

<b>DECISION No:</b>	<b>2009/02</b>
<b>SUBJECT:</b>	<b>Decision of the Executive Board on policy of the European Union Agency for Fundamental Rights on protecting the dignity of the person and preventing psychological harassment and sexual harassment</b>
<b>PERSON RESPONSIBLE:</b>	<b>Director</b>
<b>STATUS:</b>	<b>Final</b>

THE EXECUTIVE BOARD OF THE EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS,

HAVING REGARD to the Council Regulation (EC) n° 168 /2007 of 15 February 2007 establishing the European Union Agency for Fundamental Rights (hereafter “the Agency”), and in particular Articles 15 and 24 thereof,

HAVING REGARD to the Staff Regulations of Officials and Conditions of Employment of Other Servants of the European Communities, laid down by Council Regulation (EEC, EURATOM, ECSC) No 259/68, and in particular to Articles 1d, 12 and 12a of the Staff Regulations concerning behaviour which may infringe human dignity and Article 11 of the Conditions of Employment of Other Servants,

Following consultation with the Staff Committee on 25 May 2009 and subject to the agreement of the Commission pursuant to article 110 of the Staff Regulations,

Whereas:

- (1) The European Union Agency for Fundamental Rights (FRA) affirms its commitment to foster a sound and non-discriminatory working environment in which the dignity and respect of individuals under all circumstances shall be protected.
- (2) Psychological harassment and sexual harassment at work are serious problems which FRA shall strive to prevent by promoting a culture free of all forms of violence in the workplace in which such harassment is unacceptable.
- (3) Both psychological harassment and sexual harassment stem from different issues but have certain similarities. An informal procedure common to these two forms of harassment should therefore be opened through the network of confidential counsellors and arrangements laid down applicable to the common formal procedure under Articles 24 and 90 of the Staff Regulations.

- (4) Steps should therefore be taken to:
- a. introduce a common policy of prevention of psychological harassment and sexual harassment within the context of the Staff Regulations;
  - b. introduce an informal and formal procedure relating to psychological harassment;
  - c. take appropriate action in accordance with the Staff Regulations against any person who is found guilty of psychological or sexual harassment at the end of a formal procedure.

HAS DECIDED AS FOLLOWS:

**Article 1**

The document entitled “Policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment” annexed to this Decision is hereby adopted.

**Article 2**

This decision shall take effect on the day following its adoption.

Done at Vienna, 18/09/2009



Anastasia Crickley  
Chairperson of the Executive Board

## ANNEX

### **POLICY OF THE EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS ON PROTECTING THE DIGNITY OF THE PERSON AND PREVENTING PSYCHOLOGICAL HARASSMENT AND SEXUAL HARASSMENT**

#### **1. INTRODUCTION**

As an employer and to protect its staff, the FRA must guarantee respect for the dignity of women and men at the workplace. FRA shall foster a sound and non-discriminatory working environment and in which the dignity and respect of individuals under all circumstances shall be protected.

Article 11 of the Conditions of Employment of Other Servants and Article 12a of the Staff Regulations explicitly condemn psychological and sexual harassment and define a common understanding of the two forms as follows:

- “Psychological harassment” means any improper conduct that takes place over a period, is repetitive or systematic and involves physical behaviour, spoken or written language, gestures or other acts that are intentional and that may undermine the personality, dignity or physical or psychological integrity of any person.
- “sexual harassment” means conduct relating to sex which is unwanted by the person to whom it is directed and which has the purpose or effect of offending that person or creating an intimidating, hostile, offensive or disturbing environment.

The FRA policy to prevent harassment is a protection tool for persons employed by the FRA. In this context, the victims and the possible witnesses will benefit from FRA’s protection guaranteed under Article 11 of the Conditions of Employment of Other Servants and Article 24 of the Staff Regulations.

The policy will promote the development of an organisational culture in which every member of staff feels personally bound to respect and protect the dignity of his/her colleagues. In a professional environment in which different languages and culture coexist, generating a huge variety of interactions, these phenomena of violence may take a variety of forms and be perceived in a variety of ways. However, any conduct which does not respect the dignity of the person must be condemned.

