

APPENDIX M

PROCEDURES FOR HANDLING DISCRIMINATION/ HARASSMENT COMPLAINTS

(These procedures shall apply to all full-time or part-time staff and students in the University and shall be read in conjunction with the Policy on Equal Opportunity.)

Definitions

Sex discrimination

1. The definitions of sex discrimination and the exceptions in the Sex Discrimination Ordinance will apply.

Sexual harassment

2. The definitions of sexual harassment in the Sex Discrimination Ordinance will apply.
3. For the avoidance of doubt, sexual harassment may still take place if an unwelcome sexual advance has been stopped because it was rejected by a person and that person is later treated unfavourably because of that rejection.
4. "Conduct of a sexual nature" shall include making a statement of a sexual nature to, or in the presence of, a person, whether the statement is made orally, in writing, electronically, or by any other means.

Disability discrimination, harassment, and vilification

5. The definitions of disability discrimination, harassment and vilification and the exceptions in the Disability Discrimination Ordinance will apply.

Marital status discrimination

6. The definitions of marital status discrimination and the exceptions in the Sex Discrimination Ordinance will apply.

Pregnancy discrimination

7. The definitions of pregnancy discrimination and the exceptions in the Sex Discrimination Ordinance will apply.

Family status discrimination

8. The definitions of family status discrimination and the exceptions in the Family Status Discrimination Ordinance will apply.

Harassment on the ground of sexual orientation

9. A person harasses another person on the ground of the latter's sexual orientation if that first-mentioned person engages in unwelcome conduct (which may include an oral or written statement) on account of that second-mentioned person's sexual orientation, in circumstances in which a

reasonable person having regard to all the circumstances would have anticipated that the second-mentioned person would be offended, humiliated or intimidated by that conduct.

Racial discrimination

10. The definitions of race discrimination and the exceptions in the Race Discrimination Ordinance will apply.

Racial harassment

11. The Definitions of race harassment in the Race Discrimination Ordinance will apply.

Victimisation

12. The discriminator, alone or together with other persons, treats a person ('the victimised person') less favourably than in those circumstances he or she treats or would treat other persons, and does so by reason that the victimised person or any other person ('the third person') has
 - (i) made an allegation or complaint, under these procedures or otherwise, that the discriminator or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of these procedures; or
 - (ii) brought proceedings against the discriminator or any other person under these procedures; or
 - (iii) given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under these procedures; or
 - (iv) otherwise done anything under or by reference to these procedures in relation to the discriminator or any other person; or
 - (v) done anything which would have constituted discrimination by way of victimisation under the relevant discrimination ordinances;

or by reason that the discriminator knows the victimised person or any other person, as the case may be, intends to do any of those things, or suspects the victimised person or the third person, as the case may be, has done, or intends to do, any of them.

13. Paragraph 12 shall not apply to treatment of a person by reason of any allegation made by him or her if the allegation was false and not made in good faith.
14. For the avoidance of doubt, discrimination may still take place if a discriminatory conduct has been stopped because it was rejected by a person and that person is later treated unfavourably because of that rejection.

Exceptions

15. An act or omission shall not constitute discrimination if:
 - (i) there is any statutory exception that permits the act or omission; or
 - (ii) the allegedly discriminatory act or omission satisfies the following criteria:
 - (a) there is a legitimate reason for carrying out the allegedly discriminatory act or omission; and
 - (b) having considered all the circumstances, a reasonable person would regard that the allegedly discriminatory act is an appropriate response or measure to achieving the objectives as identified in paragraph 15(ii)(a) above.

Complainant

16. A Complainant is a person who has made a complaint alleging that he or she has been subject to discrimination or harassment, including any person who has sought the assistance from the Equal Opportunity Unit, the Equal Opportunity Advisers, the Personal Development and Counselling Centre, or the members of the Discrimination Complaints Committee.

