

Policy on Sexual Harassment

Preamble

1. The University is committed to equal opportunity in academic pursuit and employment, and hence to eliminate any form of discrimination against members of the University community: faculty members, staff members and students. Since sexual harassment degrades the harassee and inhibits his/her academic and work performance, it will be taken very seriously whenever it is known to occur.
2. Sexual harassment is both an ethical and legal conflict-of-interest issue for faculty members and staff members, as well as an issue of discrimination which the academic institution striving for excellence cannot ignore. This form of discrimination is an economic issue as well as one of equity in that it not only damages the harassee economically but also the institution which may lose its best students or employees.
3. The University is committed to eliminating and preventing sexual harassment and will not condone any act of sexual harassment committed by its student or employee. The sexual harassment policy and procedure to follow sets out the mechanism for dealing with allegations or complaints of sexual harassment and providing proper redress if and when it does occur. By stating the University's stance on sexual harassment clearly and by putting an appropriate procedure in place, the Policy also aims at cultivating a sense of justice, fairness and openness in the University community.

Legal Definition of Sexual Harassment

4. According to Section 2(5) of the Sex Discrimination Ordinance (Cap. 480) ("the Ordinance"), the definition of sexual harassment is as follows:
"A person (howsoever described) sexually harasses a woman if –
 - (a) *the person –*
 - (i) *makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to her; or*
 - (ii) *engages in other unwelcome conduct of a sexual nature in relation to her,*
in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that she would be offended, humiliated or intimidated; or
 - (b) *the person, alone or together with other persons, engages in conduct of a sexual nature which creates a sexually hostile or intimidating work environment for her."*
5. It should be noted that the Ordinance covers sexual harassment of both men and women, and the above definition shall have effect regarding sexual harassment of men with such modifications as are necessary.
6. Section 23 of the Ordinance specifies various forms of sexual harassment in the field of employment. In the context of the University, it is unlawful for an employee of the University to:
 - (a) sexually harass a fellow employee or a person who is seeking to be employed by the University;

- (b) sexually harass a contract worker or a commission agent engaged by the University.
- 7. Section 39 of the Ordinance specifies various forms of sexual harassment in educational establishments. In the context of the University, it is unlawful for an employee of the University to sexually harass a person who is seeking to be, or who is a student of the University.
- 8. Also, it is unlawful for a student of the University to:
 - (a) sexually harass a fellow student or a person who is seeking to be a student of the University;
 - (b) sexually harass an employee of the University.

Behavioural Definition of Sexual Harassment

- 9. Without limiting the legal definition of sexual harassment, the following behaviour can be regarded as sexual harassment:
 - (a) unwelcome sexual advances – e.g., leering and lewd gestures, touching, grabbing or deliberately brushing up against another person;
 - (b) unwelcome requests for sexual favours – e.g., suggestions that sexual co-operation or the toleration of sexual advances may further a person’s career or affect a person’s academic results;
 - (c) unwelcome verbal, non-verbal or physical conduct of a sexual nature – e.g., sexually derogatory or stereotypical remarks; persistent questioning about a person’s sex life; and
 - (d) conduct of a sexual nature that creates a hostile or intimidating work environment – e.g., sexual or obscene jokes sexually around the workplace, displaying sexist or other sexually offensive pictures or posters.
- 10. There are two patterns of conduct which constitute sexual harassment:
 - (a) The first pattern involves sexually motivated behaviour accompanied by other conduct that make the employment or education benefit depend on sexual cooperation or toleration of the sexual behaviour. This first pattern characteristically involves **misuse of authority** to bribe, coerce, or punish (either explicitly or implicitly). This type of harassment includes situations where sexual cooperation is made a condition of employment, substantiation, or promotion decisions, or a condition of admission or retention in an academic decision where a student’s refusal to comply affects a grade or other academic decision. It also includes suggestion that sexual favours may further a person’s career or educational opportunities or that not offering them may adversely affect these opportunities.
 - (b) The second type of sexual harassment may involve the same sexual behaviour, but it occurs under circumstances that do not permit a clear inference that coercion or bribery was intended. The focus is on the impact of harassment on **environment and performance** and is sometimes defined as **sexually hostile environment**. A sexual behaviour may be discriminatory if it has a negative impact on a worker or student’s environment and performance. The essence of sexual harassment as discrimination is the differential treatment and impact based on gender

