

REPORT OF THE REVIEW COMMITTEE ON THE HANDLING OF SEXUAL HARASSMENT

SECTION I - INTRODUCTION

1.1 Terms of Reference

The Review Committee was established by the Vice-Chancellor on 27 June 2012, with the following terms of Reference:

- (1) To conduct a review on the University's existing policy against sexual harassment, including the procedures for handling and investigating complaints of sexual harassment, having regard to the Sex Discrimination Ordinance (Cap.480), guidelines of the Equal Opportunities Commission, and practices at other educational institutions in Hong Kong and overseas.
- (2) To formulate proposals to enhance awareness and understanding of sexual harassment, to prevent incidents of sexual harassment occurring, to handle sexual harassment and identifying measures to be taken if no formal complaints are lodged, and to provide support to victims (and alleged victims) of sexual harassment, having regard to the rights and privacy of all the individuals concerned.
- (3) To consult the Committee Against Sexual Harassment on any proposed changes to the Policy Against Sexual Harassment, educational programmes to enhance the awareness of staff and students of sexual harassment, and procedures for handling and investigating complaints of sexual harassment.
- (4) To report on its findings to the Vice-Chancellor and to submit proposals for any change to existing policy and procedures to the Administrative and Planning Committee by 31st December, 2012.

1.2 Composition and Membership

The composition and membership of the Committee, as set out along with its Terms of Reference, was as follows:

Chairperson, appointed by the Vice-Chancellor Professor Christopher Gane

Chairperson of the Committee Against Sexual Harassment (*ex officio*) Professor Diana Lee

Two Lay Members of the Council Dr Anthony Neoh, S.C.
Dr Anissa Wong Chan

Registrar and Secretary (<i>ex officio</i>)	Mr Eric Ng
Three members of staff – at least one academic and one non-academic appointed by the Vice-Chancellor	Professor Emily Chan Professor Freedom Leung Ms Corinna Lee
Secretary, appointed by the Registrar and Secretary	Ms Yvonne Luk

1.3 Background to the Report

In April 2012 an inquest was opened into the death of an employee of The Chinese University of Hong Kong. The inquest concluded in June 2012 when the jury returned a verdict of suicide. There was considerable public interest in the case, and it was widely reported in the news media. It is not necessary for the purposes of this report to go into the details of this case, and the Review Committee was not tasked with conducting an inquiry into the case, that having been the responsibility of the Coroner's inquest. So far as they are pertinent to the scope of the Committee's inquiry, the circumstances of the case were as follows.

Prior to her death the deceased had made allegations in private that she had been the victim of sexual harassment by her immediate supervisor, a senior member of the University Administration. Different members of the University made attempts to persuade the complainant to lodge a complaint under the University's established procedures for dealing with sexual harassment, but she declined to do so. More specifically, she had declined, in writing, to lodge a complaint, and further indicated, repeatedly, that she did not want the matter to be pursued with, or even made known to, the person against whom she had made the allegations.

In the light of the complainant's stated position, the University's procedures for handling a complaint of sexual harassment could not be invoked. However, with the complainant's consent, a confidential record of the alleged incidents was drawn up and placed under sealed cover on her confidential file held in the Personnel Office. That is how matters remained at the time of the complainant's death.

Although the Coroner's Court made no recommendation on the University's policy or procedures for the handling of allegations of sexual harassment, the Vice-Chancellor decided to establish a committee to undertake a comprehensive review.

In accordance with its terms of reference the Committee has reviewed the University's sexual harassment policy and procedures as a whole. It has, however, paid particular attention to two issues that were brought into sharp focus by the circumstances of the case which forms the background to this report. The first of these is how to deal with cases in which the complainant makes known to the University (or a University member) an allegation of sexual harassment, but at the same time makes it clear that she or he does not wish the University (or the University member) to take any further action under its established procedures. The second is the position of the person against whom an allegation is made in such circumstances, and how, if at all, that person's situation should be addressed by the University's procedures for handling allegations of sexual harassment.

1.4 Working Method

The Committee recognised that a significant part of its work in the initial stages would involve gathering information and views on the operation of the University's current policy and procedures. To that end meetings were held with a substantial number of individuals, organizations and groups that the Committee believed would be able to provide insights into the operation of our procedures.

The Chairperson and Secretary of the Review Committee attended all of these meetings, along with other members of the Committee, according to their availability. A total of eleven of these information-gathering meetings were held during the months of September and October 2012. Details of the individuals and groups met are set out in Appendix 2.

