

EUROPEAN SOUTHERN OBSERVATORY

**A policy on fair treatment, courtesy and
respect**

1 May 2010

Fair Treatment, Courtesy and Respect

Policy Statement

ESO is committed to creating a work environment that is safe, professional and of mutual trust where diversity and inclusion are valued and where everyone is entitled to be treated with courtesy and respect. Consequently ESO will not tolerate any form of harassment on any site towards its members of personnel or other persons.

With the attached document “Definitions and Procedures in cases of Harassment” ESO Management would like to sensitise members of personnel on this matter, informing about possible forms of harassment at work and its serious negative effects. The document also aims to provide to members of personnel proper guidance to deal with harassment in the workplace and to give them confidence to challenge such behaviours without fear of retaliation.

Please note: Consistent with its respect for staff privacy, ESO does not take an interest in personal conduct and behaviour outside of work – unless such conduct or behaviour impairs the members of personnel’s work performance, affects other members of personnel of ESO or affects the reputation or legitimate business interest of ESO.

Definitions and Procedures in cases of Harassment
1 May 2010

1.0 Scope

Following the policy on fair treatment, courtesy and respect, as well as based on the respective Chapters on “Rights, Duties, Obligations and Privileges”, “Health and Safety” and “Disciplinary Measures” of the Staff Rules and Regulations (SRR) and the Regulations for Local Staff in Chile (RPL), this document aims at:

- drawing attention to the different forms of harassment at work;
- raising awareness of the effect of behaviour on others;
- outlining the responsibilities;
- assisting members of personnel to find effective ways to deal with behaviour they find difficult and/or unreasonable;
- establishing the use of informal harassment contacts to assist members of personnel who may be victims of inappropriate behaviour, or, in certain circumstances, the perpetrators of it; and
- referral to the formal procedure within this document, and to the appropriate disciplinary procedure where necessary.

Where the alleged harasser is a contractor/hired manpower/agency worker, Annex 2 would apply.

2.0 Harassment defined

There are a number of terms used to describe inappropriate behaviour in the workplace, including harassment, sexual harassment, discrimination and abuse of authority. The following definitions are adapted from guidance provided by the United Nations:

2.1 What is Harassment?

Harassment is any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person. Harassment may take the form of words, gestures or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another or which create an intimidating, hostile or offensive work environment. Harassment normally implies a series of incidents, but can be a one-off serious incident. It is important to note that harassment is not defined by the intention of the perpetrator, but instead by the impact of their behaviour on the recipient.

2.2 What is Sexual Harassment?

Sexual harassment is any unwelcome sexual advance, request for sexual favour, verbal or physical conduct or gesture of a sexual nature, or any other behaviour of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation to another, when such conduct interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive work environment. While typically involving a pattern of behaviour, it can take the form of a single incident. Sexual harassment may occur between persons of the opposite or same sex. Both males and females can be either the victims or the offenders.

2.3 What is Discrimination?

Discrimination is any unfair treatment or arbitrary distinction based on a person's race, sex, religion, nationality, ethnic origin, sexual orientation, disability, age, language, social origin or other status. Discrimination may be an isolated event affecting one person or a group of persons similarly situated, or may manifest itself through harassment or abuse of authority.

2.4 What is meant by “abuse of authority”?

Abuse of authority is the improper use of a position of influence, power or authority against another person. This is particularly serious when a person uses his or her influence, power or authority to improperly influence the career or employment conditions of another. Discrimination and harassment, including sexual harassment, are particularly serious when accompanied by abuse of authority.

2.5 What does not constitute Harassment?

Disagreement on work performance or on other work related issues is normally not considered harassment and is not dealt with under the provisions of this policy but in the context of performance management. It is not harassment for a supervisor or other members of personnel to request a colleague completes their work to an appropriate standard and in an appropriate way. Unless these requests are made in a manner which is demeaning or intimidating, or in any other way that is inappropriate, these requests do not constitute harassment.

