

CITY UNIVERSITY OF HONG KONG

Sexual Harassment Policy and Procedures

1. Preamble

- 1.1. Under the Sex Discrimination Ordinance (SDO), sexual harassment in the education and employment fields is unlawful. The University has a legal and moral obligation to provide a working and learning environment that is free from sexual harassment and hence adopts a zero-tolerance policy towards all forms of sexual harassment.
- 1.2. Besides being unlawful, sexual harassment is an important ethical issue for the whole University because of the negative impact it has on the physical and psychological well-being of staff and students. It impairs efforts made to foster a respectful and productive working and learning environment. Sexual harassment often results in communication breakdown, conflict, demoralisation, absenteeism, withdrawal and resignation. Conversely, the prevention and elimination of sexual harassment in the University encourages high productivity in work, effective learning, regular attendance, high retention rate, respectful communication and trust, and the fulfillment of the University's legal responsibilities and obligations.
- 1.3. All members of the University community, whether staff or students, are entitled to a working and learning environment which is professional and which promotes respect and regard for the rights and feelings of all. Sexual harassment violates the rights, dignity and integrity of the individual and undermines the environment necessary for the advancement of learning and will not be tolerated by the University. The University is committed to preventing and eliminating sexual harassment and will not condone any act of sexual harassment committed by its staff members or students.
- 1.4. Sexual harassment is a breach to staff and student discipline and shall be subject to disciplinary action, which may lead to penalty including immediate termination of employment for staff and/or expulsion of students, and may also entail civil liability and even criminal consequences. All sexual harassment complaints should be thoroughly and fairly handled and/or investigated without delay in accordance with the Procedures for Handling Sexual Harassment Complaints as detailed in [Appendices II](#) and [III](#).
- 1.5. Whatever form it takes, the University will not permit any staff member or student to harass others with whom he/she has business and/or academic interactions including, but not limited to, other staff members, students and prospective students, or permit any outsider to harass its staff members or students. This is true, not only in the workplace or on campus, but during business/school trips, business-related social events organised or sponsored by the University and at any other venues.
- 1.6. The University will keep the Sexual Harassment Policy and Procedures under constant review.

2. Definition of Sexual Harassment

2.1. Following the Sex Discrimination Ordinance (SDO):

A person (howsoever described) sexually harasses another person if:

2.1.1. the person,

- (i) makes an unwelcome¹ sexual advance, or an unwelcome request for sexual favours, to that person; or
- (ii) engages in other unwelcome conduct of a sexual nature² 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

2.1.2. 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.

2.2. Under the SDO, sexual harassment covers acts of sexual harassment of both men and women as well as sexual harassment to persons of the same sex.

2.3. In the field of employment, it is unlawful for an employee to sexually harass a fellow employee who may include a contract worker, a commission agent or any person who is seeking to be employed by the University (s.23 of the SDO).

2.4. For educational establishments, it is unlawful for any staff member of the University to sexually harass a person who is a student or a prospective student of the University; for a student or prospective student of the University to sexually harass staff member of the University; and for any student of the University to sexually harass any fellow student or a person who is a prospective student of the University (s.39 of the SDO).

2.5. 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 (s.47 of the SDO). It is unlawful for a person to instruct, to procure, or attempt to procure, another person to sexually harass a third person (s.44 of the SDO). It is also unlawful for a person to induce or attempt to induce another person to sexually harass a third person by providing or offering to provide that person with any benefit, or subjecting or threatening to subject that person to any detriment (s.45 of the SDO).

2.6. Examples of sexual harassment include:

2.6.1. Unwelcome sexual advances – e.g. leering and lewd gestures, touching, grabbing or deliberately brushing against another person;

¹ In general terms, “unwelcome” behaviour is behaviour that is uninvited and unwanted by the recipient(s) of the behaviour.

² “Conduct of sexual nature” includes making a statement of a sexual nature to another person, or in the presence of that person, whether the statement is made orally or in writing [s.2(7) of the SDO].

- 2.6.2. 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 employment conditions or academic results;
 - 2.6.3. 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;
 - 2.6.4. Conduct of a sexual nature that creates a hostile or intimidating environment – e.g. sexual or obscene jokes around the workplace/classrooms and campus/halls of residence; displaying sexist or other sexually offensive materials; offensive communications of a sexual nature (letters, phone calls, faxes, e-mails and text messages, etc.). Materials used for educational purposes are not examples of sexual harassment.
- 2.7. Unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature constitute sexual harassment in the University when any aspect of an individual’s employment or educational experience is made conditional on submission to such conduct:
- 2.7.1. Aspects of employment include but are not limited to hiring, retention, personnel review, pay review, transfer, promotion, termination, re-assignment, salary determination, fringe benefits, workload, opportunities, training and staff development, and working conditions.
 - 2.7.2. Aspects of educational experience include but are not limited to admission to a course or class, grades, letters of recommendation, homework, publications, honours, research opportunities, scholarships, housing, grants, employment opportunities, use of facilities, probation, termination, and classroom conditions.
- 2.8. Sexual harassment in employment includes the following situations:
- 2.8.1. sexually harassing a person who is employed or seeking to be employed either by the employer or by someone else within the same organisation;
 - 2.8.2. sexually harassing a contract worker or a commission agent;
 - 2.8.3. sexually harassing a person seeking an authorisation or qualification; and
 - 2.8.4. sexually harassing a person seeking or undergoing training.
- 2.9. 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.
- 2.10. 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.

- 2.11. Even if the act of sexual harassment is not intentional or there is no evidence to prove the intention, it amounts to sexual harassment once the act meets the definition of sexual harassment. Hence, no matter whether the act is intentional or not, or even if the act is of a playful nature, it may amount to sexual harassment.
- 2.12. In determining whether certain conduct constitutes sexual harassment, the entire record and the totality of the circumstances will be considered.

