

THE CHINESE UNIVERSITY OF HONG KONG

Policy Against Sexual Harassment Executive Summary

1. The University is committed to equal opportunity in academic pursuits and employment. Any form of discrimination or harassment will not be tolerated. The University shall take any and all necessary steps to eliminate and prevent its occurrence on campus.
2. Sex discrimination and sexual harassment are prohibited by law. Sexual harassment if and when it occurs may adversely affect the work of University staff members and the learning environment of its students.
3. The University is committed to eliminating and preventing sexual harassment. A Task Force on Education and Training has been established to promote awareness of the need to prevent sexual harassment. Please refer to Annex 1 for more details on education and publicity for prevention of sexual harassment.
4. The University's policy and procedure against sexual harassment ("the Policy") sets out the mechanism for dealing with allegations or complaints of sexual harassment and for providing proper redress if and when harassment occurs. By clearly stating the University's stance on sexual harassment and putting an appropriate procedure in place, the University aims to cultivate a sense of justice, fairness and openness in the University community in relation to gender equality and the furtherance of mutual respect.
5. A Panel Against Sexual Harassment shall be responsible for mediation and complaint investigation of cases involving staff members or students.
6. Written complaints are not required to trigger mediation, but a written complaint must be filed if a complaint investigation process is to be initiated. After complaint investigation process is initiated, an Investigation Team will be established with a view to submitting a fact-finding report to the Convenor of the Panel Against Sexual Harassment ("the Panel Convenor") within prescribed time limits. Among other things, this report will include a determination as to whether or not an act of sexual harassment has been committed.
7. The Panel Convenor shall notify the complainant and the complainee of the findings and recommendations of the fact-finding report, prepare a final report after taking into account any written submission from the complainant or the complainee and submit a final report to the Vice-Chancellor (or his/her designate) for consideration.
8. After reviewing the report and any submissions, the Vice-Chancellor (or his/her designate) shall make a final decision whether or not to accept the recommendations, in whole or in part, of the final report and may decide to take other appropriate actions. The Vice-Chancellor or his/her designate will convey this decision in writing to the complainant and the complainee as soon as it is made.

9. If the conduct of the relevant staff member or student warrants disciplinary action, the University reserves the right to invoke the relevant disciplinary procedures and to take appropriate disciplinary action against the staff member or student concerned.
10. The internal University procedures do not affect the right of the complainant to lodge a complaint directly with the Equal Opportunities Commission or the Police, or to take civil action in the District Court.
11. A flow chart on handling sexual harassment complaints is appended in Annex 2 for illustration.

October 3, 2008

THE CHINESE UNIVERSITY OF HONG KONG

CUHK Policy Against Sexual Harassment

Preamble

1. The University is committed to equal opportunity in academic pursuits and employment. Any form of discrimination or harassment will not be tolerated. The University shall take any and all necessary steps to eliminate and prevent its occurrence involving members of the University community.
2. Sex discrimination and sexual harassment are prohibited by law. Sexual harassment if and when it occurs may adversely affect the work of the University staff members and the learning environment of its students.
3. The University is committed to eliminating and preventing sexual harassment and will not condone any act of sexual harassment committed by its staff members or students. The policy and procedure below set out the mechanism for dealing with allegations or complaints of sexual harassment and for providing proper redress if and when harassment occurs. By clearly stating the University's stance on sexual harassment and putting an appropriate procedure in place, the University aims to cultivate a sense of justice, fairness and openness in the University community in relation to gender equality and the furtherance of mutual respect.

Legal Definition of Sexual Harassment

4. According to Section 2(5) of the Sex Discrimination Ordinance (Cap. 480, LHK) ("the Ordinance"):

"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 hostile or intimidating 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. (Section 2(8) of the Ordinance)
6. Section 23 of the Ordinance further provides that various forms of sexual harassment in the field of employment are unlawful. This will cover a fellow staff member, a contract worker, a commission agent or any person who is seeking to be employed by the University.
7. Section 39 of the Ordinance applies specifically to educational establishments. In the context of the University, it is unlawful for an employee of the University to sexually harass a person who is a student or a prospective student of the University. Additionally, it is unlawful for a student or prospective student of the University to sexually harass any fellow student or prospective student of the University; or to sexually harass any staff of the University.
8. The full text of the Ordinance can be obtained at the Department of Justice's website www.legislation.gov.hk.