2.6 Malicious or petty complaints

ESO takes complaints about harassment very seriously and encourages anyone who feels they are experiencing inappropriate behaviour to raise this as an issue in order that it can be stopped. Just as complaints of harassment are treated seriously, so are malicious or petty complaints. Appropriate disciplinary action, as foreseen in the respective Regulations, may be taken when it can be demonstrated that a complaint has been made on a petty or malicious basis.

2.7 What is Victimisation?

Victimisation or retaliation may occur when an individual is adversely treated because she/he have made a complaint of discrimination or harassment, or has assisted or provided evidence in such a case. Victimisation or retaliation against a member of personnel will not be tolerated and will be treated seriously and consequently. Measures may be taken to prevent any potential victimisation/retaliation.

3.0 The effects of Harassment?

All forms of harassment in the workplace are damaging to both members of personnel and the employer. ESO does not underestimate the damage, tension and conflict within the workplace that harassment can create. It also recognises that recipients of harassment can feel stress and anxiety which can put great strains on their professional

and private lives. The results can be poor morale and work performance, higher absenteeism, and a divided workforce. All of these have a direct impact on the Organisation.

4.0 Responsibilities

4.1 The Organisation's Responsibility

ESO will ensure that adequate resources are made available to deal effectively with complaints of harassment in the workplace. Appropriate training and awareness events will be provided to members of personnel, supervisors and HR Officers.

ESO will appoint individuals known as Harassment Contact Persons (HCP), and Mediators from across the Organisation and/or external specialists. Individuals who are appointed internally will receive appropriate training. Those persons will provide advice and assistance to members of personnel who believe they have been subjected to harassment, have been accused of harassment, have witnessed harassment, or need advice regarding harassment issues. For further information please see the chapters 4.4 and 4.5.

All complaints of harassment will be dealt with as promptly as possible. Confidentiality will be maintained at all times, unless the behaviour being reported represents a risk to other members of personnel, the person themselves, or constitutes a criminal offence which calls for immediate action. In these situations, the person will be informed that confidentiality cannot be maintained.

4.2 The Supervisor's Responsibility

Supervisors should be fully aware of this policy and the procedure for dealing with complaints, and set a good example by treating all staff and stakeholders with dignity and respect. In addition, supervisors have a general responsibility for ensuring a good and harmonious working environment in which no-one feels threatened or intimidated.

Supervisors should be aware that members of personnel affected by harassment may be reluctant or nervous about complaining. They may be worried about not being taken seriously, about reprisal, about damaging their career prospects and about creating a bad atmosphere in the workplace. Supervisors have the responsibility to be aware of this, and take steps to quickly resolve problems in a sensitive manner. Support for members of personnel who have indicated they are experiencing harassment, have been accused of harassment, or indicate they have witnessed harassment, is likely to be necessary.

It is the responsibility of supervisors to ensure that prompt action is taken to stop any form of harassment, that potentially offensive material is not displayed or circulated in the workplace and that members of personnel are aware of this policy statement.

Supervisors who are approached by a member of personnel complaining of harassment must ensure that they treat the matter seriously, confidentially and sensitively and that the member of personnel is quickly and correctly advised of the procedures available to them. In order to ensure confidentiality, complaints of harassment should not be

discussed with anyone other than the member of personnel who raised the complaint and the alleged member of personnel unless in those circumstances where confidentiality has to be broken due to the severity of the reported behaviour.

4.3 Responsibilities of members of personnel

Every member of personnel has a responsibility to familiarise themselves with this policy and comply with it.

Members of personnel have a role to play in helping create an environment at work in which harassment is known to be unacceptable. They can contribute to preventing harassment through awareness of the type of behaviour which may demonstrate harassment, and ensuring that their own standards of behaviour do not cause offence.