3. Sexual Harassment Complaints

- 3.1. In an effort to avoid any misunderstandings and foster open communication in the workplace and on campus, staff members or students are recommended, but are not required, to communicate their discomfort to those whom they feel are engaging in inappropriate conduct. Staff members or students may seek guidance from the **Committee Against Sexual Harassment (CASH)** on issues concerning sexual harassment. Enquiries can be directed to the CASH enquiry line at 3442 9000 (during 9:00 a.m. to 5:00 p.m. from Monday to Friday) or e-mail at cash@cityu.edu.hk. Staff members, students and other persons may also lodge a complaint with the **Designated Complaint Recipient** (please refer to paragraph 5 of [Appendix II \(a\)](#) or paragraph 7 of [Appendix III \(a\)](#)) of CASH if they think that they have been sexually harassed or if they have witnessed any act of sexual harassment which is covered by this policy. While anonymous complaints may be considered, it is recommended for complainants to provide the University with his/her identity to facilitate handling of the complaint. Information on CASH is detailed at [Appendix I](#).
- 3.2. A sexual harassment complaint can be classified as either **formal** or **informal**, depending on whether an investigation is conducted into the case. The two approaches are both valid, and the exact approach to be adopted depends on the preference of complainant.
- 3.3. In general, it may be appropriate for minor and single incidents (but not more serious and repeated acts of sexual harassment) to be dealt with informally. The main objective of an informal complaint is to stop the alleged harassment at the earliest possible stage. The handling of informal complaints would not involve any investigation (e.g. fact-finding, decision making or judgment) by the University. The informal mechanism may include the complainant seeking mediation help from the University via CASH.
- 3.4. In the event the complaint could not be resolved through the informal mechanism (e.g. when the complainant does not agree with the respondent's account of the incident, etc.), or at any time when the complainant requests an investigation into his/her allegation, the complaint should be dealt with in a formal manner according to prescribed procedures.
- 3.5. The complainant should lodge either a written or an oral complaint as soon as possible in accordance to the procedures but in no case exceeding twelve months from the date the alleged act of harassment occurs. The lapse of time may weaken a complainant's case and render the subsequent investigation difficult to carry out. Delayed complaints may only be handled at the sole discretion of the **Chairperson of CASH**, decision of which would be final.

- 3.6. The procedures for handling informal and formal sexual harassment complaints are detailed in [Appendices II \(a\), \(b\)](#) and [III \(a\), \(b\)](#) respectively.
- 3.7. The Sexual Harassment Policy and Procedures are without prejudice to all statutory rights³ of the complainant(s).
- 3.8. In the event that the complainant chooses to report the case to the statutory bodies, the University shall suspend the on-going procedures or investigation (if any) until there is a conclusion of the relevant proceedings.

4. Principles for Handling Sexual Harassment Complaints

4.1. General Principles

- 4.1.1. All complaints must be handled promptly, seriously, objectively, fairly and without any bias and with a commonsense approach.
- 4.1.2. All complaints should be assumed to be made in good faith unless proven otherwise. Nobody will be punished because of lodging a complaint in good faith.
- 4.1.3. Care must be taken to ensure that the process of bringing and/or handling a complaint would be reasonably discreet and does not unnecessarily expose the complainant to further distress and humiliation.
- 4.1.4. Both the complainant and the alleged harasser may be accompanied by a person with the following background, if they so wish, at all meetings:
 - (i) Another member of the University (either staff or student);
 - (ii) Friend or relatives; or
 - (iii) a representative from a volunteer group.
- 4.1.5. Designated persons handling the complaints or the investigations should have the relevant training and experience in related issues. They should not have any direct working or educational relationship with the complainant/alleged harasser.
- 4.1.6. Subject to the requirements of the Personal Data (Privacy) Ordinance, all complaints of sexual harassment will be received and handled in a confidential manner and any information relating to a complaint of sexual harassment will only be disclosed on a strict need-to-know basis. However, investigation of such

³ (a) The complainant may also seek advice or lodge a complaint of sexual harassment with the Equal Opportunities Commission (EOC). A complaint of sexual harassment should be lodged within twelve months from the date the act of harassment was done, failing which the EOC may decide not to conduct, or to discontinue, an investigation into the act.

(b) Pursuant to the provisions of the Sex Discrimination Ordinance, the complainant may also institute civil proceedings in the District Court to claim against the alleged harasser within twenty-four months from when the act complained of was done.

(c) The complainant may report the case to the Police if he/she considers appropriate.

complaints will in most cases require disclosure to the accused and to other witnesses in order to gather pertinent facts. It gives assurance to the individuals involved in the complaint that management appreciates the sensitive nature of sexual harassment and details of the complaint will not be disclosed to unrelated individuals. Both the victim-complainant⁴ and the alleged harasser should be informed of the outcome of the investigation.

4.1.7. The complainant and the witnesses should be protected against victimisation⁵ for making or being involved in the complaint. No retaliatory measure by anyone will be allowed against the complainant or anyone who cooperates in a harassment investigation.

4.1.8. As a general rule, a complainant should normally not be removed from his/her usual duties/studies or treated in an unusual manner whilst awaiting the outcome of the complaint as this may constitute less favourable treatment to the complainant which is not justified and may constitute a ground for complaint of victimisation. There may however be cases where it is difficult to keep the parties together until the outcome is known, for instance, when investigation is suspended pending consideration by the statutory bodies. Under such circumstances, Heads of Departments should take appropriate measures to deal with the situation but the wishes of the complainant and the alleged harasser have to be taken into account.

5. Publicity and Preventive Measures

5.1. The University's Sexual Harassment Policy and Procedures and any updates thereof should be announced to members of the University community and be incorporated in relevant staff and student publications and/or webpages appropriately from time to time.