that a broad range of sexual behaviours can have in an employment or educational context. Sexual harassment includes a range of unsolicited intimidation or discomfort, causes offence, exclusion or withdrawal or threatens or appears to threaten one's learning or employment. These behaviours include, inter alia, sexual teasing, suggestive remarks, sexist jokes, patronizing or derogatory behaviour, verbal or physical threats or abuse (including sexually derogatory or stereotyped remarks and statements), an offensive manner of communication (e.g., leering and lewd gestures, touching, grabbing or brushing up against others), the display or circulation of sexually offensive material and sexually suggestive material, and unwarranted intrusive or persistent questioning about a person's marital status, sexual interest or orientation.

Publicity and Education

11. The University is committed to eliminating and preventing sexual harassment. In 1996, a Task Force on Education and Training was established to promote the sensitivity of the University community on sexual harassment. Please refer to Annex 1 for more details on education and publicity for prevention of sexual harassment.

Mediation, Complaint Investigation and Appeal Processes

12. The mediation, complaint investigation and appeal processes are available to students, academic staff and other employees through the Sexual Harassment Panel. The Sexual Harassment Panel shall have the responsibilities as detailed in Annex 2 and shall report to the Committee on Sexual Harassment Policy. For each allegation/complaint, a team of at least two panelists will be appointed by the Convenor of the Sexual Harassment Panel to conduct mediation or investigation. The primary purpose of the two processes is to deal with the allegation/complaint expeditiously and informally.
13. No person shall be subject to reprisal for initiating or participating in the mediation, or complaint investigation processes, or in the formal disciplinary procedures.
14. Any student or employee of the University who (a) has been sexually harassed by another student or employee or (b) has witnessed an act of sexual harassment committed by another student or employee of the University may approach the Sexual Harassment Panel. The current officers designated by the Sexual Harassment Panel to deal with enquiries and complaints are:

<u>Name</u>	<u>Phone</u>	<u>Email</u>
Professor Edith Lau	2252 8888	edithlau@cuhk.edu.hk
Ms. Margaret Wong	2609 8716	margaretwong@cuhk.edu.hk

Mediation

15. The Sexual Harassment Panel will offer to facilitate mediation of the dispute upon request of the complainant or the complainee. Under normal circumstances, attempts at mediation do not require the filing of a written complaint.
16. The student or employee may elect to bypass the mediation and proceed with the filing of a written complaint.

Complaint Investigation and Appeal Procedure

17. Investigation

- (a) Any student or employee* of the University who wishes the University to initiate an investigation into an act of sexual harassment should file a written complaint with the Sexual Harassment Panel.
- (b) Students and employees who are subject to false allegation of sexual harassment may also lodge a written complaint with the Sexual Harassment Panel.
- (c) Upon receipt of a written complaint, the Sexual Harassment Panel will conduct a full and impartial investigation. At least two panelists of different genders shall be appointed by the Convenor of the Sexual Harassment Panel to investigate a complaint on a roster basis and the specific requirement, if any, as advised by the complainant/panelists will be taken into consideration. Under special circumstances as deemed necessary by the Convenor of the Sexual Harassment Panel, a non-staff Council member will join the Investigation Team to ensure that justice is upheld and seen to be upheld in the process of investigation.
- (d) In the course of the investigation, the following standards shall be observed:
 - (i) The complainee will be given a copy of the complaint by the Investigation Team and will have an opportunity to respond to the allegation.
 - (ii) Any individual may, upon notification, be accompanied by one person other than a legal representative when the individual is interviewed.
 - (iii) Witnesses and concerned parties will be interviewed individually and in conformance with the privacy requirements of applicable laws.
 - (iv) Relevant documents will be reviewed.

18. Fact-finding Report

- (a) The Investigation Team will submit a written fact-finding report to the Convenor of the Sexual Harassment Panel. The fact-finding report shall contain the following:
 - (i) A statement of the issues under review.
 - (ii) The positions of the parties.
 - (iii) A finding of the results of the investigation.
 - (iv) Conclusion as to whether an act of sexual harassment has been committed.
 - (v) Conclusion as to whether a false allegation of sexual harassment has been made.
 - (vi) Recommended course(s) of action for the consideration of the Convenor of the Sexual Harassment Panel.
- (b) The Panel Convenor will appoint at least one panelist independent of the investigation to review the fact-finding report.