Respondent

17. A Respondent is the person against whom a complaint of discrimination/harassment has been made.

Lodging a complaint

18. Any person who considers that he or she has been or is being subjected to discrimination by any member, employee or student of the University may seek assistance from the Equal Opportunity Unit, the Equal Opportunity Advisers, the Personal Development and Counselling Centre, or the members of the Discrimination Complaints Committee. Upon receipt of such request for assistance, the matter shall be referred to the Equal Opportunity Officer who shall ascertain whether the complainant is aware of the steps to resolve the complaint informally and whether the complainant wishes to make use of such steps to attempt to resolve the complaints informally. With the consent of the complainant, the Equal Opportunity Officer shall attempt, and if appropriate, with the assistance of other person, to resolve the complaint informally.
19. When the informal process of resolving the matter fails, or if the complainant decides not to attempt any informal resolution, the complainant may make a formal complaint to the Vice-Chancellor either directly or through the Equal Opportunity Officer, or the Equal Opportunity Advisers.
20. The Vice-Chancellor's Office shall acknowledge receipt of a complaint.
21. A complaint shall:
 - (i) be in writing;
 - (ii) provide the identity of the complainant; and
 - (iii) provide details of the alleged discrimination and the identity of the person alleged to be responsible for the discrimination.
22. Subject to paragraph 23 below, where the Vice-Chancellor receives a complaint under these Procedures, the Vice-Chancellor shall refer the complaint to the Equal Opportunity Officer.
23. Where the Vice-Chancellor receives a complaint which is anonymous, the Vice-Chancellor shall not proceed further with such a complaint unless the Vice-Chancellor considers that the complaint alleges matters which are of such a nature that they should, in the interests of good administration, be further investigated. In the event that the Vice-Chancellor considers that an anonymous complaint should be further investigated in the interests of good administration, the Vice-Chancellor shall communicate the substance of the complaint to the person(s) alleged by the complaint to have engaged in discrimination/harassment and offer the person(s) an opportunity to respond to the complaint.
24. On receiving a complaint, the Equal Opportunity Officer shall
 - (i) from then on become the main point of contact for the complainant;
 - (ii) inform the complainant of any procedures and services available for this purpose;

- (iii) ascertain again whether the complainant is aware of the steps to resolve the complaint informally and whether the complainant wishes to make use of such steps to attempt to resolve the complaint informally;
 - (iv) ascertain whether the complainant wishes to continue with the complaint under these procedures; and
 - (v) obtain permission in writing from the complainant for the disclosure of his or her identity to the respondent and to other persons to whom disclosure is necessary for the proper investigation and consideration of the complaint under these procedures.
25. The Equal Opportunity Officer shall undertake a preliminary inquiry into the complaint in order to determine whether there is prima facie evidence that any member, employee or student of the University may have engaged in discrimination/harassment. The purposes of the preliminary inquiry are to ensure that there are sufficient materials which warrant a full investigation and to screen out obviously unfounded allegations. It is not intended to be a preliminary hearing and the Equal Opportunity Officer is not expected to engage in a full-scale enquiry or extensive hearing of witnesses.
26. Where the complainant has objected to the involvement of the Equal Opportunity Officer, the Vice-Chancellor shall determine whether to reject the objection, or to appoint another person to replace the Equal Opportunity Officer, or exceptionally to allow the case to go directly to the Discrimination Complaints Committee for a full-scale investigation.
27. The Equal Opportunity Officer shall submit a written report of the preliminary inquiry to the Vice-Chancellor, normally within 4 weeks of the receipt of the complaint, setting out the allegations made, a brief summary of the evidence available to the preliminary inquiry, and the conclusion on whether there are sufficient materials which warrant a full-scale investigation into whether the respondent has engaged in discrimination/harassment.
28. Upon receipt of a report from the Equal Opportunity Officer, the Vice-Chancellor shall take appropriate action which may include the following:
- (i) referring the matter to the Discrimination Complaints Committee for a full-scale investigation; and/or
 - (ii) referring the matter to an outside body; or
 - (iii) dismissing the complaint.
29. In the event that the Vice-Chancellor decides to dismiss the complaint, the Vice-Chancellor shall, through the Equal Opportunity Officer, inform both the complainant and the respondent of his/her decision and the reasons for it.