5.2. Publicity and education programmes in the form of briefing sessions or workshops should be organised for staff and students to enhance their awareness of the issue. Available resources should also be made known to all staff and students to enable them to seek appropriate guidance and counselling when in need.

5.3. Publicity materials should be distributed to departments and units for display or circulation. Such materials could be used for training programmes as well as for

⁴ Victim-complainant means a complainant who is a victim of the alleged sexual harassment and has a legitimate and direct personal interest in receiving information relating to the disciplinary process in question, including not only the outcome of a complaint but also the penalty imposed.

⁵ Under the SDO, 'victimisation' is an unlawful act. According to the Code of Practice on Employment under the Sex Discrimination Ordinance, 'victimisation' arises where a person (the discriminator) treats another person (the person victimised) less favourably than persons in comparable circumstances because the person victimised or a third person has done or intends to do, or is suspected to have done or to intend to do, the following:

- bringing proceedings against the discriminator or any other person under the SDO;
- giving evidence or information in connection with proceedings brought by any person against the discriminator or any other person under the SDO;
- otherwise doing anything under or by reference to the SDO in relation to the discriminator or any other person;
- or
- alleging that the discriminator or any other person has committed an act which is unlawful under the SDO.

distribution to new appointees and students during induction or orientation programmes.

- 5.4. Promotional and educational activities should be conducted as an on-going exercise to introduce and reinforce the policy.
- 5.5. Heads of Departments and Line Managers have an important contribution to make in ensuring that the culture of the workplace or learning environment actively discourages sexual harassment.
- 5.6. It is vital that all Heads of Departments and Line Managers should be familiarised with the University's Sexual Harassment Policy and Procedures and take practical steps in their respective areas to prevent harassment before it starts.
- 5.7. Heads of Departments and Line Managers have a personal and legal obligation to comply with the Sex Discrimination Ordinance and to 'take all reasonable steps' to prevent sexual harassment from occurring in the area for which they are responsible. Failure to do so may result in the University being vicariously liable for allowing sexual harassment to take place.

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Current version 14 August 2020

CITY UNIVERSITY OF HONG KONG

Committee Against Sexual Harassment (CASH)

1. The Committee Against Sexual Harassment (CASH) is appointed by the President, comprising academic and administrative and services staff members in both genders from different Colleges, Schools, Departments and Administrative Units who are familiar with the University's Sexual Harassment Policy and Procedures, have knowledge of related legislation, are sensitive to gender issues and possess relevant training and experience in related issues.
2. The composition of CASH is as follows:

Chairperson	:	A senior academic or administrative and services staff
Ex-officio Members <i>(also as designated recipients of sexual harassment complaints depending on the identity of the alleged harasser)</i>	:	Director of Human Resources Dean of Students Dean of Graduate Studies
Members	:	Not more than ten academic or administrative and services staff including: (a) two nominees of the Director of Human Resources, (b) one nominee of each of the other Ex-officio Members, (c) other nominees by the Provost, Vice-Presidents or equivalent and Deans
Secretary	:	An administrative and services staff
3. Maximum number of Members from the same unit/office is limited to two so as to ensure background diversity. The Chairperson and Members, other than the Ex-officio Members, will be appointed to serve initially for a term of three years. Subsequent appointments will be on staggered terms. Members may be appointed to serve as Subject Officer or a member of an Investigation Panel to investigate formal complaints on sexual harassment.
4. The terms of reference of CASH are as follows:
 - (a) To provide support to the promotion of awareness of the Sexual Harassment Policy and Procedures in the University.
 - (b) To identify and recommend changes to policies/practices on sexual harassment that may be inconsistent with the legislation.

- (c) To inform staff and students of available options, and their right to lodge complaints on sexual harassment internally or externally with the Equal Opportunities Commission, the police, and the courts.

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CITY UNIVERSITY OF HONG KONG