* *The Sexual Harassment Panel will only conduct mediation and/or investigation if the complaint is filed by a student or employee of the University who (a) has been sexually harassed by another student or employee of the University or (b) has witnessed an act of sexual harassment committed by another student or employee of the University.*

19. Follow-up and Appeal Procedures

- (a) The Investigation Team will submit the fact-finding report to the Convenor of the Sexual Harassment Panel .
- (b) The Investigation Team shall also forward a copy of the fact-finding report to the Vice-Chancellor for information.
- (c) The Convenor of the Harassment Panel shall review the fact-finding report (including the comments from the Independent Reviewer) and notify the complainant and the complaine e in writing of the findings and recommendations of the fact-finding report.
- (d) The complainant and the complaine e shall submit their appeal in writing, if any, to the Convenor of the Sexual Harassment Panel.
- (e) The Convenor of the Sexual Harassment Panel shall review the fact-finding report, taking into account the reasons for appeal stated in the complainant and/or complaine e's written submission, if any, and submit the final report together with any appeal of the complainant and the complaine e to the Vice-Chancellor (or his/her designate) for consideration.
- (f) After reviewing the reasons for appeal stated in the complainant and/or complaine e's written submission and the relevant evidence, if any, the Vice-Chancellor (or his/her designate) shall make a final decision whether or not he/she accepts the recommendations of the final report and may decide to take other actions. The Vice-Chancellor (or his/her designate) may discuss with the Investigation Team and/or the Convenor of the Sexual Harassment Panel prior to making his/her final decision.
- (g) The Vice-Chancellor or his/her designate will convey in writing his/her decision to the complainant and the complaine e. Formal disciplinary procedures may be invoked if a case of sexual harassment is established.

Time Limits

- 20. The filing of a written complaint should normally be made within (i) ninety (90) calendar days from the time the complainant knew or should have known of an act(s) of sexual harassment or action taken as a result of alleged sexual harassment or (ii) thirty (30) working days after mediation (paragraph 15 of this Section refers) has been completed, whichever is later.
- 21. Unless an extension of time is granted by the Convenor of the Sexual Harassment Panel for good reasons, the total time period for the investigation, from the filing of a written complaint to submission of the fact-finding report and recommended action to the Convenor of the Sexual Harassment Panel, will not exceed ninety (90) working days.
- 22. The Convenor of the Sexual Harassment Panel shall convey to the complainant and the complaine e the findings and recommendations of the fact-finding report within fifteen (15) working days after receipt of the fact-finding report.
- 23. The complainant and the complaine e shall submit their feedback/appeal to the Convenor of the Sexual Harassment Panel within fifteen (15) working days after being notified of the findings and recommendations of the fact-finding report.
- 24. The Convenor of the Sexual Harassment Panel shall submit a final report to the Vice-Chancellor within fifteen (15) working days after receipt of the appeal from the complainant and the complaine e.

25. The decision of the Vice-Chancellor will be made as soon as practicable following receipt of the final report together with the appeal from the complainant and the complainee.
26. The time limits set forth herein may be extended by the Convenor of the Sexual Harassment Panel for good cause. The Panel Convenor may consider a complaint which is out of time if he/she considers that it is just and equitable to do so.

Confidentiality

27. In the mediation, complaint investigation and appeal processes, every reasonable effort shall be made to protect the privacy of all parties in accordance with existing University policies and applicable laws.
 - (a) In the mediation process, no record kept by the panelists or other resource people shall include the names of individuals or other information which would permit identification.
 - (b) In the mediation, complaint investigation and appeal processes, files pertaining to the cases including investigations conducted by the Investigation Team and to the disposition of the complaint shall not be made available to parties not directly handling or affected by the case, unless so required by law. Such records will be made available to individuals involved or alleged to be involved in a complaint and to University officials who have a need to know only in accordance with and only to the extent required by the appropriate laws and University regulations.

Conflict of Interest

28. Any person who has a direct interest in the complaint shall not take part in the mediation, investigation and appeal procedures in order to ensure that impartiality is upheld throughout the entire process.

