

# THE HONG KONG UNIVERSITY OF SCIENCE AND TECHNOLOGY

## POLICY ON SEXUAL HARASSMENT

### 1. POLICY STATEMENT

1.1 The Hong Kong University of Science and Technology is committed to ensuring a safe, positive and pleasant environment for students and staff alike. We thus do not in any way condone, nor tolerate, any form of sexual harassment. The act of sexual harassment is an infringement of human rights and limits the rights of equality, while also having a negative impact on work morale, productivity and health of the infringed. We strongly encourage members of the HKUST community, including visiting faculty and students who feel infringed by members of the University, to come forth and report incidents of sexual harassments, as well as seek advice and guidance through the established procedures. The University has a sound protocol for the complaint procedures, and urges individuals to fully utilize such. Should one however consider it necessary, one may choose to lodge a complaint with the Equal Opportunities Commission or perhaps take legal actions in the district court. Under the laws of Hong Kong, sexual harassment is unlawful. According to official University policy, sexual harassment is strongly prohibited. Grounded claims of incidents within the University will lead to disciplinary actions, which may in the most serious of cases lead to termination of employment or expulsion from studies.

### 2. WHAT IS SEXUAL HARASSMENT

#### 2.1 Legal Definition

2.1.1 According to the Sex Discrimination Ordinance (Cap. 480):

A person sexually harasses another person if:

- a. the person
  - makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to that person; or
  - engages in other unwelcome conduct of a sexual nature in relation to that person;

in circumstances in which a reasonable person, having regard to all the circumstances would have anticipated that the person 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 that person.

2.1.2 The Ordinance covers sexual harassment of both men and women.

2.1.3 Under the Ordinance, a person who knowingly aids another person to do an

act of sexual harassment shall be treated as he/she is doing an act of the like description. It is unlawful for a person to instruct, to procure, or attempt to procure, another person to sexually harass a third person.

## 2.2 Sexual harassment in the context of the University

2.2.1 In the context of the University, any unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- a. any aspect of an individual's employment or educational experience is made conditional on submission to such conduct, either explicitly or implicitly; or
- b. employment or educational decisions affecting an individual are based on rejection of such conduct; or
- c. such conduct has the purpose or effect of
  - unreasonably interfering with an individual's work performance or educational experience, or
  - creating an intimidating, hostile, or offensive working or learning environment.

### **Aspects of Employment**

Aspects of an individual's employment include but are not limited to hiring, retention, promotion, termination, reassignment, salary increases, pay, fringe benefits, workload, opportunities, training and staff development, and working conditions.

### **Aspects of Educational Experience**

Aspects of an individual's educational experience include but are not limited to admission to a class or program, grades, letters of recommendation, homework, honours, research opportunities, scholarships, housing, grants, employment opportunities, use of facilities, probation, termination, and classroom conditions.

## 2.3 In general

2.3.1 In determining whether conduct constitutes sexual harassment, the entire record and the totality of circumstances will be considered.

2.3.2 A series of incidents may constitute sexual harassment. However, depending on the circumstances, it is not necessary for there to be a series of incidents. One incident may be sufficient to constitute sexual harassment.

2.3.3 A person may be the victim of a hostile environment where he or she is harassed in a pattern of incidents that may not be, in and of themselves, offensive, but when considered together amount to sexual harassment.

## 2.4 Examples of Sexual Harassment

2.4.1 Sexual harassment differs from voluntary sexual interaction by the element of coercion, threat, or unwanted sexual attention. It can range from intimidating sexist comments to criminal sexual assault. Without limiting the meaning of sexual harassment as defined in the Ordinance, the following behavior 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 cooperation or the toleration of sexual advances may further a person’s employment or educational experience;
- 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 sexual nature that creates a hostile or intimidating environment – e.g. sexual or obscene jokes around the workplace/classrooms/student housing; displaying sexist or other sexually offensive pictures or posters; sexually offensive communication including telephone calls, letter or e-mail, social media network such as Facebook or Twitter, or any other form of communication.

## 3. PROTECTION AGAINST VICTIMIZATION

3.1 Victimization is defined as the negative alteration in behavior towards a particular individual, due to that party’s involvement in cases related to sexual harassment. By such is meant both the complainant, and the respondent, as well as witnesses who have been involved in the complaint or inquiry. The University wishes to strongly emphasize that any acts of victimization due to a sexual harassment incident or case hearing is in no way acceptable. Should one be found guilty of encouraging or engaging in victimization, disciplinary actions will be taken.