The Committee also conducted a paper-based review of the current policies and procedures of other Universities, both in Hong Kong and elsewhere, in order to inform its review of the Chinese University's policy and procedures.

Having drawn up a preliminary report, the Committee met with representatives of the Committee Against Sexual Harassment to discuss and refine its proposals. As a final stage of consultation, prior to the submission of its report, the Committee also held two Open Forums (on January 16 and February 28 2013) on the draft report and its recommendations to which all members of the University were invited. These Open Forums provided useful feedback to the Committee.

The Committee is very grateful to all those individuals and groups who gave generously of their time to assist it in its work.

1.5 Recommendations

A summary of the Committee's Recommendations is set out in Appendix 5 to this report.

SECTION 2 – CURRENT ARRANGEMENTS

The University first adopted a policy against sexual harassment in 1995. Since that date the Policy and its related Procedures have been kept under review by the University Administrative and Planning Committee following recommendations from the Committee Against Sexual Harassment. The current Policy and Procedures are set out in Appendix 1 but it is convenient to provide an outline of these at this point.

2.1 Legal definition of “sexual harassment”

The University's policy and procedures adopt the definition of sexual harassment set out in section 2(5) of the Sex Discrimination Ordinance (Cap. 480, LHK). According to that definition, a person (“A”) sexually harasses another person (“B”) if A (1) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to B; or (2) engages in other unwelcome conduct of a sexual nature in relation to B in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that B would be offended, humiliated or intimidated. A may also be guilty of sexual harassment if A, alone or together with other persons,

engages in conduct of a sexual nature which creates a hostile or intimidating environment for B.

Section 39 of the Ordinance makes specific provision for educational establishments, and in the context of the University, it is unlawful for an employee of the University to sexually harass a person who is a student or a prospective student of the University. Additionally, it is unlawful for a student or prospective student of the University to sexually harass any fellow student or prospective student of the University, or to sexually harass any member of staff of the University.

2.2 Policy

The University has a commitment to equal opportunity in academic pursuits and employment which makes it clear that it will not tolerate any form of discrimination or harassment, and commits the University to eliminating and preventing sexual harassment. This general policy is supported by a set of procedures for dealing with allegations or complaints of sexual harassment, and for providing proper redress should sexual harassment occur. It is the University's aim, through a clear statement of its stance on sexual harassment and the provision of appropriate procedures, to cultivate a sense of justice, fairness and openness in the University community in relation to gender equality and the furtherance of mutual respect.

2.3 Procedure

The Panel Against Sexual Harassment is responsible for handling complaints of sexual harassment. Depending upon how a case develops, consideration of an allegation of sexual harassment may involve a number of "stages" and different forms of process.

2.3.1 Initial inquiry

Initial inquiries are handled by a central unit within the University Secretariat which will provide advice on the University's procedures to persons considering making a complaint about sexual harassment. The same office will also provide advice on sources of support for individuals considering making a complaint. The contact details of this central office are available from the University website and various promotional leaflets and audio/visual materials.

2.3.2 Complaint

If a person wishes to make a complaint alleging sexual harassment, she or he may do this by raising the matter, either verbally or in writing, with the Panel Against Sexual Harassment.

2.3.3 Mediation¹

¹ Since the University's procedures were drawn up the term "mediation" has acquired a specific statutory definition in Hong Kong under section 4 of the Mediation Ordinance which came into force on 1 January 2013. The use of the term "mediation" in the University procedures did not contemplate that specific definition. The implications of the use of this term for the future are noted below in section 4.9.1.

The Panel will offer to facilitate mediation at this stage if the complainant or the complainee requests this. However, the complainant is not required to pursue mediation, and may elect to proceed directly to filing a written complaint that triggers a formal investigation. The Convenor of the Panel may also determine that a case is not suitable for mediation.

2.3.4 Formal investigation

If mediation is unsuccessful, or not pursued, a formal investigation will be conducted. The investigation is carried out by a team of at least two members of the Panel of different gender, appointed by the Panel Convenor.

Upon completion of the investigation, the investigation team submits a written fact-finding report to the Panel Convenor (with a copy to the Vice-Chancellor for information.) The investigation team's role is strictly confined to determining the facts and concluding whether or not the allegation of sexual harassment is made out. They do not have the authority to make any recommendation on sanction, penalty or disciplinary action.