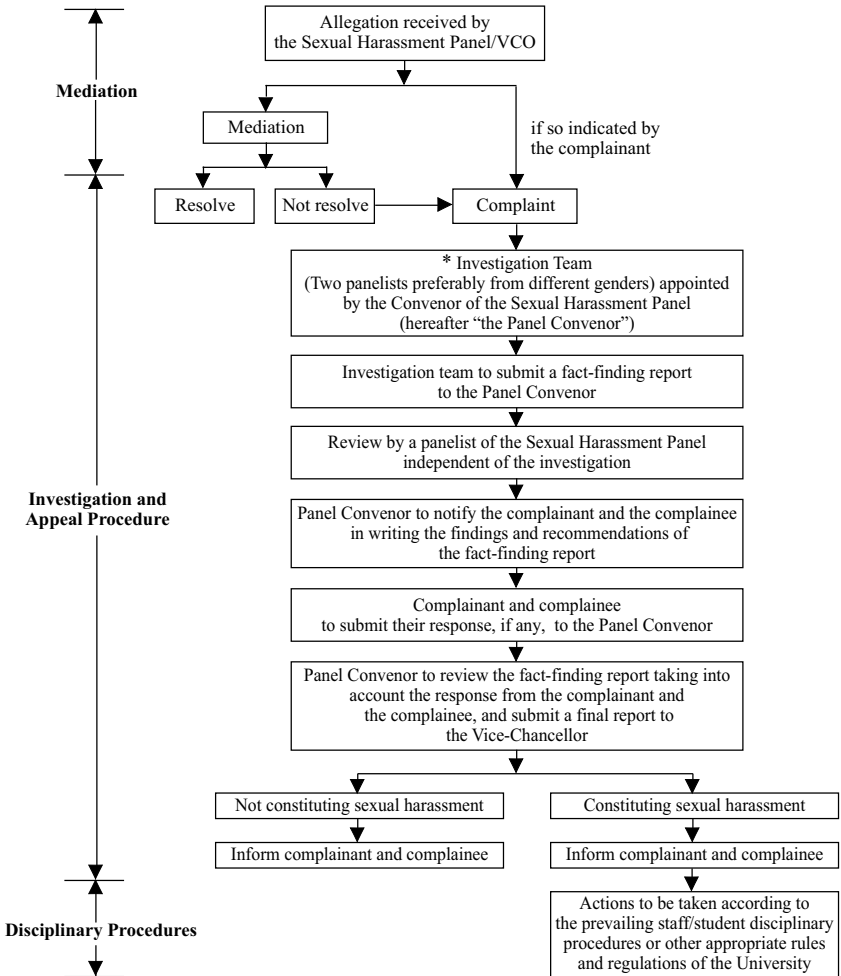
Formal Disciplinary Procedures

29. If it can be demonstrated that an act of sexual harassment has been committed and the conduct of a student or employee of the University warrants disciplinary actions, the University is entitled to invoke the relevant disciplinary procedures and take the appropriate disciplinary actions against the student or employee concerned. If the University considers it is appropriate to do so, it may on its own initiative or upon the complainant's written request bypass the mediation or investigation processes and proceed with the disciplinary procedures directly.

Right to Lodge a Complaint with EOC and to Take Court Action

30. It should be noted that the complainant has the right to lodge a complaint directly with the Equal Opportunities Commission (EOC) or to take civil action in the District Court of Hong Kong.
31. Under the Sex Discrimination Ordinance, the EOC may decide not to take up an investigation into an act of alleged sexual harassment if the complaint is not lodged within 12 months of the incident. If a complainant decides to take court action in respect of a claim of sexual harassment, he/she normally has to commence the legal proceedings within 24 months of the incident.

Flow Chart on Handling Sexual Harassment Complaints



* Under special circumstances as deemed necessary by the Convenor of the Sexual Harassment Panel, a non-staff Council member will join the investigation team to ensure that justice is upheld and seen to be upheld in the process of investigation.

Publicity and Education

1. Importance of Awareness, Promotion, and Education

- (a) The University's policy statement on sexual harassment, related grievance procedures and code of conduct for staff and for students, if any, should be promulgated to all members of the University community in the form of circulars and notices as soon as they are ready. In introducing the sexual harassment policy, it is important to:
 - (i) explain the reason and the need for introducing the policy;
 - (ii) unambiguously define the University's policy at an early stage;
 - (iii) seek the support of all staff and students to observe and participate in the execution of the policy; and
 - (iv) provide necessary training for the proper administration and observance of the policy.
- (b) A Task Force on Education and Training has been established under the Committee on Sexual Harassment Policy to promote the awareness of the Policy on Sexual Harassment. The objective is to ensure that the Policy is properly received rather than rejected, and correctly interpreted rather than abused. It will be a learning experience for both the University and its population. The right messages must therefore be suitably conveyed, awareness promoted, and its community appropriately educated.