Examples of Sexual Harassment

9. Sexual harassment includes unwelcome sexual advances, unwelcome requests for sexual favours and other conduct of a sexual nature including physical acts and verbal comments as a result of which a reasonable person would anticipate that the subject of attention would be offended, humiliated or intimidated. Any sex-related language, action or physical contact that is unwelcome may constitute sexual harassment. An intimidating, hostile or offensive working or learning environment will also constitute sexual harassment. Sexual harassment can be through spoken words, emails, letters, phone calls, or the like. Sexual harassment does not have to be intentional or aimed at any particular subject and may be explicit or implicit.
10. The following behaviour is illustrative of, but not limited to, what may be regarded as sexual harassment:
 - a) **Unwelcome sexual advances** – e.g., persistent requests for dates, leering or lewd gestures, touching, grabbing or deliberately brushing up against another person;
 - b) **Unwelcome requests for sexual favours (Misuse of authority)** – e.g., explicit or implicit 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; questioning regarding a person's marital status or sex life; and

- d) **Conduct of a sexual nature that creates a hostile or intimidating working or educational environment** – e.g., sexual or obscene remarks around the workplace/classrooms/hostels or displaying sexist or other sexually offensive pictures or posters.

Publicity and Education

11. The University is committed to eliminating and preventing sexual harassment. A Task Force on Education and Training has been established to promote awareness of the need to prevent sexual harassment. Please refer to Annex 1 for more details on education and publicity for the prevention of sexual harassment.

Victimization

12. No staff member or student of the University shall be subject to victimization or reprisal for initiating a good faith complaint, for participating in mediation, for providing information in the complaint investigation processes, or for participating in the formal disciplinary procedures. However, the University reserves the right to take disciplinary action against any staff member or student making a false complaint or intentionally providing false information in any mediation or complaint process.
13. The procedure for handling complaints of victimization will broadly replicate the process of handling complaints of sexual harassment, except that the Panel Convenor will make the final decision.
14. If it can be demonstrated that an act of victimization has been committed, the University will take action according to the prevailing disciplinary procedures or other appropriate rules and regulations of the University.

Mediation, Investigation and Appeal

15. Any staff member or student who believes that he or she is a victim of sexual harassment should act promptly. Correcting the situation immediately is in everyone's best interests. Ignoring sexual harassment may make the situation worse because the harasser may misinterpret a lack of response as approval or condonation of the behaviour. Delay in making a complaint may also present difficulties for the University in conducting a thorough investigation and establishing the facts of the case.
16. Mediation and complaint investigation processes are available to staff or students through the Panel Against Sexual Harassment. A flow chart on handling sexual harassment complaints is appended in Annex 2. The Panel Against Sexual Harassment shall have the responsibilities as detailed in Annex 3 and shall report to the Committee Against Sexual Harassment. For each allegation/complaint, a team of at least two panelists will be appointed by the Panel Convenor to conduct mediation or

investigation. The primary purpose of the mediation and complaint investigation processes is to deal with the complaint fairly and expeditiously.

17. Any staff member or student of the University who (a) has been sexually harassed by another staff member or student; (b) has witnessed an act of sexual harassment committed by another staff member or student of the University; or (c) has been expressly authorized by a victim to act on his/her behalf may approach the Panel Against Sexual Harassment. The current officers designated by the Panel Against Sexual Harassment to deal with enquiries and complaints are:

	<u>Name</u>	<u>Phone</u>	<u>Email</u>
a)	Professor Diana Lee, Convenor	2609 6227	tzefanlee@cuhk.edu.hk
b)	Ms. Yvonne Luk, Secretary	2609 8716	yvonneluk@cuhk.edu.hk

18. In the event that a sexual harassment complaint is under criminal investigation by a law enforcement agency or is the subject of criminal or civil proceedings in court, the University may suspend its mediation or investigation process. The Panel may resume the mediation or investigation process if the criminal investigation or civil action is abandoned, not proceeded with, discontinued or completed or following the dropping or completion of criminal or civil proceedings.