On receipt of the investigation team's report, the Panel Convenor appoints at least one panel member, independent of the investigation team, to review their report.

On receipt of the independent review the Panel Convenor further reviews the report and notifies the parties of the fact-finding report. The parties may then submit observations on the report, or an appeal against its findings and conclusion, to the Panel Convenor.

The Panel Convenor then conducts a further review of the report, taking into account any submissions made by the parties, and prepares a final report to the Vice-Chancellor.

The Vice-Chancellor (or his designate) is then required to make a final decision on the case.

2.4 Statistics

Information concerning sexual harassment *enquiries* since 1997 is set out in Appendix 3. These figures show that the total number of enquiries over the years has grown, although not consistently. They also show that the single largest category of enquiries relates, probably not surprisingly, to advice on an alleged case of sexual harassment.

Information concerning the handling of sexual harassment *complaints* since 1996 is set out in Appendix 4. A number of comments may be made about these figures.

The first is that they reveal a low number of complaints being brought to the University over this period – 25 complaints involving 25 persons and organisations (CU Student Union and “a student body”).

The second is that although the law and the University's procedures recognise that sexual harassment may be committed by a member of either sex against a member of either sex, complaints of sexual harassment in the University are overwhelmingly complaints brought by women against men. In this regard the University reflects the experience in Hong Kong more generally, and, indeed, the international experience in relation to addressing sexual harassment.

Thirdly, both staff and students have used the procedures, and in the latter case they have been used to bring complaints about the behaviour of other students. There has been a small number of complaints by students against members of the University staff, including two brought by a female student against a male member of the teaching staff of the University. There has been no instance of a complaint brought by a member of staff against a student.

So far as concerns the resolution of the cases, the majority have been disposed through formal investigation. Where mediation has either been unsuccessful or not pursued by the complainant, and the case has gone to formal investigation, the complaint has been upheld in ten out of sixteen cases. While mediation accounts for a minority of disposals over the period as a whole, in the last four years it has accounted for six out of the 10 cases dealt with.

2.5 The extent of sexual harassment in the University

In the absence of similar information from other Universities or organizations of a similar size it is impossible to determine whether these figures are a true reflection of the prevalence of sexual harassment within the University, or whether there is an issue of non-reporting by staff and students who may have been the victim of sexual harassment. One senior member of the academic staff with experience in the area suggested that non-reporting may indeed be a problem, but noted the difficulties in determining this objectively. Some members of the student community reflected that their peers might be unwilling to use the University's procedures to make a complaint of sexual harassment because of the potentially serious consequences for the individual, although the statistics set out in Appendix 4 do not necessarily support this.

The Committee recognises the difficulties associated with quantifying the experience of sexual harassment in the University. Although a detailed study of sexual harassment on campus was undertaken in this University in 1992,² there has been no similar or follow-up study, with the result that there is no objective up-to-date information on the extent of sexual harassment in the University. The 1992 study concluded that sexual harassment constituted "a real problem" on campus, and called for a "clear and definite institutional response"³ which is now found in the University's current policy and procedures on sexual harassment.

Research carried out elsewhere suggests that the actual level of sexual harassment experienced in the workplace is likely to be significantly higher than that which is reported. The reasons why sexual harassment is not reported are various, and complex, but include: a belief on the part of victims that nothing will be done about their complaint; fear of being blamed for "inviting" or encouraging" the offending behaviour; concern for the harasser; fear of suffering disadvantage in the workplace; shameful feelings about the harassment.⁴

² Choi, Po-king, *et al*, Power and Dignity: Sexual Harassment on Campus in Hong Kong" Hong Kong Institute of Asia Pacific Studies, occasional Paper no. 32 (1993), available at: <http://www.cuhk.edu.hk/policy/harass/b5/ref/11to20.html>

³ Choi, Po-king, *et al*. at p. 37.

⁴ For general reviews of the research in this area see: *Report of the Secretary-General of the United Nations. In-depth Study on all Forms of Violence Against Women* 68 (July 2006); European

Similar experiences are reported in relation to sexual harassment in the education environment.⁵ A recent study by the Hong Kong Equal Opportunities Commission⁶ on student sexual attitudes, and views on sexual harassment reports that 50% of the students⁷ surveyed reported experiencing sexual harassment in one form or another in the 12 months preceding the survey.