Membership of the Discrimination Complaints Committee

30. The Discrimination Complaints Committee shall consist of:
- (i) a Chairperson who shall be a lay member of the Council, appointed for a period of two years;
 - (ii) a staff member, appointed by the Council for a period of two years;
 - (iii) one student member on the nomination of the Hong Kong University Students' Union and appointed by the Vice-Chancellor for one year at a time; and the following additional members in conducting investigation of each case referred to the Committee by the Vice-Chancellor;
 - (iv) one member appointed by the Vice-Chancellor from a list of Equal Opportunity Advisers who shall not have been previously involved in the case in any manner (There should be two categories in the list of Equal Opportunity Advisers. Newly-appointed Equal Opportunity Advisers shall be listed under Category A, and any Equal Opportunity Adviser who has been

- involved in any investigation shall be moved to Category B. The Vice-Chancellor shall appoint members from Category A only, unless the names in that Category are exhausted.);
- (iii) where the complainant or the respondent is a postgraduate student, a nominee from the Postgraduate Students Association;
 - (iv) the Equal Opportunity Officer, as an observing member.
31. At least one of the members of the Committee for each case for investigation shall be a woman and at least one of the members shall be a man.
32. 3 members of the Committee shall form a quorum of any meeting of the Committee.
33. Any person who has a direct interest in the complaint shall not be involved in the investigation of that case.
34. In appointing the Committee, due regard shall be given to the desirability of appointing members with relevant expertise or background in the field of equal opportunities or related fields.
35. The Registrar or his or her deputy shall be the secretary to the Committee.

Powers of the Discrimination Complaints Committee

36. The Discrimination Complaints Committee shall investigate and make findings upon any discrimination complaint ordered to be brought before it by the Vice-Chancellor against any member, employee or student of the University.
37. The Committee shall have power to provide for and regulate:
- (i) the procedures to be followed in connection with its meetings;
 - (ii) the conduct of all persons at any meeting of the Committee; and
 - (iii) the procedure for conducting investigation, and shall not be bound by the rules of evidence.
38. The Committee may,
- (i) where the respondent is a student, order the imposition of any of the following penalties:
 - (a) reprimand (and such reprimand shall form part of the student's official record for the remainder of his or her studies in the curriculum concerned);
 - (b) fine (maximum to be determined from time to time by the Council);
 - (c) withdrawal of any academic or other University privilege, benefit, right or facility other than the right to follow courses of instruction and present himself or herself for examinations;
 - (d) suspension;
 - (e) expulsion;
 - (f) and/or make appropriate recommendation to the Vice Chancellor.
 - (ii) where the respondent is a staff member, make recommendations to the Vice-Chancellor to initiate appropriate proceedings as provided for in the University Ordinance and Statutes, Terms of Service and Staff Manual.

Procedures of the Discrimination Complaints Committee

39. The Committee shall notify the complainant and respondent of the proceedings of the Committee and provide both the complainant and the respondent with:
- (i) a copy of the Policy on Equal Opportunity;
 - (ii) a copy of these Procedures;
 - (iii) membership of the Committee;

- (iv) a copy of the complainant's written complaint;
 - (v) a copy of the report provided to the Committee following the preliminary inquiry conducted by the Equal Opportunity Officer; and
 - (vi) any other documents considered relevant by the Committee.
40. Either the complainant or the respondent may object to the composition of the Committee. The Registrar shall consider any objection made to the composition and shall, if there are reasonable grounds for the objection, appoint another member to the Committee to replace the person whose membership of the Committee has been objected to.
41. The Committee may take legal advice at any time and may invite the presence of a legal adviser at its meetings who however shall not be a member of the Committee.
42. The Committee may exercise all powers necessary for the performance of its functions, and shall carry out its inquiry in as expeditious a manner as is consistent with respect for the right of the parties to a fair hearing.
43. The Committee may require the complainant and the respondent to give evidence, orally or in writing.
44. The Committee shall give the complainant and the respondent not less than 7 days' notice of the date, time and place of the first meeting of the Committee, and of any meeting at which the complainant or respondent is required to be present, and shall give the complainant and respondent reasonable notice of other meetings of the Committee.
45. The complainant and the respondent shall inform the Committee in writing, no later than 2 weeks after the receipt of the notice of the proceedings of the Committee:
- (i) whether he or she will appear in person (with or without a colleague or an adviser), or whether he or she will be legally represented;
 - (ii) whether he or she wishes to submit any evidence or other material to the Committee or to call any witnesses (and, if so, the names of those witnesses);
 - (iii) whether he or she wishes the Committee to call any witnesses on his or her behalf (and, if so, the name of those witnesses).
46. Where the Committee has given notice of a meeting to the complainant and the respondent in accordance with these procedures, but one of those parties is not present at the commencement of the meeting, the Committee may proceed with the meeting.
47. The complainant and the respondent shall be given an opportunity to respond to any information or evidence which is brought to the attention of the Committee by either party, or by any third party, during the course of the investigation, and which appears to call for response, clarification and confirmation. The complainant and the respondent shall be entitled:
- (i) to be present at all meetings of the Committee at which evidence or submissions are presented on behalf of one of the parties;
 - (ii) to appear before the Committee in person and to be accompanied by a colleague or an adviser, who may speak on his or her behalf, or to be legally represented before the Committee;
 - (iii) to present evidence to the Committee;
 - (v) to call witnesses or to request the Committee to do so on his or her behalf.
48. The rights set out above apply both to hearings of the Committee at which the issue of whether the respondent has engaged in discrimination/harassment is being examined and to hearings at which

