with a view to establishing the facts.
		13. The Investigator(s) may proceed with the investigation notwithstanding the non-attendance of the complainant, respondent or witness.
		14. The Investigator(s) will give the complainant and the respondent an opportunity to respond to the evidence of others, as it relates to them.
		15. The Investigator(s) will prepare a Draft Investigation Report (normally compiled within 15 working days of the conclusion of the investigation). The investigator(s) shall consider all evidence presented and shall make their findings based on the balance of probabilities. Interview records, including those of witnesses and relevant evidence presented and obtained by the Investigator(s) which are relied on to make findings will be appended to the Investigation Report.
		16. A draft report of the Investigator(s) will be sent to the complainant and respondent for an opportunity to review the report and to identify any factual errors. Both parties will have 10 working days to respond to the draft report. The Investigator(s) will give consideration to any responses provided and will provide a reasoned commentary on consideration of these aspects in their final report.
		17. The investigator(s) will provide the final report to the Human Resource Director or their nominee. The Human Resource Director or nominee will then provide a copy of the final report to the complainant and respondent.
		18. Where it is concluded that bullying, harassment, sexual harassment, or sexual violence has taken place, the Investigator(s) will note the extent of the behaviour.
		19. Where a complaint is not substantiated, the Investigator(s) will stipulate whether or not they have reason to believe that the complaint was false, malicious or vexatious in its intent.

#### Outcome of the Investigation

### The Director of Human Resources or their nominee will write to both the complainant and the respondent informing them of the outcome of the investigation. A copy of the Investigator’s report will also be provided. The content of the letter and report will be kept confidential by all parties involved.

### Where there is a finding that the matter complained of is upheld, in whole or in part and the investigator has established that there has been a breach of “The Policies”, appropriate action will be taken as determined by the Director, HR or their nominee. Such actions may include progression through Statute No 4 and appropriate disciplinary action may be taken up to and including dismissal. The investigation report can be relied upon during a subsequent disciplinary procedure. Information on any action taken, including whether a disciplinary process is invoked in respect of the employee against whom the complaint is made, will be confidential and not shared with the complainant.

### In some circumstances, disciplinary action may be inappropriate. Alternative measures may include training, counselling and/or a period of monitoring and appraisal. Should these actions prove unsatisfactory, disciplinary action may then be invoked.

### Where there is a finding that the matter complained of is not upheld, no action will be taken against the complainant provided that the complaint was made in good faith. In the interests of all employees, any false, malicious or vexatious complaints will be treated very seriously and may lead to disciplinary action against the complainant. Victimisation or retaliation against a complainant, witness or any other party will constitute a serious disciplinary offence.

### In line with the University’s health and safety responsibilities, the working environment where the complaint arose will be monitored to ensure there is no reoccurrence, and that any controls that need to be put in place to prevent such issues recurring are identified.

### Regardless of the outcome, it is recognised that investigations can result in divisive relationships and some type of reconciliation or rehabilitative meetings, mediation or training may be considered as appropriate to restore healthier working relationships for the future.

1. **Appeal**

### If a complainant or respondent is dissatisfied with the outcome of the formal complaint, they have the right to appeal the outcome on either of the following grounds:

* A material procedural irregularity demonstrably affected the outcome. In this instance, the appeal will focus on the conduct of the investigation in terms of fair process and adherence to procedure. It should be noted that an appeal is not a re-hearing of the original issues.
* There is material new information that one of the parties was unable, for valid reasons, to provide when the matter was being investigated and that would have significantly affected the outcome.
	1. If a complainant or respondent chooses to appeal, they must comply with the following conditions:
* The appeal form must be completed and submitted within 10 working days of receiving notification of the outcome of the investigation. (See Appendix 1) The appeal form must provide sufficient detail on the grounds for the appeal. Failure to submit the form by the deadline will mean that this internal procedure is concluded.
* The relevant supporting documents must be provided along with the appeal form.

### The appeal will be conducted by an external independent appeal person appointed by the Director of Human Resources or their nominee, who has not previously been involved in the investigation of the complaint and will focus only on the aspect of the basis of the appeal cited by the appellant as being the subject of the appeal. The complainant and respondent will be notified in writing with details of the appointed appeals person.