Mediation

19. The Panel Against Sexual Harassment will offer to facilitate mediation of the dispute at the request of the complainant or the complaine. Under normal circumstances, attempts at mediation do not require the filing of a written complaint.

Mediation is a voluntary process, and will be conducted by the Panel only where both the complainant and the complaine agree to mediation. No legal rights or remedies are forfeited by entering into mediation. If the mediation fails to reach a settlement, the complainant can continue to enforce his/her rights.

If a settlement has been reached during the mediation, the parties may enter into a legally binding agreement to record the terms of the settlement.

20. The Panel Convenor shall appoint two panelists of different gender to conduct any mediation. The Secretary of the Committee Against Sexual Harassment shall act as Secretary of the mediation team.
21. The maximum time for the conduct of mediation is 40 working days from the receipt of a complaint. If the dispute is not resolved by mediation within this period or either party decides to stop the mediation, the complainant may pursue the case through formal investigation. In such a case, a written complaint should be filed with the Panel Against Sexual Harassment. The time limit for mediation may be extended by the Panel Convenor on reasonable grounds and with the agreement of both parties.
22. The complainant may elect to bypass mediation and proceed directly with the filing of a written complaint.

Complaint Investigation and Appeal Procedure

23. Investigation

- a) Any staff member or student* of the University who makes a complaint and wishes the University to initiate an investigation into an act of sexual harassment should file a written complaint with the Panel Against Sexual Harassment.
- b) Upon receipt of a written complaint, the Panel Against Sexual Harassment will conduct a full and impartial investigation. At least two panelists of different gender shall be appointed on a roster basis by the Panel Convenor to investigate a complaint (the “Investigation Team”). Under special circumstances, as deemed necessary by the Panel Convenor, a non-staff Council member may be invited to join the Investigation Team to assist the process and secure the confidence of the parties.
- c) In the course of the investigation:
 - i) The complainee will be given a copy of the complaint by the Investigation Team and will be provided with an opportunity to respond to the allegation.
 - ii) The complainant, complainee, witnesses and any other parties concerned will be interviewed individually, separately and in private by the Investigation Team. Neither the parties nor witnesses will be subject to questioning except by members of the Investigation Team.
 - iii) Subject to the approval of the Investigation Team, any individual attending an interview may ask to be allowed to be accompanied by one person other than a legal representative. Such a request must be submitted in writing in advance and set out the reasons for requesting an accompanying person together with the name and occupation of the individual proposed for the Investigation Team’s consideration. The Investigation Team’s decision on such a request shall be final. If the request is granted, the accompanying person will not be entitled to address the Investigation Team.
 - iv) Documents and/or any evidence may be produced and reviewed.
 - v) A contemporaneous record will be kept of all oral evidence given to the Investigation Team.

* The Panel Against Sexual Harassment will conduct an investigation only if the complaint is filed by a staff member or student of the University who (a) has been sexually harassed by another staff member or student of the University; (b) has witnessed an act of sexual harassment committed by another staff member or student of the University; or (c) has been expressly authorized by the victim to act on his/her behalf.