Members of personnel should take action if they observe that a colleague may be being harassed. They may want to talk to the recipient of the behaviour, to challenge the person demonstrating inappropriate behaviour, talk to the supervisor, or if the supervisor is involved help is available from:

- The Harassment Contact Person;
- The Staff Association/the Union;
- The next hierarchical supervisor (Head of Department/Head Division/Director);
- The HR Special Advisor; and/or
- The Head of Human Resources.

4.4 The Role of the Harassment Contact Person (HCP)

Each HCP is appointed by the Director General for a period of two years renewable. There shall be two HCPs appointed for the Paranal Observatory and APEX, one for the La Silla Observatory, one for the Vitacura office/ Santiago and two appointed for the Headquarters in Garching. An updated list of HCPs is available on the homepage of HR.

The HCP is impartial and her/his role is to provide information and guidance to members of personnel who feel they are being harassed/ (the Claimant), members of personnel accused of harassment (the Respondent), members of personnel who indicate they have witnessed harassment, or others seeking support around harassment issues. The same HCP cannot act for both claimant and respondent within the same case.

The HCP can:

- Offer a private and confidential environment to encourage discussion of the alleged incident(s);
- Listen to individuals and encourage them to speak freely about the alleged incident(s);
- Discuss with individuals the courses of action open to them;
- Support individuals through their chosen action if required by the individual;
- Meet with the member of personnel if required by the individual after the problem has been resolved, to ensure that the transition back to normal working is smooth and to ensure that any risk of victimisation is minimised.

When a member of personnel makes a formal complaint, the HCP may help the member of personnel put the complaint in writing to their supervisor or the HR Special Advisor.

The HCP cannot tell an individual what action to take or investigate a complaint of harassment. HCPs must maintain confidentiality at all times unless the behaviour being reported represents a risk to other members of personnel, the person themselves, or constitutes a criminal offence which calls for immediate action. In these situations, the person will be informed that confidentiality cannot be maintained.

4.5 The Role of the Mediator

Each Mediator is appointed by the Director General for a period of two years renewable. There shall be at least two mediators appointed for Garching and at least two for Chile. An updated list of Mediators is available on the homepage of HR.

The Mediator is impartial to the events leading up to a formal complaint. They have responsibility to work with the parties concerned towards reconciliation.

The role of the Mediator is to:

- Listen to all parties;
- Mediate and try to reconcile the parties (where appropriate); and
- Remain entirely impartial throughout the process.

5.0 Making a complaint

Key stages in making a complaint

Allegations and incidents of harassment can often be most effectively resolved if they are raised at an early stage, and dealt with promptly, rather than left until the matter has become more serious.

To make sure that it is possible to be accurate later, it is important that anyone who feels they have suffered discrimination, harassment or victimisation should keep a note of the details outlined below for each incident. This information should be recorded, whether the complaint is to be handled informally or formally, as it may be required during any subsequent investigation. These notes should be made as soon as possible after each incident and should include:

- Date and time of incident;
- Place of incident;
- Name of the alleged offender;
- What actually happened;
- How the member of personnel felt at the time;
- Name of anyone else present at the time;
- Action taken, including whether the matter was reported to e.g. the Supervisor/Head of Department/Division or Representative of Staff Association or Union or the HCP or the HR Special Advisor; and
- Any correspondence relating to incidents/subsequent complaints.

There are four stages involved in raising a complaint of harassment.

- Stage 1. Seeking advice/support when the member of personnel feels that she/he is being harassed;
- Stage 2. Informal Resolution;
- Stage 3. Formal Complaint; and
- Stage 4. Formal Investigation

The approach taken to resolve complaints is determined by the member of personnel; unless the alleged behaviour is very serious in nature.

In most cases, it is expected that progression to Stage 3 will not be made unless Stage 2 has been completed – i.e. the respondent has been made aware that her/his behaviour is unacceptable and has had the opportunity to change her/his behaviour. Exceptions to this can be made when the alleged behaviour is very serious in nature.