Procedures for Handling Informal Sexual Harassment Complaints

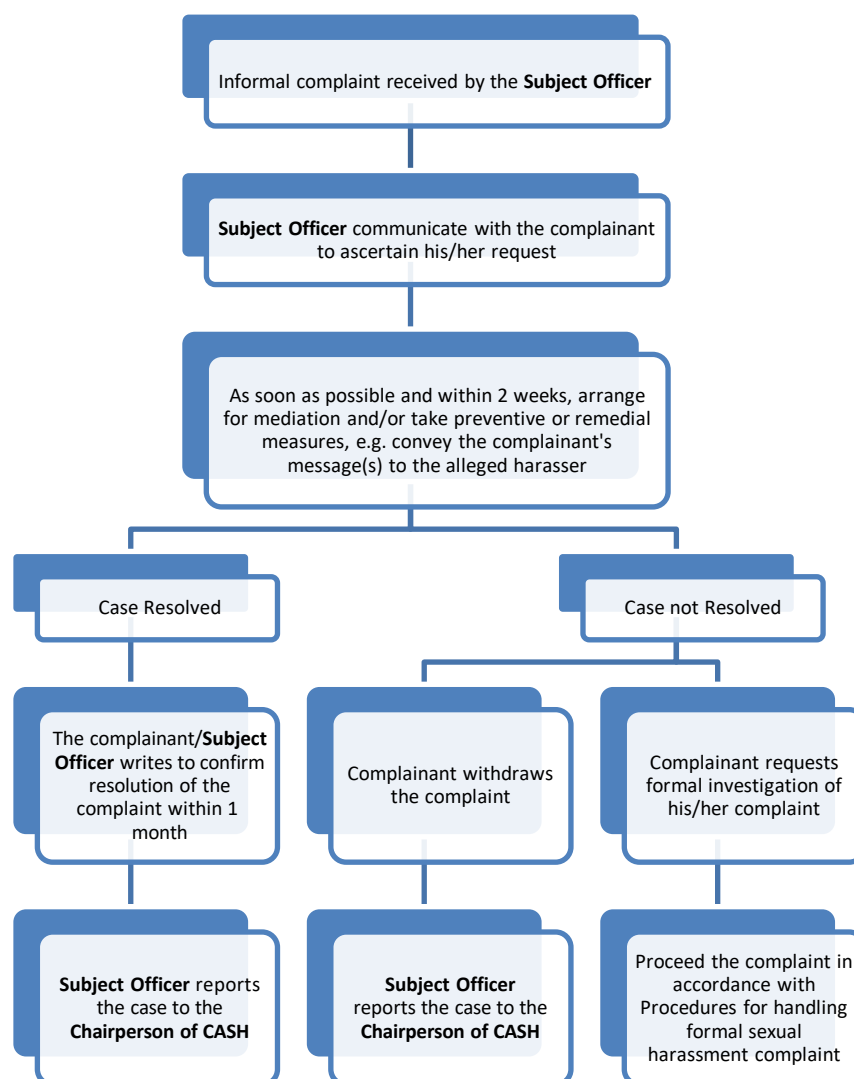
1. Informal handling mechanism focuses on resolving the conflict and stopping the act of alleged harassment at the earliest possible stage. The handling of informal complaint would not involve any investigation (e.g. fact-finding, decision making or judgment) by the University.
2. Whether to adopt the informal complaint procedures depends on the preference of the complainant. The informal mechanism may include the complainant seeking mediation help from the University via the Committee Against Sexual Harassment (CASH). A complaint will be handled informally when a complainant prefers that informal actions be taken to stop the harassment at the earliest possible stage instead of requesting an investigation into his/her case.
3. In general, informal action may be suitable for minor and single incidents of sexual harassment but not for more serious and repeated acts of sexual harassment.
4. All complaints of sexual harassment will be received and handled in a confidential manner and any information relating to a complaint of sexual harassment will only be disclosed on a strict need-to-know basis.
5. Depending on the identity (*staff or student*) of the alleged harasser, complaints of sexual harassment should be lodged with the following respective personnel (the ***Designated Complaint Recipient***):
 - (a) the Director of Human Resources (or nominee) when the alleged harasser is a staff member; or
 - (b) the Dean of Students (or nominee) when the alleged harasser is a student at or below undergraduate level; or
 - (c) the Dean of Graduate Studies (or nominee) when the alleged harasser is a student at postgraduate level.

The nominee shall be chosen from Members of CASH.

6. When the Director of Human Resources, the Dean of Students, the Dean of Graduate Studies, the Head of Department or any other person comes into knowledge of a sexual harassment complaint of which they are not the ***Designated Complaint Recipient***, he/she should direct the case to the ***Designated Complaint Recipient***.
7. The ***Designated Complaint Recipient*** or his/her nominee (who is a Member of CASH) shall become the ***Subject Officer*** of the case. In appropriate circumstances or at the request of the complainant, the gender of the delegated ***Subject Officer*** should be taken into consideration.

8. On receiving an informal complaint of sexual harassment, the **Subject Officer** should communicate with the complainant and if the complainant so desires, communicate with the alleged harasser on behalf of the complainant soonest possible in 2 weeks. Mediation and/or preventive or remedial measures may be adopted to address the situation as soon as possible. Such informal action can be particularly useful when the concerned alleged harasser admits to the alleged conduct but does not realise that such behaviour is offensive to the complainant.
9. If the complaint is resolved informally, the complainant shall write to the **Subject Officer** to confirm resolution of the complaint within one month. Should the complainant fail to make such written confirmation within one month, the **Subject Officer** shall write to the complainant to confirm the resolution. If the complainant does not raise any objection to the **Subject Officer's** written resolution within 7 days, the complaint shall be deemed resolved.
10. On conclusion of the case, the **Subject Officer** shall report to the **Chairperson of CASH** in writing, giving a brief account of the complaint and measures taken to resolve the complaint.
11. However, if the complaint could not be resolved informally (e.g. the alleged harasser does not agree that he/she had committed the alleged act of sexual harassment or the complainant is not satisfied with the alleged harasser's responses, if any), the **Subject Officer** shall remind the complainant of his/her options in handling the complaint.
12. If the complainant requests an investigation into his/her allegations, the **Subject Officer** should inform the **Designated Complaint Recipient** of the complainant's decision of handling the complaint formally unless the complainant withdraws his/her complaint unconditionally in writing. **Formal** complaints are handled in accordance with the Procedures for Handling Formal Sexual Harassment Complaints laid down in [Appendix III \(a\)](#).
13. A flow chart showing the process is at the [Appendix II \(b\)](#).
14. The **Chairperson of CASH**, as assisted by the Secretary of CASH, shall maintain records of complaints or cases handled for statistical purposes and report to the President on an annual basis.

Flow Chart on Handling Informal Sexual Harassment Complaints



Note:

The Subject Officer will be:

1. the Director of Human Resources (or nominee) when the alleged harasser is a staff member; or
2. the Dean of Students (or nominee) when the alleged harasser is a student at or below undergraduate level; or
3. the Dean of Graduate Studies (or nominee) when the alleged harasser is a student at postgraduate level.