24. Fact-Finding Report

- a) The Investigation Team will submit a written fact-finding report to the Panel Convenor. The fact-finding report shall consist of the following:
 - i) A statement of the issues under review.
 - ii) The allegation(s) made by the complainant.
 - iii) The evidence adduced in support of the allegation(s).
 - iv) The response of the person of whom complaint is made to the allegation(s).
 - v) The evidence adduced in rebuttal of the allegation(s).
 - vi) The finding of facts following the investigation.
 - vii) A determination as to whether the complaint (s) is established.
 - viii) Recommended course(s) of action.
- b) The Panel Convenor will appoint at least one panelist independent of the investigation (the “Independent Reviewer”) to review the fact-finding report. The Independent Reviewer will review the fact-finding report to ensure that the procedures have been complied with, that the report is set out in accordance with 24(a) above and that the determination on the complaint is in accordance with the facts as found. The Independent Reviewer may (i) endorse the report for submission to the Panel Convenor or (ii) remit the report to the Investigating Team for clarification or further explanation or re-consideration of all or any part of the report before agreeing to forward it to the Panel Convenor; and in the event of either (i) or (ii) the Independent Reviewer may add any comment or observation for consideration by the Panel Convenor.
- c) The final report of the Investigation Team together with any comment or observation by the Independent Reviewer shall be submitted to the Panel Convenor.

25. Follow-up and Appeal Procedures

- a) The Panel Convenor shall review the fact-finding report (having taken into account any comment or observation by the Independent Reviewer) and notify the complainant and the complaine in writing of the fact-finding report.
- b) The complainant and the complaine may make written observations or submit a written appeal to the Panel Convenor.
- c) The Panel Convenor shall review the fact-finding report, taking into account the observations or written appeal stated in the complainant and/or complaine’s written submission (“Grounds of Appeal”), if any, and submit the final report together with the Grounds of Appeal to the Vice-Chancellor (or his/her designate) for consideration.

- d) The Vice-Chancellor (or designate) shall decide to accept or reject the recommendations or any part thereof contained in the final report and shall decide what actions, if any, should be taken. The Vice-Chancellor (or designate) may make a written request to the Investigation Team and/or the Panel Convenor for clarification or further information prior to making his/her final decision.
- e) The decision of the Vice-Chancellor or designate is final and will be conveyed in writing to the complainant and the complainee. The University is entitled to invoke formal disciplinary procedures if a case of sexual harassment is established.

Time Limits

- 26. 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 has been completed, whichever is later.
- 27. Unless an extension of time is granted by the Panel Convenor, 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 Panel Convenor, will not exceed eighty (80) working days.
- 28. The Panel Convenor shall convey to the complainant and the complainee the findings and recommendations of the fact-finding report within fifteen (15) working days after receipt of the fact-finding report.
- 29. The complainant and the complainee shall submit their observations/appeal to the Panel Convenor within fifteen (15) working days after being notified of the findings and recommendations of the fact-finding report.
- 30. The Panel Convenor shall submit a final report to the Vice-Chancellor within fifteen (15) working days after delivery of the fact-finding report or receipt of the Grounds of Appeal.
- 31. The decision of the Vice-Chancellor (or designate) will be made as soon as practicable following receipt of the final report together with the Grounds of Appeal.
- 32. The time limits set forth herein may be extended by the Panel Convenor on reasonable grounds. The Panel Convenor may consider a complaint which is out of time if he/she considers that it is fair to do so.

Confidentiality

- 33. In the mediation, complaint investigation and appeal processes, every reasonable effort shall be made to ensure confidentiality and to protect the privacy of all parties in accordance with existing University policies and applicable laws.

34. In the mediation, complaint investigation and appeal processes, files pertaining to a case shall be kept confidential. However, if there is a criminal investigation or criminal proceedings in court, the University may need to provide necessary information contained in the files. The University may also need to disclose some information to third parties (e.g. in reporting a crime) when there is clearly a risk that the harassing behaviour has created or will create significant harm to the complainant or other persons and where the University needs to intervene because of its own potential liability for failing to do so.

Records may be made available to University officials in accordance with and to the extent required by University rules, regulations or policy or by law.

Conflict of Interest

35. Any person who has an actual or potential conflict of interest in the complaint shall declare his/her interest and shall not take part as a mediator or as a member of the Investigation Team, Independent Reviewer, Panel Convenor or in any other capacity as a decision-maker.