the Committee is considering the steps that should be taken following a determination that the respondent has engaged in discrimination/harassment.

49. In the conduct of its inquiry, the Committee may adopt such measures as it considers necessary to protect the complainant from intimidation or humiliation in the presentation of evidence or during examination or cross-examination.
50. For the purposes of its investigation, the Committee shall have access to such University documents as it sees fit.
51. The Committee may decline to inquire into a complaint or may suspend or discontinue its inquiry into a complaint if:
 - (i) it considers that the complaint does not allege facts which, if proved, would amount to discrimination;
 - (ii) the substance of the complaint of discrimination has been examined or is being examined under another University procedure or by any public body which has responsibility for receiving complaints of discrimination, or by a court or tribunal;
 - (iii) the complainant and the respondent have agreed to resolve the matter and the Committee considers that the terms of the agreement are consistent with respect for the principles of equal opportunity.
52. At the conclusion of the investigation, the Committee shall make a finding on facts and determine whether the complaint (or one or more of the complaints, as the case may be) is substantiated and whether the respondent has engaged in discrimination. The Committee shall dismiss the complaint if it concludes that the complaint is not substantiated, the respondent has not engaged in discrimination, or the alleged act constitutes an exception under paragraph 15 of this Procedure. The Committee may, whether it finds a complaint substantiated or not, make any specific recommendation in relation to the complaint and any general recommendation for better enhancing or upholding the University's policy relating to equal opportunity.
53. Where the Committee concludes that the respondent has engaged in discrimination and
 - (i) where the respondent is a student, it shall exercise its powers provided in paragraph 38(i). A right of appeal against the finding of and penalty imposed by the Committee shall lie within 14 days to the Council. The decision of the Council shall be final;
 - (ii) where the respondent is a staff member, the Committee shall submit a report to the Vice-Chancellor setting out its findings and recommendations for action consistent with University Statutes and Regulations, and terms and conditions of employment. The Vice-Chancellor, upon receipt of the report, shall decide what appropriate sanction or proceedings shall be taken in light of the recommendation of the Committee.
54. Subject to the right of appeal under paragraphs 52 and 53 which shall be pursued if available, any person who is aggrieved by a decision of the Discrimination Complaints Committee under paragraph 52 or 53 or by a decision of the Vice-Chancellor under Paragraph 26 or 53(ii) may seek redress through the University's formal grievance procedure.

Report of the Committee

55. In all cases, the Committee shall provide both the complainant and the respondent with a copy of the final report at the same time the Committee submits it to the Vice-Chancellor.

Confidentiality

56. All records of proceedings and documents produced for use in relation to a complaint made under these Procedures are confidential and shall be dealt with by all parties concerned in strict confidence and in accordance with applicable laws on the protection of personal information. Unauthorised disclosure of any information may result in appropriate action by the Council.

Vice-Chancellor

57. Notwithstanding any provision in these procedures, the Vice-Chancellor may at any time take any necessary administrative decision as he or she thinks appropriate to facilitate consideration of a complaint and/or introduce such temporary measures as may be necessary to protect any member, employee or student of the University or the proper functioning of the University.
58. If a complaint is made against the Vice-Chancellor under these Procedures, the powers of the Vice-Chancellor shall be exercised by the Chairman of the Council.

Review

59. The Discrimination Complaints Committee shall review this statement of policy and procedures periodically, and at any other times as necessary and recommend necessary changes to the policy statement and the procedures.