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Procedures for Handling Formal Sexual Harassment Complaints

1. The **formal** mechanism is suitable for more serious or repetitive sexual harassment complaints, or when sexual harassment continues or the conflict between the two parties cannot be resolved using an informal mechanism. Whether to adopt the formal complaint procedures depends on the preference of the complainant.
2. The **formal** mechanism involves investigation where the complainant will be formally interviewed. The alleged harasser will be informed about the complaint and be given the opportunity to respond to the allegations and raise any matters in his/her own defence. Witnesses, if any, may also be interviewed.
3. Designated persons charged with handling a formal complaint must not pre-judge the matter. In conducting the investigation, full accounts from all parties of the matter must be obtained before the **Investigating Panel** says, implies or does anything that could be perceived as judging the matter. The allegations should be properly investigated, all parties being heard and relevant submission considered. Irrelevant matters should not be taken into account.
4. It also involves making a finding on the balance of probability (i.e. whether it is more likely than not that the sexual harassment had occurred). Until a formal complaint has been investigated and a decision made, the claims of the person who believes he/she has been harassed are allegations only. A person who makes an allegation cannot be involved in determining it.
5. The victim-complainant(s) and the alleged harasser(s) must be kept informed throughout the process. All relevant and interested parties must have access to information about the range of resolution outcomes available, e.g. whether the case is to be dismissed. However, a complainant who is not a victim himself/herself would not be informed of the result of the investigation, and/or the recommended disciplinary action, if any.
6. Outcomes should be consistent and fit the breach of policy that has occurred.
7. Depending on the identity (*staff or student*) of the alleged harasser, complaints of sexual harassment should be lodged with the following respective personnel (the **Designated Complaint Recipient**):
 - (a) the Director of Human Resources (or nominee) when the alleged harasser is a staff member; or
 - (b) the Dean of Students (or nominee) when the alleged harasser is a student at or below undergraduate level; or
 - (c) the Dean of Graduate Studies (or nominee) when the alleged harasser is a student at postgraduate level.

The nominee shall be chosen from Members of CASH.

8. When the Director of Human Resources, the Dean of Students, the Dean of Graduate Studies, the Head of Department or any other person comes into knowledge of a sexual harassment complaint of which they are not the **Designated Complaint Recipient**, he/she should direct the case to the **Designated Complaint Recipient**.
9. The **Designated Complaint Recipient** or his/her nominee (who is a Member of CASH) shall become the **Subject Officer** of the case. In appropriate circumstances or at the request of the complainant, the gender of the delegated **Subject Officer** should be taken into consideration.
10. On receiving the sexual harassment complaint, the **Subject Officer** shall acknowledge a written complaint in writing within two weeks of receipt. In case of an oral complaint, the **Subject Officer** shall record it in writing and confirm the record with the complainant as soon as possible, and in any case within two weeks.
11. The **Subject Officer** shall report the complaint to the **Chairperson of CASH** (with a copy to the President).
12. If, upon receipt of the complaint or at any time during the course of investigation, the **Subject Officer** discovers that the complaint is of a criminal nature, e.g. the substance of the complaint may amount to an indecent assault, the complainant will be informed of his/her right to report to the Police. Investigation and/or any ongoing procedures by the University should be suspended once referral has been made to the Police and the **Subject Officer** should inform the **Chairperson of CASH** and the President immediately.
13. The **Subject Officer** should maintain case files and records of the formal complaints received to facilitate the monitoring of progress in processing the formal complaints. All such files and records should be accorded confidential status and passed to the Secretary of CASH on completion of the procedures for retention.
14. The **Subject Officer** shall form an **Investigation Panel (Investigation Panel)** to carry out investigations. The **Investigation Panel** shall comprise the **Subject Officer** as the Chairperson and at least two more Members chosen from CASH by the **Subject Officer**. The total number of members of the **Investigation Panel** should be an odd number. In appropriate circumstances and in consultation with the **Chairperson of CASH**, the **Subject Officer** has the authority to appoint other staff members, instead of Members from CASH, to serve as Members of the **Investigation Panel**. A student or other persons may be co-opted on the **Investigation Panel** as decided by the **Subject Officer** in consultation with the **Chairperson of CASH**. The **Subject Officer** shall nominate a person to be the Secretary of the **Investigation Panel**. A fair distribution of members in both genders should be observed as far as practicable. No members of an **Investigation Panel** shall have any direct working or educational relationship with the complainant/alleged harasser.
15. The **Investigation Panel** shall carry out the investigations as soon as practicable in accordance with the principles set out in the Sexual Harassment Policy and Procedures and notify the alleged harasser of the carrying out of the investigations. A set of Standard Terms of Reference of **Investigation Panel** is provided in the [Annex](#) which the **Investigation Panel** may consider to adopt or amend as appropriate. The investigation should include the following:

(a) *Interviewing the complainant*

The nature of the details of the complaint should be ascertained. To facilitate subsequent investigations, a written statement should be taken which should be signed and confirmed to be accurate by the complainant. If the complainant is a minor, he/she is entitled to be accompanied by his/her parents and/or guardians when attending interviews so as to safeguard his/her rights.

(b) *Interviewing the alleged harasser*

Details of the allegations should be given in writing to the alleged harasser who should then be interviewed to give explanations or comments. The interview should be recorded in writing and signed and confirmed to be accurate by the alleged harasser. If the alleged harasser is a minor, he/she is entitled to be accompanied by his/her parents and/or guardians when attending interviews so as to safeguard his/her rights.

(c) *Provisions during the interview*

- Given that cases of sexual harassment involve issues of a sensitive and embarrassing nature, both the complainant and the alleged harasser may need help and support during the interview. Under such circumstances, both parties may be accompanied by another person⁶ throughout the proceedings (see paragraph 4.1.4 of the Sexual Harassment Policy and Procedures).
- Reasonable measures should be taken to avoid the complainant and the alleged harasser to appear in the same meeting as far as practicable.
- Both parties have the right to give evidence in their preferred language and an interpreter will be provided by the Chairperson of the **Panel** if necessary.
- The Secretary of the **Investigation Panel** shall maintain a record of proceedings as the Chairperson considers appropriate.