Formal Disciplinary Procedures

36. If it is determined that an act of sexual harassment has been committed and the conduct of a staff member or student of the University warrants possible disciplinary action, the University is entitled to invoke the relevant disciplinary procedures and take appropriate disciplinary action against the staff member or student concerned. If the University considers that 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 disciplinary procedures directly.

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

37. The internal University procedures do not affect 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 or to make a complaint to the police or other investigating agency.
38. Under the 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 alleged 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.
39. If a complainant wishes to make a claim in court, it is advised that this is done within the prescribed time limit. If the complainant wishes to report the incident to the Police and needs advice and assistance on the procedure, the Panel Convenor may offer help.

October 3, 2008

(The Policy has been approved by Committee Against Sexual Harassment and Administrative and Planning Committee)

THE CHINESE UNIVERSITY OF HONG KONG

Publicity and Education

1. Importance of Awareness, Promotion, and Education

- a) The University's policy statement on sexual harassment, related investigation procedures and guidelines for staff and for students, should be promulgated to all members of the University community in the form of circulars and notices as soon as they become available. In introducing the Policy Against Sexual Harassment, it is important to:
 - i) explain the reason and the need for introducing the policy;
 - ii) clearly define the University's policy;
 - iii) seek the support of all staff and students to observe and comply with the policy; and
 - iv) provide necessary training where required for the proper administration and observance of the policy.
- b) A Task Force on Education and Training has been established under the Committee Against Sexual Harassment to promote awareness of the issue. The objective is to ensure that the Policy is properly received and correctly interpreted. It will be a valuable learning experience for both the University and its population. The right messages must therefore be suitably conveyed, awareness promoted, and the University community appropriately educated.

2. Targets

The publicity and education programme should be organised for all staff and students. They include people at different levels with various functional responsibilities and duties - Deans, Department Chairs and Unit Heads in the Administration, teaching and non-teaching staff, full- and part-time undergraduates as well as postgraduates and the rest of the campus community.

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

- a) The policy, procedures, general information as well as sources of further information should be disseminated through campus computerized network to all LAN users and published in the CUHK Newsletter, College newsletters, the Campus Community Newspaper, and student publications such as CU Student.

- b) Policies, procedures and guidelines for the reporting, receiving and filing of complaints should be included in the Staff Handbooks and Student Handbook.
- c) To implement the policy, procedure and guidelines and to increase 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 resource persons and as advisors of their respective units.
 - ii) Talks may be arranged for staff members through CUTA, staff unions, 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 the Policy by including talks 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 of the topic and dissemination of information to the new comers.