2. Targets

The publicity and education programme should be organized for all staff and students. It should therefore be addressed to people at different levels with various functional responsibilities and duties — Deans, Department Chairmen and Unit Heads in the Administration, teaching and non-teaching staff, full- and part-time undergraduates as well as postgraduates and the whole campus community.

3. How the Policy Should be Publicized and Awareness Training Provided

- (a) Announcement on adoption of the policy and procedures as well as general information about the issue and where to get more detailed information can be made through campus computerized network to all LAN users and published in CUHK Newsletter, Colleges' newsletters, Campus Community Newspaper, and students' publications such as CU Student.
- (b) Policies, procedures for reporting, receiving and filing of complaints and guidelines should be included in the Staff Handbooks and Student Handbook.
- (c) To implement the policy and procedure and to arouse awareness of sexual harassment problems, educational seminars and programmes should be arranged for various target groups:
 - (i) Seminars for Department/Unit Heads, administrators and other selected personnel who may help to promote the policy and serve as a resource person and advisor of their respective units.
 - (ii) Talks may be arranged for staff members through CUTA, CUSA, CUWO, Staff Common Room, etc., to heighten their sensitivity to the issue and their awareness of their role in discouraging harassing behaviour.

- (iii) Programmes for similar purposes may be arranged for students by the Office of Student Affairs and the Colleges' Dean of Students' Offices.
- (iv) The Colleges may also support by including a talk on the subject during their weekly/monthly assemblies.
- (d) A session in the training programmes for new staff members (e.g., Executive Orientation Programme, orientation programme for newly recruited clerical and secretarial staff) and orientation programmes for students may be used for discussion on the topic and providing information to the new comers.

4. Promotional Literature and Educational Tools

Publicity materials including pamphlets, information leaflets, posters and case profiles could be printed and distributed to departments and units for posting up or circulation. Some of these materials could be used for training programmes as well as for distribution to new appointees. Actual cases (if any), research findings, books, videos/films, and description of hypothetical situations may be used as training instruments. A question-and-answer leaflet to distinguish between what is sexual harassment and what is not will be useful to avoid misinterpretation of the policy and will provide better impact for illustration purposes.

5. Maintenance of the Policy

Promotional and educational activities should be conducted as an on-going exercise to introduce and reinforce the policy. The frequency of such activities could be timed to provide the most effective impact, e.g., in September and January each year (beginning of teaching term) when there are incomers. During the year, such activities are also needed for reinforcement purposes.

Sexual Harassment Panel

1. The Sexual Harassment Panel shall consist of:-
 - (a) Faculty members and staff members of different genders who have sensitivity to sexual harassment matters and of good standing, preferably of different ranks, for a term of two years, with one panelist appointed as the Convenor; and
 - (b) A non-staff Council member to be nominated by the Council.
2. The responsibilities of the Sexual Harassment Panel include:-
 - (a) Informing individuals of available options, including but not limited to mediation and complaint investigation by the University, and their right to lodge complaints with Equal Opportunities Commission and to take court action.
 - (b) Informing all parties involved or alleged to be involved in a complaint of available formal disciplinary procedures if the complaint is not resolved through the processes outlined in paragraphs 15-26 of the Section on **Mediation, Complaint Investigation and Appeal Processes**.
 - (c) Informing the individual wishing to initiate an investigation that a written complaint will be required and that the complaint, including the identity of the complainant, will be disclosed to the complainee.
 - (d) Informing all parties involved or alleged to be involved in a complaint that the fact-finding report will be submitted to the Convenor of the Sexual Harassment Panel.
 - (e) Conducting mediation or investigation on receipt of allegation/complaint through a team of at least two panelists and, if deemed appropriate, a non-staff Council member, to be appointed by the Convenor of the Panel.
 - (f) Maintaining records of complaints, reports, and subsequent management action in conformance with the privacy requirements of applicable laws.