The FRA will take the necessary steps to prevent and punish, under the Staff Regulations and the relevant EU legislation, any conduct that prejudices the dignity of its staff in the workplace and undermines its good name<sup>1</sup>. Any contact deemed to constitute psychological or sexual harassment is regarded by FRA as unacceptable and will be punished regardless of the rank of the individuals formally recognised as guilty of such conduct<sup>2</sup>.

The goals of the FRA harassment-prevention policy are:

- to promote a culture in which psychological and sexual harassment, like other forms of violence in the workplace, are considered unacceptable and are neither tolerated nor ignored;

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<sup>1</sup> See Article 12 and 12a of the Staff Regulations.

<sup>2</sup> See Article 86 of the Staff Regulations and Article 9 of Annex IX.



- to introduce a policy of prevention by raising staff awareness and providing information, training and counselling;
- to introduce effective procedures (the informal and formal procedures) to protect the dignity of each and every person working at the FRA;
- to take appropriate action (if necessary, disciplinary measures) in accordance with the Staff Regulations against any person who is found guilty of psychological harassment or sexual harassment.

This policy is in line with the harassment policy adopted by the European Commission and the approach taken by the EU Agencies.

## 2. DESCRIPTION

Psychological harassment and sexual harassment stem from different issues but have certain similarities. In some cases, moreover, these two forms of harassment may be closely linked<sup>3</sup>.

Offensive conduct of this type often stems from abuse of power or maliciousness, and can be perpetrated by both individuals and groups. Harassment, be it psychological or sexual, may come from colleagues on an equal footing, as well as superiors and subordinates.

### Psychological harassment

Psychological harassment is described under Article 12a of the Staff Regulations<sup>4</sup>. It may be manifested in various forms:

- offensive or degrading comments, in particular in public, bullying, antagonism, pressure, offensive behaviour, even refusal to communicate;
- insults relating to someone's personal or professional competence;
- insulting or threatening remarks, both oral and written;
- belittling someone's contributions and achievements;
- being isolated, set apart, excluded, rejected, ignored, disparaged or humiliated by colleagues;
- impairing their social relations;
- setting unrealistic working objectives;
- contrary to the job description, not giving someone any work, or systematically giving them work which does not meet their profile.
- assigning systematically someone to a job which manifestly does not meet their competences.

Such behaviour, while unacceptable, may in isolation appear of little consequence. When occurring on a regular basis, however, such conduct can cause serious harm to the person at whom it is directed.

Some kinds of behaviour may hurt certain people without constituting psychological harassment. A remark, a dispute, a clash of personalities at work, a management decision which is difficult to accept (allocation of new tasks, for instance), a duly substantiated negative appraisal, even repeated, cannot therefore necessarily be considered psychological harassment.

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<sup>3</sup> This is the case where sexual harassment translates into psychological harassment, for instance after rejection of a request of a sexual nature.

<sup>4</sup> See also section 1 "Introduction" of this document.

The terms used to describe psychological harassment vary from country to country (mobbing, bullying, workplace violence, psychological harassment, etc.)

## **Sexual harassment**

Sexual harassment is described under Article 12a of the Staff Regulations<sup>5</sup>

Sexual harassment may take different forms (physical, verbal, written or other), and involve persons of the opposite sex and of the same sex. The essential characteristic of sexual harassment is that it is unwanted by the recipient; it is therefore for each individual to determine what behaviour is acceptable to them and what they regard as offensive. Sexual attention becomes sexual harassment if it is persisted in once it has been made clear that it is regarded by the recipient as offensive, although, unlike psychological harassment, a single incident may constitute sexual harassment if it is sufficiently serious<sup>6</sup>. Anyone who is guilty of such behaviour knows or should know that it affects the dignity of women and men at the workplace. Sexual harassment is also treated as discrimination based on gender<sup>7</sup>. It is the unwanted nature of the conduct which distinguishes sexual harassment from friendly behaviour, which is welcome and mutual.

A range of different types of behaviour can be considered sexual harassment, such as:

- promises of some kind of reward (favourable career moves, etc.) in return for sexual favours, or threats of reprisals if such requests are turned down;
- repetition of coarse or suggestive remarks, or sexual innuendo;
- use of crude and obscene language and gestures;
- repeated and exaggerated compliments on the appearance of a work colleague;
- physical contact, rubbing against someone, pinching, deliberate unwanted kisses;
- acts of voyeurism or exhibitionism;
- use of pornographic material.