Stage 1: Seeking advice/support when a member of personnel feels that she/he is being harassed

If she/he feels that she/he is being harassed, there are a number of people she/he can speak to confidentially. These include:

- Supervisors;
- The International Staff Association/the Union;
- A HCP; and
- The HR Special Advisor.

She/he can speak to these people for a number of reasons, including:

- Simply talking the incident through
- Understanding what options are available
- Getting advice on how to challenge the behaviour

It is important to note that these conversations will be entirely confidential unless the member of personnel tells the person about something that is so serious it represents a risk to ESO members of personnel or others. If the person feels they have to break confidentiality, they will inform the member of personnel concerned.

Outcomes from this meeting can include:

- The member of personnel decides to do nothing (no formal record will be made of the issue(s) discussed);
- The member of personnel decides to take some form of action. The possible actions are outlined in Stages 2 and 3b, below; or
- The nature of the incident is deemed serious enough to immediately make a Formal Complaint. The action is outlined in Stage 3 below.

Stage 2: Informal Resolution

Conflict situations such as harassment can in many cases be resolved informally, thus causing less stress for all parties. An informal resolution is likely to produce solutions which are speedy, effective and restore positive relationships in the workforce. Resolving matters informally means that the person concerned is made aware that their behaviour is unacceptable. This can happen through the following methods:

- The member of personnel decides to challenge the person causing the problem
- The member of personnel asks a third party to challenge the person concerned

Wherever possible, members of personnel should tell the person who is causing the problem that the conduct in question is unwanted and/or offensive and must stop. If the member of personnel does not feel that she/he can speak to the person directly about their behaviour, she/he can ask a third party to speak to them on her/his behalf. The third party can be e.g. the Supervisor/Head of Department/Division/Director or Representative of Staff Association/ Union or the HCP or the HR Special Advisor.

A potential outcome of informal resolution can be that both parties agree to mediation.

The benefits of informal solutions should not discourage members of personnel from using formal procedures where the behaviour is very serious in nature, or in circumstances where a previous attempt at informal resolution or reconciliation has proved unsuccessful or in case of repetition. In these situations, a formal complaint can be raised, as outlined in Stage 3b.

Stage 3: Formal Complaint

3a – Immediate Formal Complaint

If the nature of the complaint is deemed serious enough to immediately make a formal complaint, considering the SRR Article R I 3.07, and RPL Article R I 3.10. Where this is the case it will be handled in line with the SRR Article R II 5.01 – 5.14, and RPL Article II 4.01 – 5.04.

3b – Formal Complaint following Informal Complaint

If informal attempts have been unsuccessful, or if the behaviour is too serious to be dealt with using informal procedures, a formal complaint shall be made.

Where it has been decided that a formal complaint should be made, the member of personnel should put the complaint in writing to the HR Special Advisor, preferably after discussing the case with a HCP. The complaint should include the following details:

- The exact nature of the complaint including, if relevant, locations, dates, and times of particular incidents;
- The name(s) of the individual(s) complained of; and
- The name(s) of witness(es) to relevant incident(s) and details of any action taken by the complainant or any other party.

On receipt of a written formal complainant, the HR Special Advisor will then:

- Acknowledge the complaint in writing; and
- Inform the Head of Human Resources of the complaint. This is in confidence, and there is not a requirement at this stage to disclose the details of the case.

After consultation with the complainant the HR Special Advisor shall recommend to the complainant how the formal complaint could be handled. If appropriate, the HR Special Advisor and/ or the mediator will work with the members of personnel that are identified in the complaint to help them reach an agreement that will sort out the problems without the need to have further formal investigation. This approach is voluntary, and will need all parties concerned to consent to mediation.

If consent is not obtained for mediation, then a Panel will be convened, or mediation is unsuccessful, the HR Special Advisor will consult with the Head of Human Resources to convene a Panel to investigate the matter further, and a summary of the circumstances will be provided to the Panel.