(d) *Interviewing witnesses*

- Both the complainant and the alleged harasser may call witness(es) to give evidence on their behalf. The **Investigation Panel** shall have the discretion to call any other witnesses (if any).
- All interviews should be recorded in writing and, where practicable, signed and confirmed to be accurate by each witness.

(e) *Provision of information materials*

- The **Investigation Panel** shall determine the information, documents and other materials, including the written statements collected and records of interview conducted by the **Investigation Panel**, to be passed on to the complainant and

⁶ The accompanying person is to provide advice and moral support to the staff/student member concerned. He/she shall have no right to address the **Investigation Panel**. Notes-taking for personal use may be allowed in appropriate circumstances as determined by the **Investigation Panel**.

alleged harasser to facilitate the investigation.

- The complainant, alleged harasser and witnesses should be made aware that the information they provide to the **Investigation Panel** in writing or during interviews, with personal data redacted, may be provided to the complainant and the alleged harasser.
- In making its findings and decisions, the **Investigation Panel** can take into account its interview record even if such interview record is, for any reason, not signed and confirmed to be accurate by the complainant, alleged harasser or witnesses.

(f) *Findings*

- Both parties must be given an opportunity to present their cases in detail and to comment on the allegations and responses made by the other party (including their responses provided under paragraph 23 below, if any). The **Investigation Panel** will analyse the information and ascertain the facts of the case.
- The standard of proof required should be based on the balance of probabilities and commensurate with the gravity of the breach of standards of behaviour.
- In determining whether certain conduct constitutes sexual harassment, the entire record and the totality of the circumstances shall be considered.

16. The investigation of a complaint by the **Investigation Panel** shall normally be completed and a reply shall be issued to the victim-complainant within three months after receipt of the complaint. If an investigation cannot be completed within three months, the **Investigation Panel** will send an interim reply to the victim-complainant and the alleged harasser, informing them of the progress of the investigation. Any investigation which cannot be completed within four months should be drawn to the attention of the **Chairperson of CASH** and the President.
17. If at any time during the investigation, the **Investigation Panel** discovers that the same complaint has been lodged with any statutory bodies or police, internal investigation shall be suspended. The **Subject Officer** should inform the **Chairperson of CASH** and the President. Internal investigation may resume upon conclusion of the external proceedings.
18. It is the responsibility of the **Investigation Panel** to obtain and scrutinise all relevant information concerning the case to see whether an act of sexual harassment might have been committed.
19. The investigation can be discontinued if the **Investigation Panel** is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking substance; or if at any time during the investigation the complainant does not desire the investigation be conducted or continued. If the **Investigation Panel** has decided to discontinue the investigation, the complainant and the alleged harasser should be advised of the reasons for that decision.
20. The **Investigation Panel** shall, upon the conclusion of the investigations and thereafter as soon as practicable, determine and conclude whether the complaint is established.
21. Both the victim-complainant and the alleged harasser should be informed by the

Investigation Panel whether the complaint has been established. If the complaint is not established, the reasons and the outcome of the investigation should be given to both the victim-complainant and the alleged harasser. For the avoidance of doubt, the conclusion that the complaint is not established is a decision of the **Investigation Panel**.

22. If the complaint is established, the **Investigation Panel** shall also make recommendation on whether consideration should be given to instituting disciplinary action against the alleged harasser and have the option to make recommendation on the penalties to be imposed when considered appropriate.
23. In cases where the complainant is a victim of wrongdoing committed by the alleged harasser, both the victim-complainant ⁷ and the alleged harasser should be informed of whether disciplinary action will be recommended against the alleged harasser and the penalties recommended, if any. Both the victim-complainant and the alleged harasser should be given a period of one week to respond. The response, if any, shall be considered by the **Investigation Panel** before it reports the findings and recommendations to the relevant disciplinary authority for consideration. A complainant who is not a victim to the sexual harassment act would not be informed of the results and/or recommendations.
24. In the event that the complaint has been established, the **Investigation Panel** shall write to the relevant disciplinary authority ⁸ in accordance with the University's Regulations Governing Staff Discipline or Code of Student Conduct and Disciplinary Procedure, with copies to the **Chairperson of CASH** and the President, providing a full report on the investigation, outcome and recommendations. For the avoidance of doubt, the **Investigation Panel's** conclusion that a complaint is established is a recommendation to be made to the appropriate disciplinary authority. The decision power rests with the appropriate disciplinary authority.

⁷ Victim-complainant means a complainant who is a victim of the alleged sexual harassment and has a legitimate and direct personal interest in receiving information relating to the disciplinary process in question, including not only the outcome of a complaint but also the penalty imposed.

⁸ According to the Regulations Governing Staff Discipline, the respective Dean (for Colleges)/Line Manager at Vice- President or equivalent level is the Responsible Authority to instigate final disciplinary action. He/She may decide to take one or more of the courses of action set out below which are not meant to be exhaustive, or alternatively, he/she may form a Disciplinary Committee to assist and advise him/her in reviewing the case:

- to issue a written warning to the staff member concerned;
- to order the staff member concerned to indemnify the costs of the disciplinary process;
- to order stoppage or deferment of salary increase which may otherwise be enjoyed by the staff member concerned;
- to suspend or to forfeit the entitlement of the staff member concerned to one or more of the named fringe benefits which may otherwise be enjoyed by the staff member;
- to vary the grade and/or terms of appointment of the staff member concerned with or without reduction or forfeiture of the privileges and/or benefits;
- to dismiss the staff member concerned with or without reduction or forfeiture of the privileges and/or benefits.