### The appeal will take place in the form of a review of the investigation process, including the investigation report, complainant, respondent and witness statements and any other evidence gathered as part of the investigation process. The appeals person reserves the right to meet with any party they deem necessary for the purpose of considering the grounds of appeal. The appeals person will communicate their decision in writing to the Director, HR or their nominee.

### The Director, HR of their nominee will communicate the decision of the appeals person to both the complainant and respondent normally within 20 working days from the commencement of the appeal.

### The appeals person can make one of the following decisions:

* + Dismiss the appeal
	+ Uphold the appeal in whole or in part
	+ Uphold the appeal and direct that a new investigator be appointed to conduct a new investigation

### The decision of the appeal’s person is final and may not be further appealed within UL.

**9. Withdrawal of Complaints**

* 1. From time to time, complainants may seek to withdraw their complaint after initiating a formal investigation. A complaint can be withdrawn by emailing Human Resources at DignityResp.Employee@ul.ie (when the Respondent is an employee).
	2. In the event of a complaint being withdrawn by the Complainant, UL reserves the right to investigate the claim or the reason for its withdrawal. At its discretion, UL may conduct an investigation in the interests of each party involved or in consideration of its duty of care.

# 10. Investigations by An Garda Síochána

* 1. Where the complainant identifies a breach of this policy that constitutes a potential criminal offence or an immediate threat to safety, they have the right to report the matter to the Gardaí. Individuals should also inform UL through school/department/division heads so that appropriate steps can be taken and support provided.
	2. Should a complaint submitted to UL be investigated by An Garda Síochána, the University reserves the right to suspend its own investigation, based on the individual facts of the case, until the investigation by An Garda Síochána has come to an end. Once UL is notified by the complainant that the Garda investigation has been completed, its investigation will commence.
	3. Furthermore, An Garda Síochána may request that UL’s internal investigation be suspended until An Garda Síochána states that the internal investigation can resume. UL will keep the situation under review. The complainant and respondent will have the right to contest this decision, which will be considered by UL.

**11. Statutory Redress**

This Procedure is designed to support employees in the resolution of complaints of bullying/harassment/discrimination/sexual harassment/sexual violence. However, it does not prevent employees from exercising their statutory entitlements under the Industrial Relations Acts, 1946 to 2015, the Employment Equality Acts 1998 – 2015, or the Safety, Health and Welfare at Work Act 2005.

**12. Appendix 1**

## **[Appeal Form](https://forms.office.com/e/nNCtiBPW62)**

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| A logo with green text  Description automatically generated**Dignity and Respect Policy and Procedures for Students and Employees Appeal Form** |
| This form is to be completed online and submitted via the link provided above within 10 working days of receiving the investigation outcome notification. Failure to meet the deadline concludes the internal procedure. |
| **1. Appellant Information** |
| Case Reference and/or Description |  |
| Appellant name |  |
| Appellant UL ID number |  |
| Address |  |
| Contact email |  |
| Contact phone number |  |
| **2. Reason for Appeal** |
| 1. Specify the reason for your appeal in accordance with Section 8 of the Dignity & Respect, Sexual Violence & Harassment Formal Complaints Investigation Procedure (Employees) |  |
| 2. Specify any material new information that, for valid reasons, it was not possible to provide when the matter was being investigated and that would have significantly affected the outcome (if applicable) |  |
| Upload supporting documentation (if any) |  |
| **3. Declaration**I certify that the information provided in this appeal form is true and accurate to the best of my knowledge. I understand that providing false information may result in disciplinary action. I consent to UL using the information provided in this form to investigate and resolve this appeal. I also consent to the information being shared with the investigating team and decision-making bodies and, at the discretion of University of Limerick, with the other parties involved in the case. Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **4. Submission Instructions**Please click the Submit button at the end of this online form to submit the completed form. Please refer to the Student Dignity & Respect Policy and Procedures for further guidance and assistance on the complaint and appeal processes.Note: In circumstances where the submission link is not accessible, this appeal form can be completed by either the Complainant or the Respondent and emailed to DignityResp.Employee@ul.ie (when the Respondent is an employee) along with attached supporting documents within 10 working days of receiving the investigation outcome notification.Thank you for your cooperation in upholding University of Limerick’s commitment to creating a safe, inclusive and respectful environment for all members of the UL community. |

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