Given the relatively small number of complaints of sexual harassment actually lodged with the University, the potential level of sexual harassment, and the potential problem of under- or non-reporting of sexual harassment, the Committee **recommends** that the University undertake a new study of sexual harassment in the University in order to determine, so far as possible, the true level of sexual harassment within the University community. Given that the study of sexual harassment on campus referred to above pre-dates the adoption by the University of its sexual harassment policy and procedures, a new study would have the added benefit of helping to evaluate the impact of the University's policy and procedures on sexual harassment on campus.

2.6 Strengths and weaknesses of current arrangements

The Committee believes that it is important to state clearly that neither its own examination of the current arrangements, nor the information that it received during its meetings with stakeholders, suggest that there are fundamental flaws in the University's *Policy* towards sexual harassment. The Committee has, however, identified a number of areas in relation to training, awareness-raising and communication of the policy where there is room for improvement. These issues are addressed in section 3 below.

The position is somewhat different with regard to the issue of *Procedures*. The Committee's examination of our current procedures, information received during its meetings with stakeholders and, indeed, the case which forms the background to the Committee's establishment by the Vice-Chancellor have identified areas where the current arrangements could be improved. These issues are addressed in section 4 below.

SECTION 3 – POLICY MATTERS

3.1 Sexual harassment and equal opportunities

Foundation for the Improvement of Living and Working Conditions, *Violence, Bullying and Harassment in the Workplace* (2004). See also Choi, Po-king *et al*, at p. 37.

⁵ See, for example, Ingulli, Elaine D., "Sexual Harassment in education" 18 Rutgers Law Journal 281-342 (1987).

⁶ *Study on Students' Sexual Attitudes and Views on Sexual Harassment*, March 2013. Executive summary available at:

<http://www.eoc.org.hk/EOC/GraphicsFolder/InforCenter/Research/content.aspx?ItemID=11183>.

⁷ The survey was conducted by questionnaire and group discussion sessions between May and November 2011. A total of 5902 students (including school students from primary four, secondary one, four and six, and students from tertiary institutions) participated in the questionnaire survey.

This is an issue that was raised with the Committee by a number of stakeholders who suggested that the University should locate its policy and procedures on sexual harassment within the framework of a general equal opportunities policy. The current University policy statement on sexual harassment does indeed make reference to equal opportunity, and underlines the University's commitment to this. But those who raised this issue with the Committee suggested that a sexual harassment policy and associated procedures are likely to be more effective if embedded in an over-arching equal opportunities policy.

The Committee recognises that there is strength in these observations, that this is a practice increasingly followed in Universities of international standing, and believes that this is a direction in which the University should move in due course.

However, the Committee also recognises that the issues surrounding the development and implementation of a comprehensive equal opportunities policy extend well beyond its terms of reference and does not feel that it would be appropriate to make any recommendation in this regard.

3.2 The role of the Vice-Chancellor

As outlined above, the Vice-Chancellor has a central role in determining the disposal of cases that have been dealt with by formal investigation. The Committee recognises that this is consistent with the role that the Vice-Chancellor plays in relation to other investigations which may have disciplinary implications, and that there is therefore a case for maintaining consistency with those other procedures. At the same time, however, there are considerations that suggest that it might be better to remove the Vice-Chancellor from this direct involvement in the process of determining the disposal of cases dealt with by formal investigation.

Principal amongst these is the consideration of the leadership role that should be played by senior management in relation to reinforcing the University's policy against sexual harassment. The Committee believes that it is desirable that that role should be kept separate from a "procedural" role in respect of implementing and applying the policy.

The Committee therefore **recommends** that the role of the Vice-Chancellor in this respect should be replaced by a designated Pro-Vice-Chancellor (except in relation to the matters referred to below in paragraph 4.9.3.).

3.3 Composition of the Panel Against Sexual Harassment

The Panel Against Sexual Harassment is currently comprised of "teaching and non-teaching staff members of both genders, who are of good standing, preferably of different ranks" appointed for a term of two years, with one member of the Panel being appointed as the Convenor.

The Committee received a number of suggestions regarding the composition of the Panel, some of which are reflected in the proposals which follow.

One line of argument that the Committee is not, however, disposed to accept is that it is not appropriate to ask members of the academic community to become involved

in handling allegations of sexual harassment. The view was put to the Committee that it is not appropriate for the University to ask members of academic staff to perform this task, either because of other competing demands on their time, or because they are somehow unsuited to the task of investigating and determining allegations of sexual harassment.