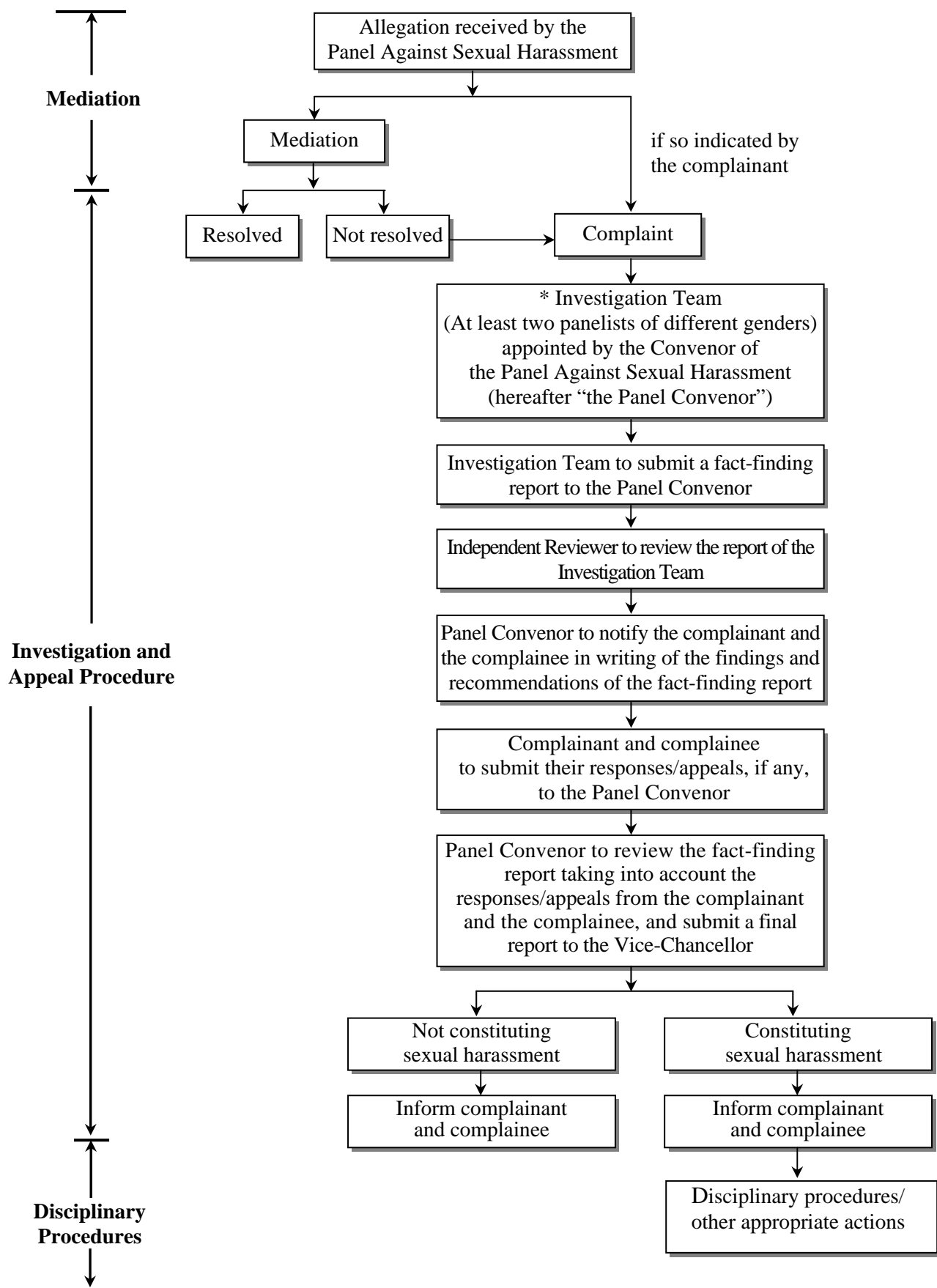
4. Promotional Literature and Educational Tools

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

5. Maintenance of the Policy

Promotional and educational activities should be conducted as an on-going exercise to introduce and reinforce the policy. 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.

Flow Chart on Handling Sexual Harassment Complaints



* Under special circumstances as deemed necessary by the Convenor of the Panel Against Sexual Harassment, 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.

THE CHINESE UNIVERSITY OF HONG KONG

Panel Against Sexual Harassment

1. The Panel Against Sexual Harassment shall consist of:-
 - a) Teaching and non-teaching staff members of both genders who are of good standing, preferably of different ranks, will be appointed 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 Panel Against Sexual Harassment include:-
 - a) Informing individuals of available options which include but are 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 individuals involved or alleged to be involved in a complaint of the available formal disciplinary procedures of the University if the complaint is not resolved through the processes administered by this Panel.
 - c) Informing the individual seeking 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 and the safeguards against victimization that are provided under applicable law and University policy.
 - d) Informing all parties involved or alleged to be involved in a complaint that a report will be produced for and submitted to the Vice-Chancellor.
 - e) Conducting mediation or investigation upon receipt of allegation/complaint through a team of at least two panelists, plus a non-staff Council member under special circumstances as deemed necessary by the Panel Convenor, to ensure that justice is upheld and seen to be upheld in the process of investigation.
 - f) Maintaining records of complaints, reports, and managing the process in such a way that they conform with the privacy requirements of applicable laws.