### **2.3. Consequences of conduct constituting psychological harassment or sexual Harassment**

Psychological harassment or sexual harassment might have various consequences for the person who suffers it or feels they are being subjected to it:

- they become isolated and social relationships tend to deteriorate;
- they make more and more mistakes, can no longer concentrate, become less productive, are demotivated, etc.;
- their professional development is hindered, career jeopardised, their very job put on the line;
- they suffer mental and physical health problems such as stress, anxiety, shame, demoralisation, humiliation and disorientation;
- they may suffer from somatic disorders, depression or increasingly serious physical and psychological disorders, which may, in extreme cases, lead to suicide.

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<sup>5</sup> See also section 1 “introduction” of this document.

<sup>6</sup> For example: groping, torn clothing, etc.

<sup>7</sup> See Article 12a(4) of the Staff Regulations.



The adverse consequences do not just affect the victims, but also impact on other colleagues and on the Agency itself: loss of expertise, staff transfers, fall in productivity, absenteeism, harming the image of the institution, etc.

### **General advice**

Some people are not always aware of the impact of their behaviour. If a certain type of conduct is felt to be inappropriate or embarrassing, it is advisable to make this clear. In the event of sexual harassment in particular, ambiguous behaviour should be set straight. It is important to react immediately, setting limits politely but firmly. If a person does not feel strong enough to set things straight, s/he should contact the confidential counsellor. In some cases, simply making it clear that the victim of such conduct finds it offensive and liable to undermine their performance at work or even their health could be sufficient to put an end to the situation. If unwanted behaviour continues, a written record should be kept of all incidents: dates, circumstances, description of events, potential witnesses, personal reactions at the time and afterwards, any psychosomatic consequences.

### **3. PREVENTION AND STAFF AWARENESS**

FRA shall implement a series of preventive measures designed to raise awareness among staff of harassment in the workplace and its different forms. Specific prevention consists of developing a strategy of information and training, both individual and collective, to avoid and reduce the risk of psychological or sexual harassment, notably by detecting recurrent cases. The training plan to support a policy of prevention of psychological and sexual harassment comprises:

- management participation in specific training and seminars to raise awareness of psychological and sexual harassment issues and to help them manage such situations. Managers are strongly advised to attend such courses;
- specific training courses for all staff to raise awareness of psychological harassment and sexual harassment issues;
- specific training courses, both initial and ongoing training, in the interests of the service, for all confidential counsellors.

### **4. PROCEDURES FOR DEALING WITH PSYCHOLOGICAL HARASSMENT AND SEXUAL HARASSMENT CASES**

Any person who feels they are the victim of psychological harassment or sexual harassment is entitled to submit a request for assistance either informally or formally. As a first step, staff is strongly advised to seek resolution of the problem through conciliation, via the informal procedure, with the assistance of a confidential counsellor. Anyone who feels they are the victim of psychological harassment or sexual harassment is, however, free from the outset to initiate a formal procedure under the Staff Regulations, involving longer timeframes. The informal procedure can also lead to a formal procedure if it proves impossible to find a solution. Passage to the formal procedure is understood to automatically involve closure of any informal procedure underway. The advantage of the informal procedure over the formal procedure lies in the possibility of finding an amicable solution and possibly avoiding a formal procedure. The advantage of the formal procedure is that it establishes the facts and, on the basis thereof, ends in the potential adoption of a penalty against a person found guilty of psychological harassment or sexual harassment at the end of a disciplinary procedure.



Each and every person working at the FRA, regardless of grade or contract of employment (this includes the trainees and all those working under a contract under national law), may, if they feel they are the victim of psychological harassment or sexual harassment by a member of staff of the FRA, initiate an informal procedure. Only staff covered by the Staff Regulations and the seconded national experts have access to the formal procedure, as described in Chapter 4. Any person not covered by the Staff Regulations working under a contract under national law and wishing to lodge a complaint concerning psychological harassment or sexual harassment against a member of staff of FRA may do so under national legislation. However, they may also bring the events which are the subject of their complaint to the attention of the Human Resources. If the information provided is sufficiently serious, an administrative inquiry may be opened.