3.2 During the course of the investigation the University shall ensure a separation of the complainant and the respondent so as to minimize the risk of victimization. Furthermore, at appropriate times or after the conclusion of the investigations has been drawn, reintegration into work/study of the various parties and witnesses shall occur.

## 4. CONFIDENTIALITY AND RECORDS

4.1 All complaints and inquiries shall be handled with utmost care so as to protect the privacy of the involved parties. Furthermore, any records or documents related to the cases shall be managed with the highest level of confidentiality.

## 5. HANDLING OF SEXUAL HARASSMENT

### 5.1 Informal Resolution

- 5.1.1 The earlier sexual harassment is dealt with, the better the chance that it will not lead to a confrontation that is potentially damaging for both parties. When a person feels sexually harassed, he or she may first try to seek an informal resolution. Informal resolution procedures are designed to put a stop to the harassment through private conciliation.
- 5.1.2 Informal resolution procedures may include talking directly with the respondent or seeking an advocate such as one's supervisor, a student counselor, a residence master, or any other supervisory personnel with whom one feels comfortable. These persons may provide advice and support to the complainant as well as serve as an informal mediator between the complainant and the respondent.
- 5.1.3 At this stage, the Gender Equity Officer may also be a source of information regarding general procedures for both informal and formal resolution, but he or she should not hear or advise on details of the case until a formal complaint is filed.
- 5.1.4 Supervisory personnel have a responsibility to ensure that the workplace and educational environment are free of sexual harassment. Whenever behavior is observed that could constitute sexual harassment, supervisors should not condone it by ignoring it. When such behavior is known to a supervisor, he or she should counsel the offending individual in an attempt to reach an informal resolution of the situation.
- 5.1.5 When informal means fail to resolve a situation that an individual feels is sexually harassing, or if the individual believes that only a formal complaint can provide relief, he or she may file a complaint in accordance with the complaint procedures set out in Section 5.2 of this document.

### 5.2 Complaint Procedures

#### *Filing a Complaint*

- 5.2.1 Any individual complaining of sexual harassment may initiate a formal complaint by meeting with the designated officer. Depending on the identity of the respondent, the designated officer is:

The Director of Human Resources (or his /her designate) when the respondent is a faculty or staff member

The Dean of Students (or his/her designate) when the respondent is a student

The designated officer will advise the complainant of the available options, services, remedies, and procedures. If the action complained of appears to

constitute a criminal offence, the complainant will be advised to make a report to the police.

- 5.2.2 If the complainant considers that the designated officer has a conflict of interest in the complaint, he/she may seek advice from the Gender Equity Officer, and if the conflict is grounded, he/she may meet with the immediate supervisor of the designated officer.
- 5.2.3 If the complainant elects to proceed, he/she should lodge a formal complaint in writing which will form the basis for further action. Where necessary, the designated officer may assist in the preparation of the written complaint. The designated officer will solicit from the complainant information regarding witnesses of the conduct complained of, and any other evidence of the alleged sexual harassment.

### ***Establishing Merit***

- 5.2.4 The designated officer together with the Gender Equity Officer will make a preliminary investigation of the allegations made by the complainant, which shall include confidential interviews with all persons identified by the complainant as witnesses to the alleged sexual harassment. Based on this investigation, they will determine whether or not there is any merit to the complaint and decide whether or not to proceed with the case. A written record of the investigation process, the conclusion and its basis should be kept by the Gender Equity Officer for future reference.
- 5.2.5 Should the designated officer and the Gender Equity Officer both decide not to proceed, the designated officer shall meet with the complainant to explain the basis for the decision. If the complainant is not satisfied with the explanation, he or she may submit a request in writing to the Gender Discrimination Committee for a review of the decision.
  - a. The designated officer will forward the request for review to the Chairman of the Gender Discrimination Committee along with the written record of the investigation process and the decision.
  - b. The Chairman of the Gender Discrimination Committee shall consult staff/student members of the Committee or both depending on the identity of the complainant and the respondent. If the decision is in favour of the complainant, the Chairman of the Gender Discrimination Committee shall direct the designated officer to proceed with the case. The designated officer shall inform the complainant the decision of the Chairman of the Gender Discrimination Committee in writing.
  - c. The decision of the Chairman of the Gender Discrimination Committee on this matter is final within the University.