According to the Code of Student Conduct and Disciplinary Procedure, major cases warranting disciplinary action will be referred to the Secretary of the Student Discipline Committee for consideration by a Student Discipline Panel. Penalties imposed by the Student Discipline Panel may consist of:

- withholding a student's eligibility for receipt of a scholarship, prize or financial award; or for inclusion on the Dean's List, or to represent the University in any external activity, for a specified period of time;
- exclusion from use of University amenities/facilities for any specified period of time*;
- suspension from the University for a specified period of time;
- expulsion from the University, which may include specification of a period within which a student may not be readmitted as a student of the University;
- the withdrawal of an award already made; etc.

25. Upon receipt of the report and recommendations of the **Investigation Panel**, the disciplinary authority concerned shall decide whether to adopt the recommendations including whether to take disciplinary action against the harasser. The Regulations Governing Staff Discipline or Code of Student Conduct and Disciplinary Procedure, as appropriate, (including the type of disciplinary action against the person in breach of disciplinary rules) shall apply.
26. Both the victim-complainant and the alleged harasser shall be informed by the disciplinary authority concerned whether the complaint is established, and whether disciplinary action will be taken and the penalties imposed.
27. If the harasser wants to appeal against the recommendations of the **Investigation Panel** and/or the decision of the disciplinary authority concerned, the appeal should be lodged with the relevant appeal authority in accordance with the Regulations Governing Staff Discipline or Code of Student Conduct and Disciplinary Procedure as appropriate (and, for the avoidance of doubt, the conditions in relation to the grounds of appeal such as new evidence or that the disciplinary procedures were not correctly followed shall apply). The appeal should be submitted in writing within the time limit specified in the Regulations Governing Staff Discipline or Code of Student Conduct and Disciplinary Procedure as appropriate, with full and complete details of the ground for the appeal.
28. If the complaint is not established by the **Investigation Panel** and the victim-complainant wants to appeal against such decision, the appeal should be submitted to the **Chairperson of CASH** in writing within three weeks after receiving the notification with full and complete details of the ground for the appeal. The **Chairperson of CASH** shall determine normally within three weeks whether to accept the appeal based on either or both of the grounds that:
 - (a) new evidence has come to light which was not previously considered by the **Investigation Panel**; and/or
 - (b) there is procedural irregularity in handling sexual harassment complaint.
29. If the **Chairperson of CASH** does not accept the victim-complainant's appeal, the decision of the **Chairperson of CASH** is final. Should the **Chairperson of CASH** decide to accept the victim-complainant's appeal, he/she shall appoint a **Review Committee** (comprising the Chairperson of the **Review Committee** and two persons) to review the appeal. Both the appellant (victim-complainant) and the alleged harasser should be informed by the **Chairperson of CASH** of the review.
30. The **Review Committee** shall review the case and make recommendation to the **Chairperson of CASH** as soon as practicable and normally within two months from the date the **Review Committee** is appointed. The **Review Committee's** recommendations shall include whether the complaint is established and if so, whether consideration should be given to instituting disciplinary action against the alleged harasser. The **Review Committee** shall, if the complaint is established, also make recommendation on the penalties to be imposed when the **Review Committee** considers appropriate in a particular case. The Chairperson of the **Review Committee** shall determine the procedures of review and the standard of proof required should be based on the balance of probabilities and commensurate with the gravity of the breach of standards of behaviour.
31. If the complaint is not established, the **Chairperson of CASH** shall convey the outcome of the

review to the appellant (victim-complainant) and the alleged harasser normally within three weeks after receiving the recommendation of the **Review Committee**. If the complaint is not established, the decision of the **Chairperson of CASH** is final.

32. In the event that the complaint is established, both the appellant (victim-complainant) and the alleged harasser shall be informed by the **Review Committee** as to whether the complaint is recommended to be established, and the appellant and the alleged harasser would also be informed as to whether consideration will be given to instituting disciplinary action against the alleged harasser and the penalties recommended (as the case may be). Both the appellant (victim-complainant) and the alleged harasser should be given a period of one week to respond. The response, if any, shall be considered by the **Review Committee** before it reports the findings and recommendations to the **Chairperson of CASH** for consideration. After considering the findings and recommendations of the **Review Committee**, the **Chairperson of CASH** may write to the relevant authorities (with a copy to the President), providing the full report and recommendations, to take disciplinary action as appropriate. For the avoidance of doubt, the **Chairperson of CASH's** conclusion that a complaint is established is a recommendation to be made to the appropriate disciplinary authority. The decision power rests with the appropriate disciplinary authority.
33. For appeal against disciplinary action taken, the appeal procedures applicable to the Regulations Governing Staff Discipline or Code of Student Conduct and Disciplinary Procedure, as appropriate, shall apply (including, for the avoidance of doubt, the conditions in relation to the grounds of appeal such as new evidence or that the disciplinary procedures were not correctly followed).
34. In order to prevent duplication of investigation resources and to avoid a complainant having to give evidence to different University committees on the same matter, the disciplinary authority or the **Chairperson of CASH** shall be entitled and have the discretion to accept all or part of the findings (including but not limited to findings of facts) and/or recommendations of the **Investigation Panel** or the **Review Committee** or the **Chairperson of CASH**, as the case may be.
35. If at the conclusion of an investigation or disciplinary proceedings, there is clear evidence to show that such complaint is frivolous or vexatious or malicious, which amounts to an abuse of process, the party concerned may be liable to disciplinary action, to be initiated by the **Chairperson of CASH**.
36. Whilst each party referred to in these procedures is expected to take all reasonable steps to comply with the time limits specified in this document, a failure to comply with one or more time limits (unless a material and culpable failure) will not in itself amount to the procedures being void or voidable.
37. A flow chart showing the process is presented at the [Appendix III \(b\)](#).