Any person who is made aware of, or is a witness to, conduct which appears to be improper according to the above descriptions has both the right and the duty to so inform whichever of the parties mentioned in this point (Human Resources, confidential counsellors, hierarchical managers). They are also obliged to cooperate in the smooth running of all enquiries carried out as part of the formal procedure.

Any person accused of psychological harassment or sexual harassment may also request information (e.g. on current policy or procedures or those to be followed) or advice from the Human Resources. The Human Resources may usefully advise the alleged harasser of the options for resolving the conflict, depending on the seriousness of the accusations.

#### **4.1 General principles for dealing with requests**

In both the formal and the informal procedures, all requests for assistance by a person complaining of psychological harassment or sexual harassment will be dealt with as quickly as possible. However, if an administrative inquiry is opened as part of the formal procedure, the timeframes for handling the request will be longer. Concerning the administration, confidentiality is guaranteed during and after the informal procedure as well as during and after the formal procedure. Compliance with the legislation on the protection of personal data<sup>8</sup> applies within both the formal and informal procedures.

Two essential principles should also be underlined:

- the presumption of innocence is fully guaranteed to alleged harassers throughout the procedure;
- Article 11 of the Conditions of Employment of Other Servants and Article 12a of the Staff Regulations foresee that, “An official who has been the victim of psychological or sexual harassment shall not suffer any prejudicial effects on the part of the institution. An official who has given evidence on psychological or sexual harassment shall not suffer any prejudicial effects on the part of the institution, provided the official has acted honestly.”

#### **4.2 Informal procedure – Confidential counsellors**

At the informal level, the aim is to provide psychological assistance. Here, the perception of psychological harassment is subjective and depends on the situation as perceived by the person concerned. The goal is to bring an end to the distress generated both by a “proven” situation of psychological harassment and by a situation that is perceived as such. The key characteristic of psychological harassment in this case is that the person subject to it considers it undesirable conduct.

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<sup>8</sup> Regulation EC No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1)



As regards sexual harassment, the formal definition in the Staff Regulations covers the subjective perception of such behaviour (unwanted conduct).

In the informal procedure, therefore, the term “victim” refers to any person who defines themselves or identifies themselves as such. However, it is important to remember that there is a fundamental legal distinction between a person «who feels they are the victim of harassment and one who has actually suffered harassment» and is therefore recognised as a victim on the basis of proven facts, having gone through the formal procedure. No stage of the informal procedure may prejudice the outcome of the formal procedure.

The informal procedure allows monitoring and may lead to an amicable resolution. However, it does not involve formal recording of the facts or the application of penalties: this is done in the formal procedure (see point 4.3 below). The advantage of the informal procedure over the formal procedure lies in the possibility of finding an amicable solution and possibly avoiding a formal procedure. It foresees the involvement of 2-4 specifically trained confidential counsellors who are staff members appointed formally, and on a voluntary basis, for a two-year renewable mandate by the Director. Before being appointed, the confidential counsellors will receive special training in targeted modules. They will subsequently receive ongoing training for such counselling work. The appointment of confidential counsellors is based on an internal call for applications and selection criteria which will be published in an administrative notice (necessary seniority, exclusion criteria, etc.). Confidential counsellors are selected by a panel made up of staff members and the Staff Committee. The panel’s choice is submitted to the Director who officially appoints the confidential counsellors. The selection will ensure, as far as possible, a gender balance and a broad representation of the different categories of staff.

The Directorate is advised to take account of the tasks of confidential counsellors and to help them carry out their work as far as possible (by giving them access to meeting rooms, for instance). In carrying out their function and mandate confidential counsellors may not suffer any prejudice from the Institution, provided that they have acted in good faith and in accordance with the procedures.

Confidential counsellor may be contacted in the following ways:

- by sending an e-mail to the central service mailbox:  
[FRA-Harassment@fra.europa.eu](mailto:FRA-Harassment@fra.europa.eu).
- by calling the central telephone number: 01 580.30. 100
- by contacting the Human Resources Manager in person;
- by contacting a confidential counsellor directly by consulting the list published on the FRA Intranet.