### ***Resolution by Mediation***

- 5.2.6 Should the designated officer and Gender Equity Officer decide to proceed with the case, or if they are directed by the Chairman of the Gender Discrimination Committee to proceed with the case, they will provide a copy of the written complaint to the respondent, then meet with him/her to discuss the accusation, the evidence supporting it, and the procedures being followed to address the complaint.
- 5.2.7 Subject to the agreement of the complainant and the respondent, a settlement intended to provide a remedy for the complaint may be proposed. The emphasis in constructing a remedy should be on eliminating the behavior that is the basis for the complaint, and restoring to the complainant any benefits that were withheld as a result of rejection of this behavior.
- 5.2.8 If both the complainant and the respondent agree to the proposed remedy, the case is considered settled. But if at a later date another sexual harassment complaint is made on the basis of behavior essentially the same as that the respondent agreed to discontinue, the designated officer may move directly to initiate a formal hearing.
- 5.2.9 Subject to the agreement between the complainant and the respondent, service of external mediators may be used.
- 5.2.10 If the respondent refuses to agree to the proposed remedy, or denies the accusation of sexual harassment, or if the complainant disagrees with the settlement, the designated officer will initiate a formal hearing into the complaint.

### ***Hearing Procedures***

#### **General**

- 5.2.11 The hearing should be conducted when mediation fails to resolve the complaint. The hearing process is intended to provide a reasonable degree of confidentiality for both the complainant and the respondent, but without the formality of a legal proceeding. The emphasis is on reaching an early resolution in a fair and even-handed manner.

#### **Hearing Panel**

- 5.2.12 For the purpose of hearing complaints of sexual harassment, the Chairman of the Gender Discrimination Committee shall appoint a Hearing Panel. The Hearing Panel should normally consist of three members with at least one member from the Gender Discrimination Committee. The Panel may consist of the President of the Students' Union or the Chairman of the Staff Association, depending on the identity of the complainant and the respondent. There shall be good gender diversity in the Panel.

5.2.13 There shall be a record keeping secretary, who shall not play a part in the deliberations of the panel. The designated officer or the Gender Equity Officer should not be part of the Hearing Panel or serve as the record keeping secretary. The Hearing Panel should be constituted so as to provide balance and perspective relevant to the case. There shall be no conflict of interest, prejudice, or bias between a Hearing Panel member and the complainant or the respondent.

#### Procedures

5.2.14 Deliberations of the Hearing Panel shall be confidential, and all parties involved in the case shall be requested not to discuss the proceedings. Record of the proceedings shall be kept in confidence and in the custody of the Gender Equity Officer.

5.2.15 The complainant, respondent, witnesses proposed by the complainant or the respondent will be interviewed separately and in private by the Hearing Panel. Neither the parties nor witnesses will be subject to questioning except by members of the Hearing Panel.

#### Decision and Remedy

5.2.16 The Hearing Panel should within 10 working days upon the conclusion of the hearing, submit a written report to the Gender Discrimination Committee. The Hearing Panel, if it finds that sexual harassment has occurred, shall recommend to the Gender Discrimination Committee one or more of the following remedies:

- a. the respondent shall cease the behavior that is the basis for the complaint;
- b. the respondent shall refrain from further contact with the complainant, to which end the Panel may recommend that the respondent or complainant be reassigned;
- c. the respondent shall undergo counseling or treatment;
- d. the University shall initiate disciplinary proceedings against the respondent and the Panel in such a case may recommend the disciplinary action to be taken;
- e. the University shall suggest remedies to restore to the complainant any benefits that were withheld as a result of rejection of this behavior.

5.2.17 After considering the report of the Hearing Panel, the Gender Discrimination Committee may accept the recommendations of the Hearing Panel in whole or in part and decide on the remedies in consultation with the relevant Branch Head. A decision in writing should be made within 10 working days from the receipt of the written report of the Hearing Panel.

5.2.18 Where the Gender Discrimination Committee disagrees with the conclusion of the Hearing Panel, the Committee shall refer the case to the Hearing Panel for further review.

5.2.19 The designated officer shall inform in writing the complainant and the respondent the outcome of the hearing and the remedies within 10 working days from the receipt of the decision on the case.