The Committee does not accept these arguments. In the Committee's view it is important that the University community takes responsibility for ensuring that its policies are carried into effect. Members of the academic community, like others within the University, have a deep appreciation of the context in which allegations of sexual harassment may arise, and that understanding of the context plays an important part in handling what are undoubtedly sensitive issues. Although the Committee did not receive similar suggestions in respect of non-academic colleagues' involvement in the investigation process, it believes that they too have an important role to play.

The Committee therefore **recommends** that the Panel Against Sexual Harassment should continue to be composed of members of the academic and non-academic staff.

The Committee does, however, believe that more directly involving both academic and administrative units in the identification of suitably qualified Panel members could improve "ownership" of the University policy and its implementation.

The Committee therefore **recommends** that academic and administrative units be invited, as necessary, to propose the names of persons for service in the Panel. Such nominations should be subject to approval by the AAPC.

The Committee also considered the question of the "independence" and "impartiality" of the panel. Although the Committee did not receive any suggestions that members of the panel did not act independently and impartially in determining the cases submitted to them, it recognises that there is an important question of how the University's procedures might be *perceived* by external (or even some internal) observers. In essence the University could be challenged on the ground that its procedures, being entirely "internal" do not provide sufficient safeguards to ensure that investigations and decisions are reached in an objective and impartial fashion.

A proposal, which the Committee believes has merit, is that the Panel should include members drawn from beyond the staff of the University, such as alumni or lay members of the University Council and Council committees. The Committee therefore **recommends** that an appropriate number of external members be appointed to serve on the Panel.

The Committee also considered whether it should be necessary for every investigation team to include an external member. While recognizing that this might be an ideal arrangement, the Committee also recognised that this would add considerably to the difficulty of appointing an appropriate panel in a given case. The Committee therefore **recommends** that the question whether an external member should be appointed to serve in a given case is a matter that should be left to the Convenor of the Panel when establishing the investigation team.

The Committee also considered whether it was appropriate to include student representation in the Panel. Noting that there is student involvement in other University procedures such as student discipline cases, the Committee believes that there should likewise be student involvement in the investigation and determination

of sexual harassment complaints where both the complainant and the complainee are students.

The Committee therefore **recommends** that the Panel should include an appropriate number of students. The Committee further **recommends** that in cases in which both parties are students the investigation team should include a student wherever possible.

3.4 Training

The importance of training with regular refresher events was emphasized by many of those who provided information to the Committee.

The University has invested significantly in training through a programme of events, talks and courses, and through the provision of on-line resources, including a training programme (via the Equal Opportunities Commission's online training programme) and videos directed towards the student community. Training for students is in student orientation programmes, and as part of the induction for new staff (academic and non-academic).⁸

However, engagement with these training opportunities is essentially voluntary, for both staff and students, and the Committee considered the question of whether training in relation to the University's policy and procedures should be made compulsory, at least for University staff. The Committee noted that mandatory University-wide training was not a policy adopted elsewhere in Hong Kong, or in the University sector more generally (although the University of Melbourne has adopted such a policy), and while the Committee believes that the University should continue to offer a wide range of training opportunities, and to encourage full participation in them, it would not be practicable at this point to attempt a programme of University-wide compulsory training.

That said, the Committee believes that training in respect of the University's policy and procedures in relation to sexual harassment should be made compulsory for staff who have leadership and management roles in the University. This is especially important in the case of line managers who may be the first point of contact for a person concerned about sexual harassment and whose attitude and response may play an important part in the willingness or otherwise of a complainant to take forward a complaint.

The Committee therefore **recommends** that the following should be required to undertake training in relation to sexual harassment and in particular the University's policy and procedures for handling this issue:

- The Vice-Chancellor
- The Provost
- Pro-Vice-Chancellors
- Associate Pro-Vice-Chancellors
- The Registrar and Secretary

⁸ Information on these activities and resources can be found at the website of the Committee Against Sexual Harassment: <http://www.cuhk.edu.hk/policy/harass/en/news/>

- Deans of Faculty and of the Graduate School
- Department Chairs
- Faculty Secretaries
- Heads of Administrative Units
- College Heads and Masters
- University and College Deans of Students
- All members of the Panel Against Sexual Harassment
- All members of the Committee Against Sexual Harassment
- All members of the Task Force on Education and Training

3.5 Communication and awareness-raising

As noted above, the University has made a significant investment in training resources and awareness-raising in relation to sexual harassment. However, in its meetings with some groups and individuals the Committee noted a relatively low level of awareness of the University's policy and procedures, particularly amongst students. A similar lack of familiarity with established policy and procedures was also reflected in comments made during the Open Forums.

