



A&L Goodbody

Workplace Banter or Sexual Harassment?

The White Paper Conference

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**Treat it
seriously**

**Follow a
process**

**Fairness to
both sides**

Agenda

1. Recent Trends

2. The Law

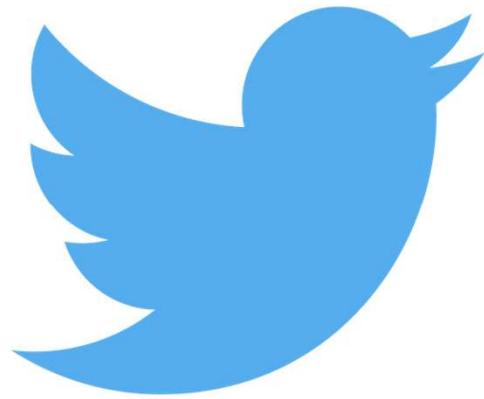
3. The Courts Approach

4. Case Studies

5. What Employers Should Do

Trends and Features

1. Settle > Litigate
2. Settlement includes Termination
3. Termination of Victim
4. Absence(s) for work related stress
5. Delays in investigation process
6. Alleged harasser seeks full exoneration or resigns



**#MeToo,
Now What?**

Banter

- Banter
 - > *"playful and friendly teasing remarks"*?
- No. Banter is:
 - > "the playful and friendly exchange of teasing remarks"
- 6 cases in 2018
- 3 x Unwelcome verbal advance or comments
- 2 x Assault
- 1 x Showing pornographic material
- Only 1 with a history of banter between the parties

1. The Law

- Employment Equality Acts
- Code of Practice

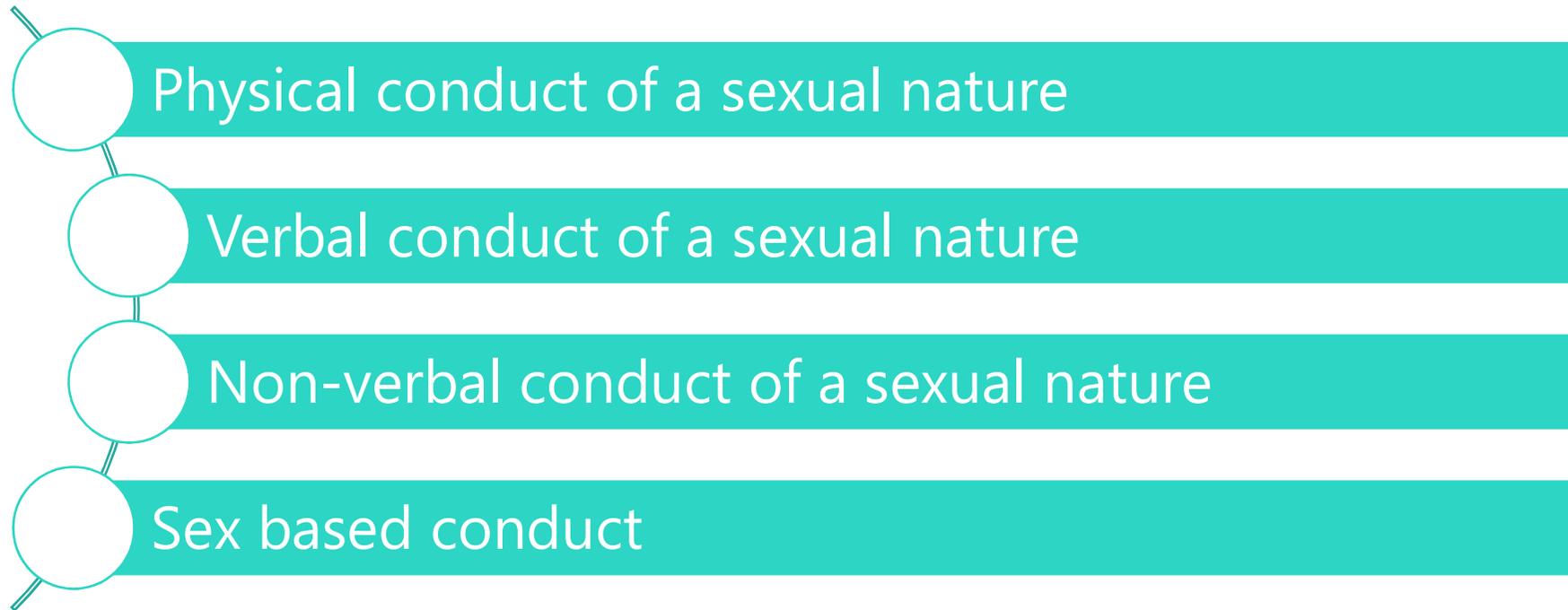


1. The Law - Employment Equality Acts 1998 – 2015

*"any form of unwanted **verbal, non-verbal or physical conduct** of a **sexual nature** being conduct which in either case has the purpose or effect of **violating a person's dignity** and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person."*

*"The essential characteristic of sexual harassment is that it is **unwanted by the recipient**, that is **for each individual to determine** what behaviour is acceptable to them and what they regard as offensive"*