Revised 14 August 2020

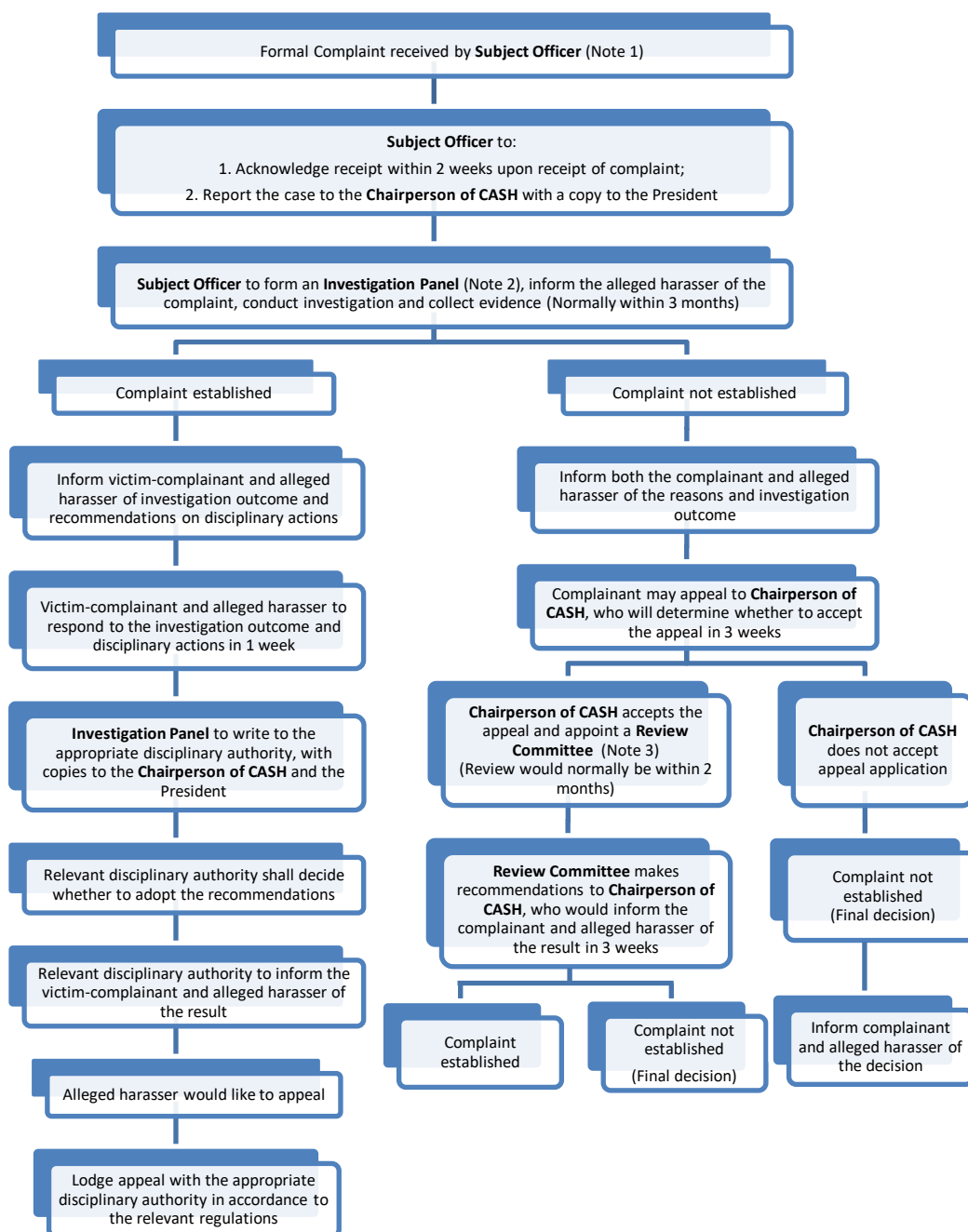
*Revised 10 August 2021 in accordance with the Code of Student Conduct and Disciplinary Procedure

Committee Against Sexual Harassment (CASH)
Standard Terms of Reference of Investigation Panel (IP)
[subject to adoption or modification by the IP as appropriate]

1. To carry out investigation on formal sexual harassment complaints in accordance with the University's Sexual Harassment Policy and Procedures.
2. To interview any relevant persons, including the complainant, the alleged harasser, and any witness(es), with a view to establishing all relevant facts.
3. To consider whether or not the complaints are established, with the power to decide when the complaints are not established and to make recommendations when the complaints are likely established.
4. To make recommendations on whether consideration should be given to instituting disciplinary action against the alleged harasser in accordance with the University's Regulations Governing Staff Discipline or Code of Student Conduct and Disciplinary Procedure.
5. To make recommendations on the penalties to be imposed if disciplinary action is recommended to be instituted against the alleged harasser.

Revised 14 August 2020

Flow Chart on Handling Formal Sexual Harassment Complaints



Note:

1. The Subject Officer will be:
 - (a) the Director of Human Resources (or nominee) when the alleged harasser is a staff member; or
 - (b) the Dean of Students (or nominee) when the alleged harasser is a student at or below undergraduate level; or
 - (c) the Dean of Graduate Studies (or nominee) when the alleged harasser is a student at postgraduate level.
2. The Investigation Panel shall comprise the Subject Officer as Chairperson and at least 2 more Members from CASH (the total number of members of the Investigation Panel should be an odd number). In appropriate

circumstances and in consultation with the Chairperson of CASH, the Subject Officer has the authority to appoint other staff members, instead of Members from CASH, to serve as Members of the Panel. A student or other persons may be co-opted on the Panel as decided by the Subject Officer in consultation with the Chairperson of CASH. The Subject Officer shall nominate a person to be the Secretary of the Investigation Panel.

3. The Review Committee shall be appointed by the Chairperson of CASH, comprising the Chairperson of the Review Committee and two persons.

Revised 14 August 2020