The effectiveness of the University's policy is, of course, dependent upon a high level of awareness of its terms, and of the options that are available to a person who believes that she or he may have been the victim of sexual harassment. The Committee therefore **recommends** that the University review its communication strategy with regard to sexual harassment to determine what measures might be taken to improve communication of its policy and procedures to the University community as a whole.

The Committee also noted that the current procedures while comprehensive and detailed could be improved in terms of the way that they are expressed. The current guidance appears to be less accessible to a potential complainant (or complainee) than is desirable. The Committee therefore **recommends** that a more "user-friendly" set of guidance should be developed for both parties as to how they should take forward their complaint or respond to a complaint. Useful models are available from other universities who have devised such guidance.⁹

3.6 Investigations by other responsible authorities

The Committee noted that there appear to have been cases of misconduct potentially involving sexual harassment which had not been drawn to the attention of the Panel Against Sexual Harassment but which had been addressed through other procedures, including College procedures.

⁹ See, for example, the information and advice published by: Northwestern University (<http://www.northwestern.edu/sexual-harassment/faq/>) and Melbourne University ("I think I have been sexually harassed..." and "Someone says I sexually harassed them..." <http://www.hr.unimelb.edu.au/advice/toolkits/equity-diversity/toolkits/harassment>)

The Committee believes that it is important that all cases of possible sexual harassment that have been drawn to the attention of College or University officers should be routed through a single University-level procedure. Cases of sexual harassment are particularly sensitive, and it is appropriate that they are handled at University level where there is access to resources that are not available at department, faculty or college level. Ensuring that cases of sexual harassment are reported to the Panel Against Sexual Harassment will, in the Committee's view, help to ensure consistency in dealing with this issue, and thus reinforce confidence in the University's policy and procedures.

The Committee therefore **recommends** that in any case in which a complaint is raised that may disclose an issue of sexual harassment, the complainant should be advised to refer the matter to the Panel Against Sexual Harassment. The Committee recognises that such issues may emerge during consideration of a complaint that does not at first present itself as one of sexual harassment. The Committee's recommendations on training may help to provide the necessary knowledge for colleagues to identify potential cases of sexual harassment.

Section 4 - PROCEDURE

As noted above, the case which provided the background to the establishment of the Review Committee highlighted two particular difficulties. The first of these relates to the situation in which a complainant raises an allegation of sexual harassment, but then declines to permit the University to take action in respect of that complaint. We refer to this as the "complainant's veto". The second relates to the position of the person against whom such an allegation is made (if identified).

4.1 The complainant's veto

Under the University's current procedures, while it is not necessary for there to be a written complaint to initiate a case, it is necessary for there to be a written complaint if the case is to proceed to the stage of formal investigation. However, in either case the complainant must be willing to allow the University procedures to be implemented. If the complainant makes it clear that she or he does not wish any action to be taken then, under the current arrangements, no action can be taken.

It may appear to be inconsistent for a person to raise a complaint but then to indicate that she or he does not want action to be taken on it. However, the Committee, through experience of its members, and from discussion with the groups and individuals that it met, understands that this is not an uncommon situation. Complainants' reasons for sharing their concerns may be various. They may feel that they wish to share their concerns with a third party, and may seek reassurance that they are not to be blamed for what has happened. They may even hope that some, informal, steps would be taken to address the issue. These attitudes are quite consistent with not wishing to initiate a more formal process that they may find to be very difficult to cope with, given the nature of the potential inquiry.

It is important, therefore, to appreciate that such a complainant is not being "difficult" or unreasonable but rather is adopting an understandable position with regard to an experience or experiences which are in themselves potentially very distressing,

without the prospect of additional distress resulting from a formal process of investigation or even mediation.

At the same time, however, raising an allegation of sexual harassment while at the same time insisting that no further action be taken may present significant difficulties for the University.

For example, an allegation of sexual harassment may, upon investigation, reveal conduct that is potentially a criminal offence. While strictly speaking the University may not be under a legal obligation to report an allegation of crime to the police, many would argue that it has at least a moral duty or civic obligation to do so.