In the first case, the Human Resources responding to the central service mailbox may direct the victim towards a confidential counsellor who meets the key criteria (language, gender, Department, etc.) specified and may provide further information on the procedural options available. As a matter of principle, the confidential counsellor will be from another Department.

The first objective of the confidential counsellor is to recognise and alleviate the victim’s suffering by receiving them and listening to them without preconceptions and without passing judgment. The confidential counsellor will inform the victim of the existing procedure and of his/her rights and shall guide him/her through the various options and structures that will help to find a satisfactory solution to the problem. Any action taken by the confidential counsellor in the informal procedure may only be carried out **with the prior agreement** of the victim and must remain within the framework of the mandate given them.



The confidential counsellor may also meet the other party and play a conciliatory role in an attempt to clarify the facts and to reach an amicable solution. In all cases, confidential counsellors shall strive to listen carefully to the two parties, remain objective, clarify the facts and ensure good communication.

Confidential counsellors shall attempt to deal with each case within a period of one month. If no solution can be found, counsellors may propose that the victim lodge a formal complaint (see point 4.3).

The informal procedure is a preventive measure which allows for acknowledgement and support to staff members, conciliation and an amicable settlement. Depending on the case, emergency measures may be considered.

Confidential counsellors shall take notes during consultations and are bound by professional secrecy. The notes shall be kept for record purposes should the claim be transformed into a formal complaint.

#### **4.3 Emergency measures**

The main concern of any victim of psychological harassment or sexual harassment is to stop that harassment as quickly as possible. Where there are signs of psychological or sexual harassment, one option which may be envisaged is to move one of the parties concerned (within the Department or to another Department). This measure may take the form of a reassignment in the interests of the service, and may involve the victim (preferably with his or her agreement) or the alleged harasser (following an interview with the competent Department). The aim of such a measure is to separate the two parties and may be proposed to the competent appointing authority by confidential counsellors or requested directly by one of the parties concerned.

Emergency measures, which must take account of the needs of each particular situation, can be taken immediately. These are precautionary measures designed to put an end to a given situation. They are also intended to give the victim a chance to recover. These measures may of course also be taken within the framework of the formal procedure, at the request of the alleged victim or on the initiative of the appointing authority concerned.

#### **4.4 Recurrent cases**

Requests for assistance from different people involving the same individual are to be considered disturbing. These will therefore be brought to the knowledge of the Human Resources and the appointing authority of the Agency. The appointing authority will decide on the most appropriate action to be taken and, where appropriate, launch the procedures provided for in Annex IX to the Staff Regulations.

#### **4.5 Formal procedure**

At the formal level, in line with the Staff Regulations, psychological harassment will only be considered to exist if the conduct of the alleged harasser is regarded as abusive, intentional, repetitive, sustained or systematic and intended, for instance, to discredit or undermine the person concerned. These criteria are cumulative. Objective facts will help verify whether these criteria have actually been met and if action can be taken.

A formal procedure can be initiated on the basis of a request for assistance under Article 24 of the Staff Regulations addressed to the Human Resources, which is responsible for initiating the procedure. The procedure can be initiated either immediately, without first going through the informal procedure, or at the end of the informal procedure where the situation has not been resolved through conciliation. When the Human Resources has taken the appropriate steps, by ensuring that an inquiry is carried out to establish the facts at the origin of the request in collaboration with the author of that request, this signifies that this request has been followed up and has not been implicitly rejected (absence of reply after 4 months)<sup>9</sup>. If the request is rejected, either explicitly or implicitly, the person concerned can, where appropriate, lodge a complaint under Article 90 (2) of the Staff Regulations and - if it is rejected - submit an appeal to the Court of First Instance.

In the formal procedure, confidential counsellors are limited to providing support for the victim. Under this procedure, and depending on the requirements of the inquiry, confidential counsellors may also be called as witnesses, to testify to facts relevant to the inquiry which they have been informed of during the informal procedure.