Stage 4: Formal Investigation

4.1 Terms of reference

The Panel will examine cases submitted to it by investigating the allegation of harassment. This will involve:

- writing to the alleged harasser detailing the allegations;
- interviewing the complainant, the respondent and any other relevant people such as named witnesses;
- maintaining comprehensive notes of any interviews carried out; and
- producing a report of its investigation.

The investigation must be objective and handled with sensitivity and due respect for the rights of both the member of personnel and the alleged harasser.

The Panel will make substantiated recommendations to the Director General concerning:

- the nature of the allegation/incident (harassment, discrimination, abuse of authority or other);
- possible disciplinary actions; and
- possible further actions to resolve the case (e.g. special training, re-assignment etc.).

The Panel shall be composed of three members:

- a Chairman, who is a senior member of personnel of the Organisation, appointed by the Director General with the agreement of the President of the Staff Association or the respective President of the Union the complaint belongs to; and

- two advisers, one appointed by the Director General and one by the Staff Association or the Union the complainant belongs to.

The Chairman and his advisers each have a deputy appointed in the same way as them. The deputies may attend all the meetings of the Panel but are not entitled to vote.

No member of the Panel may at the same time be a member of the Joint Advisory Disciplinary Board or the Joint Advisory Appeals Board.

Where the persons involved in the case object to the member appointed by the Director General, or by the Staff Association or Union, that member shall be replaced by the deputy member.

The member of personnel and the alleged member of personnel whose case is under investigation may either attend the hearing of the Panel alone or be assisted by a member of personnel of her/his choice. If so justified and subject to the prior approval of the Chairman, the members of personnel may also be represented or assisted by a person from outside the Organisation appointed by her/him for this purpose. Related costs have to be borne by the member of personnel.

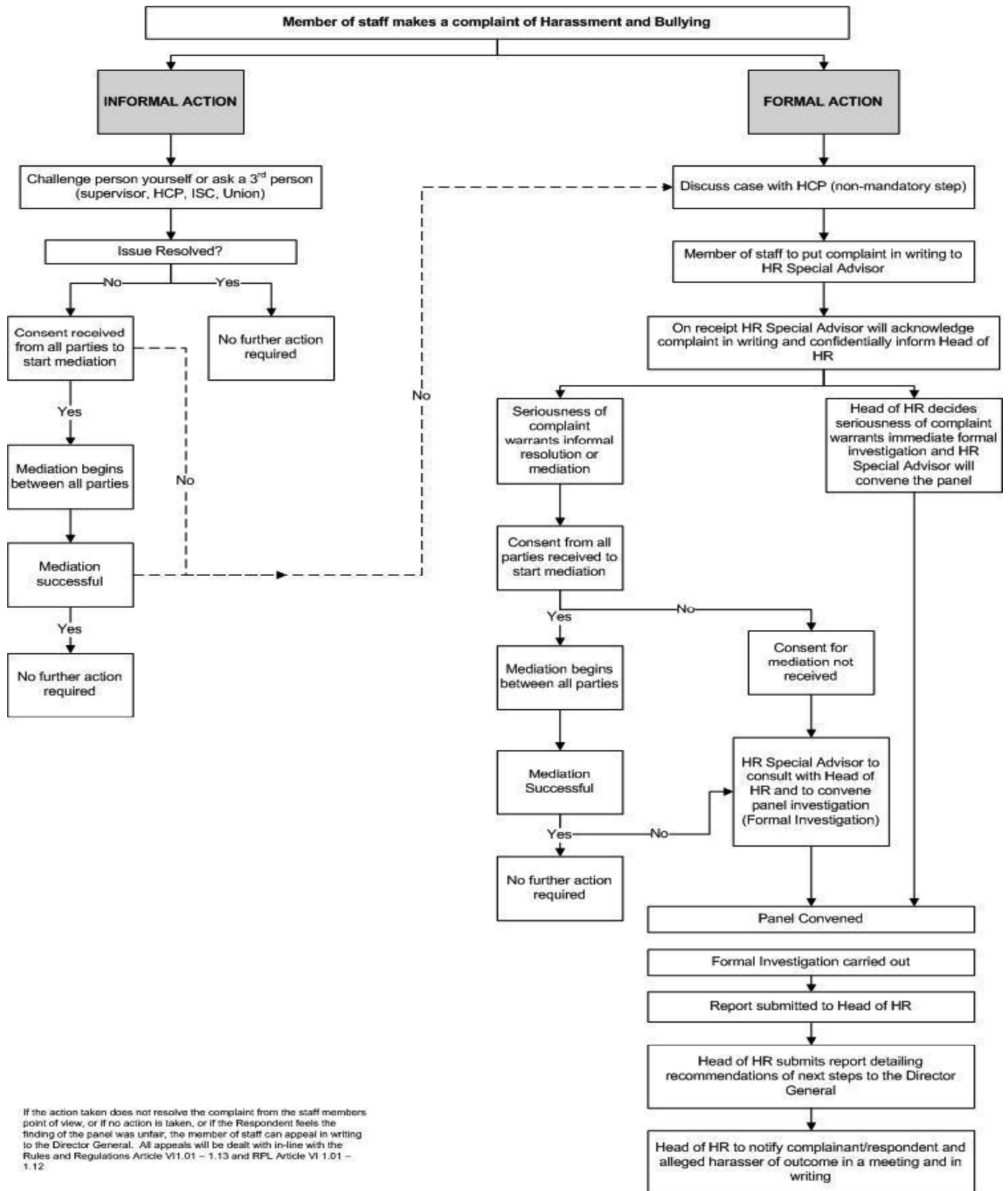
The Panel is administratively supported by Human Resources.