### *Appeal*

5.2.20 The complainant or the respondent may appeal to the President of the University the decision of the Gender Discrimination Committee within 15 working days of receiving the decision. The appeal must be made in writing, stating the grounds for the appeal and including any new evidence or specific information that was not considered by the Panel. Normally appeals will be considered only on the basis of procedural irregularities or new evidence/information.

5.2.21 The President shall review the case or refer the case to his/her designate for review. The President or his/her designate may:

- a. confirm the decision and remedy recommended by the Gender Discrimination Committee; or
- b. confirm the decision, but modify the remedy recommended by the Gender Discrimination Committee; or
- c. return the case to the Hearing Panel for review.

5.2.22 The decision of the President or his/her designate shall be final within the University.

### 5.3 Timeline, Suspension and Termination of Complaint Procedures

5.3.1 A complainant should make a complaint in a timely fashion, and once a complaint is made it must be investigated promptly. Normally a complaint should be made at the very earliest opportunity after the act of harassment occurs, and not more than 6 months after the last incident of the alleged sexual harassment. A complaint made after a significant time lapse may weaken a complainant's case and make investigation difficult. The following timelines apply to the complaint procedures:

- a. A complaint should normally be made within 6 months from the date of the last incident of the alleged sexual harassment.
- b. The designated officer and the Gender Equity Officer should complete the initial investigation and decide whether or not to proceed with the case within 30 working days after receiving the complaint.
- c. Mediation process should not take more than 20 working days.
- d. Should mediation fail, the hearing should be conducted within 15 working days.

- e. The hearing process should not take more than 15 working days, and a written report should be submitted by the Hearing Panel to the Gender Discrimination Committee within 10 working days upon the conclusion of the hearing.
  - f. A decision in writing should be made within 10 working days from the receipt of the written report of the Hearing Panel.
  - g. The designated officer should inform in writing the complainant and the respondent within 10 working days from the receipt of the decision on the case.
  - h. Appeals in writing should be made within 15 working days from the day the Complainant or the Respondent receives the decision of the Gender Discrimination Committee.
  - i. The President shall issue a final decision within one month of the receipt of the appeal.
- 5.3.2 If any deadlines cannot be met, the designated officer will inform the complainant and the respondent in writing prior to the deadline about the reasons for the delay and an estimated timeline.
- 5.3.3 Normally, the total time period for the investigation, from the filing of a complaint to submission of the hearing report and recommended action to the Gender Discrimination Committee, to informing both parties of the outcome of the hearing will not exceed 110 working days.
- 5.3.4 Once a complaint has been lodged externally, or the complaint is under police investigation or legal proceedings, internal process will not be activated, or if already commenced will be suspended.
- 5.3.5 Internal process will be terminated if the respondent terminates his/her studies or employment at the University. Should such occurs, the complainant may consider external course of action.
- 5.3.6 Internal process may be terminated if the complainant decides to withdraw or not to pursue the complaint. However, if it is determined that an act of sexual harassment has been committed and the conduct of a student, faculty or staff member warrants disciplinary actions, the University is entitled to invoke disciplinary actions against the person concerned.

#### 5.4 Complaint against the Chairman of the Gender Discrimination Committee or the President

- 5.4.1 In the event that the Chairman of the Gender Discrimination Committee is himself/herself the source of a complaint, the President or his/her designate shall handle the complaint. In the event that the President is himself/herself the source of a complaint, the complaint may be lodged direct with the Chairman of the Council.

## 5.5 Right of Representation

5.5.1 Both the complainant and the respondent have the right to be accompanied and supported by a person other than a legal representative at any meetings under the informal resolution or formal complaint and hearing procedures. The person can be a representative from the Students' Union or the Staff Association, a member of their family, or a member within the University of their choice. The person accompanying the complainant or the respondent is not entitled to address the investigators or the Hearing Panel at the meetings. The name of the accompanying person and his/her relationship with the complainant or respondent must be provided prior to the meeting.

## 6. POLICY REVIEW

6.1 This policy was established in 1994 upon approval by the University Administrative Committee. This document went into effect in 2013 after a major review of the Policy by the Gender Discrimination Committee and upon approval by the University Administrative Committee. Any comments or suggestions should be sent to the Secretary of the Gender Discrimination Committee c/o the Office of the Vice-President for Administration and Business.