The appointing authority can instruct the Human Resources to carry out an administrative inquiry to determine the facts of the case and apportion any responsibility. Any person who feels they are the victim of sexual harassment must provide all details which might support their allegations. In the case of psychological harassment, a degree of evidence is required. The person bringing a complaint of psychological harassment or sexual harassment may be accompanied at the hearings by a person of their choice, provided that person cannot be called as a witness in the course of the inquiry. At the end of the administrative inquiry a report will be presented, proposing either that the case be closed without further action or that disciplinary proceedings be opened. If it proposes the latter, the appointing authority may decide, once it has heard the person or persons concerned, to open disciplinary proceedings and apply the ensuing penalties if there is confirmation of the wrongful act<sup>10</sup>. If the misconduct involves repeated action or behaviour this will be taken into account in determining the seriousness of the misconduct and deciding on the appropriate disciplinary measure as well as a possible hierarchical relationship.<sup>11</sup>

If the procedure results in recognition of psychological harassment or sexual harassment, victims will receive compensation for the damage suffered under the terms set out in the Staff Regulations (second paragraph of Article 24) where appropriate.

If the procedure ends in no action, all those who have been interviewed will be informed. If the complaint proves to have been formulated in an abusive manner or in bad faith, the appointing authority may take disciplinary measures, either on its own initiative or at the request of the wrongfully accused person.

## 5. PARTIES INVOLVED

The Human Resources is responsible for drawing up and monitoring the implementation of this policy. Staff may approach the Human Resources for information on policy and procedures and to contact the confidential counsellors<sup>12</sup>.

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<sup>9</sup> See Article 90 (1) of the Staff Regulations.

<sup>10</sup> See Article 86 and Annex IX to the Staff Regulations.

<sup>11</sup> See Article 10(h) of Annex IX to the Staff Regulations.

<sup>12</sup> See section 4.2 regarding the informal procedure and confidential counsellors.



ANNEX I

**Your rights and responsibilities**

**A. If you feel you are a victim of psychological harassment or sexual harassment YOU ARE ENTITLED TO:**

- be heard within the informal procedure, by contacting either the Human Resources or a confidential counsellor of your choice uncritically and under the strictest confidentiality;
- be certain that the confidential counsellor will not take any steps without your agreement;
- submit a request for assistance within the context of the formal procedure without embarrassment or fear of reprisals or indiscretions;
- be accompanied by a person of your choice during meetings with investigators;
- be assured of a fair and impartial investigation;
- be informed of the result of the investigation and, where applicable, of the measures that will be taken.

**YOU MUST**

- within a reasonable period, make the person you are accusing aware of your disapproval or unease, where necessary accompanied by a confidential counsellor;
- keep a written record of all incidents;
- cooperate with those in charge of the investigation into your complaint.

**B. If you have been accused of psychological harassment or sexual harassment YOU ARE ENTITLED TO:**

- contact, if necessary at the informal procedure stage, the Human Resources or the confidential counsellor of your choice to advise you and help you uncritically and under the strictest confidentiality;
- be informed that an official complaint has been lodged against you, receive a copy of that complaint and have the opportunity to react to it;
- be accompanied by a person of your choice during meetings with investigators;
- be assured of a fair and impartial investigation;
- be informed of the result of the investigation and, where applicable, of the measures taken.

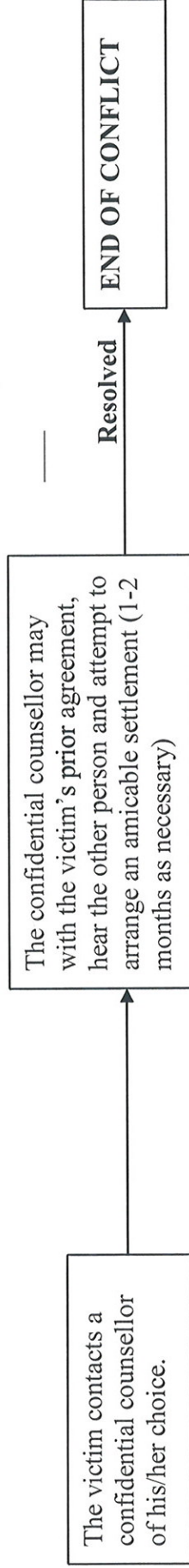
**YOU MUST**

- keep a written record of all incidents;
- cooperate with those in charge of the investigation into the complaint against you.

**ANNEX II**  
**PSYCHOLOGICAL AND SEXUAL HARASSMENT**

**OUTLINE OF THE PROCEDURE**

**INFORMAL PROCEDURE**



**FORMAL PROCEDURE**