4.2 Procedure

The proceedings of the Panel are confidential:

1. The Chairman, acting with the authority of his advisers, will represent the Panel in all procedural actions.
2. The member of personnel which refers a case to the Panel will provide all the information as outlined in Stage 3 of this memorandum as well as with further information which she/he considers necessary.
3. Within 15 calendar days of its receipt the Panel will write to the alleged harasser detailing the allegations.
4. Latest 15 days after the date of informing the alleged member of personnel the Panel shall give a separate hearing to the member of personnel and the alleged member of personnel whose case is under investigation.
5. The Panel may hold as many meetings as it considers necessary in the presence or absence of the parties. A record of the meetings of the Panel will be drawn up.
6. The Panel may on its own behalf or at the request of one of the parties order any enquiry or investigation which it considers necessary. The cost of such enquiries and investigations ordered by the Panel will be covered by the Organisation.
7. The Panel may, with the agreement of both parties, decide to stay its proceedings.

8. The Panel's recommendations shall require the majority approval of the Panel and shall be submitted to the Director General by the Chairman within 30 calendar days after the date of the last meeting.
9. The Director General will inform the persons concerned of her/his decision, giving the reasons therefore, within 60 calendar days following the last meeting of the Panel and will inform him at the same time of her/his right of appeal (SRR Chapter VI , RPL Chapter VI), with copies to the Panel.



If the action taken does not resolve the complaint from the staff members point of view, or if no action is taken, or if the Respondent feels the finding of the panel was unfair, the member of staff can appeal in writing to the Director General. All appeals will be dealt with in-line with the Rules and Regulations Article VI1.01 – 1.13 and RPL Article VI 1.01 – 1.12

Breaches of the Policy by Contractors or Agency Workers

In cases where a member of personnel perceives that they are subject to alleged harassment by contractors the member of personnel should seek to resolve their concerns in accordance with the informal process outlined above. Where such action does not resolve the member of personnel's concern, the complaint must be raised to the Head of Human Resources.

Human Resources will contact the nominated member of personnel for contract monitoring to advise them of the situation who will ensure details of the allegations are confirmed to the employer of the contractor/agency worker in writing.

The employing contractor/agency will be asked to investigate the concerns raised and take appropriate action.

Consideration will be given by ESO to request the contractor/agency removing the alleged harasser either during or as a result of the investigation.