1. The Code of Practice on Sexual Harassment and Harassment at Work



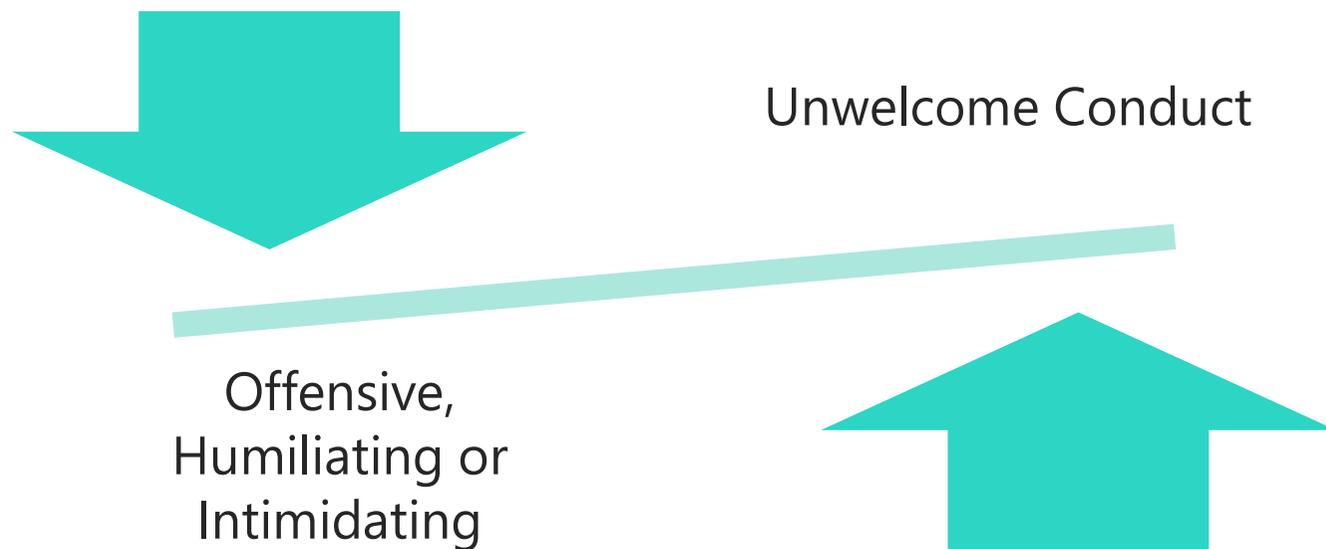
2. The Courts Approach

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2. The Court's Approach to "Banter"

- Sexual harassment focuses on the **impact** of the conduct or behaviour
- The intention of the alleged harasser does not matter



3. Case Law

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Key Cases

- Hurley v An Post – High Court
- Significant award for workplace bullying: €161k

High Court:

- > Endorsed legal definition of bullying in the Code
- > Held:
 - Employer breached common law and statutory duty of care
 - Failed to address complaints in any meaningful way
 - Made no attempt to caution workforce

Key cases

- McCarthy v ISS Ireland Ltd & HSE – Court of Appeal

Court of Appeal:

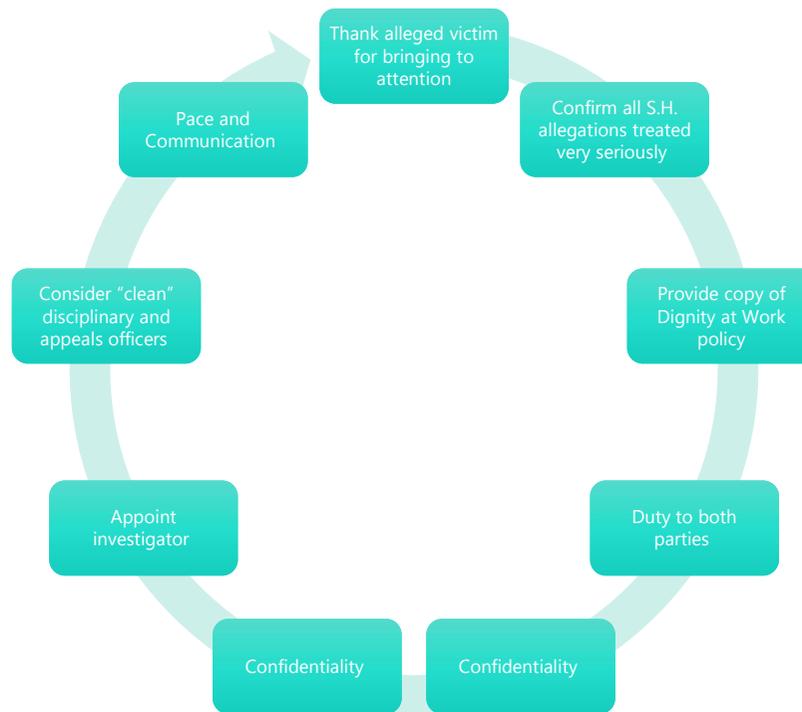
- > Failure to Provide a Safe Place of Work
- > Failure to have policies and procedures in place to deal with the issues
- > “Liable in negligence for the injuries, loss and damage”

4. Employers

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What Employers Should be doing





Thank you