Regard must also be had to the position of the University as an employer. If an employee complains to the University about sexual harassment by another employee, and the University does nothing about this, the University may be held to be vicariously responsible for that harassment.

Furthermore, if the University is made aware that an employee is engaging in conduct that may cause harm to another employee and does not take reasonable steps to address that issue, the University may be directly responsible for the harm that ensues, although the attitude of the complainant would have a direct bearing on the extent of the University's liability.

Regard must also be had to the potential reputational damage that may ensue should the University be shown to have been aware of sexual harassment and to have taken no steps to address it. Although the attitude of the complainant may well be directly relevant to the issue of legal responsibility, public opinion may not necessarily take account of the niceties of legal argument in such a case.

It may also be argued that the fact that a complaint has been made, although not followed through by the complainant into a formal inquiry, may indicate a state of affairs in a part of the University which requires intervention.

Finally, adopting a position in which an allegation of sexual harassment is not investigated because to do so would go against the wishes of the complainant is difficult to reconcile with the University's unconditional condemnation of sexual harassment as set out in the current Policy.

There are, therefore, compelling arguments which would support the University adopting a policy and procedures that would allow it to take action to investigate an allegation of sexual harassment, even if the complainant indicates that she or he does not want this to be done.

As against these arguments, there are some important counter-arguments. In the first place, the University is committed to protecting the confidentiality of complainants, and to take action against their wishes clearly departs from that commitment. Furthermore, there is the potential risk of discouraging complainants from coming forward, if – as would have to be the case – it were understood by complainants that action might be taken against their wishes. And there are potentially significant practical difficulties involved in investigating a case if the complainant declines to cooperate. The University's formal investigation procedures are predicated upon the need for a complainant to give evidence. A complaint has to be formulated and the person who is the subject of the complaint must have an opportunity to answer it. In the absence of the participation of the complainant, the formal investigation procedures cannot proceed.

Having considered these competing arguments, the Committee has concluded that the arguments in favour of allowing an investigation to proceed even against the wishes of the complainant should prevail. There remains, however, a question as to the form the investigation should take.

As noted above, the University's procedures for the investigation of an allegation of sexual harassment are predicated on the existence of a complaint, and the direct involvement of the complainant in the process of investigation and resolution. They are also predicated on the identification of a person or persons allegedly guilty of sexual harassment, and respect for that person's rights in the process of investigation, including the right to have full notice of the allegations made and the right to meet those allegations. Neither of those pre-conditions can properly be satisfied in a case where an allegation is made, but not pursued by the complainant.

The Committee has therefore concluded that, while it is essential that the University has available to it procedures to follow up on an allegation of sexual harassment even if the complainant does not wish to pursue the allegation, those procedures cannot take the form of an investigation directed towards the attribution of personal responsibility to a named individual or individuals. The form of investigation should, rather, be directed towards identifying whether there are issues in the management of the University which require to be addressed, and to recommending to the University such corrective steps as may be necessary to address those issues.

In order to maintain a clear distinction between the current investigatory procedures and the alternative form of investigation proposed here, the Committee has chosen to describe the latter as an "inquiry" rather than an "investigation".

At the same time, the Committee recognises that it is preferable, in any case of alleged sexual harassment, that the established procedures should be used wherever possible.

The Committee therefore **recommends**:

(1) The University should always seek to encourage and support a complainant to use the established procedures as described in section 2.3 above.

(2) Where a complaint had been made but the complainant has declined to participate in the normal procedures, the University should review the case to determine whether further inquiry into the underlying circumstances is justified.

(3) The University may undertake such an inquiry in any case, and should normally do so where any of the following conditions are satisfied:

(a) The allegation potentially discloses the commission of a criminal offence;

(b) The allegation is made against a senior member of the University;

(c) The allegation potentially discloses a serious abuse of authority;

(d) The circumstances of the case suggest that it would be contrary to the public interest (including the University's policy of zero tolerance of sexual harassment) for the University to take no action.

(4) The review mentioned in paragraph (2) above should be conducted jointly by the Designated Pro-Vice Chancellor and the Convenor of the Panel Against Sexual Harassment who should have full authority to determine whether to conduct a further

inquiry, having regard to the terms of paragraph (3) above. The inquiry would have to be undertaken by these two persons (and the University would have to allocate ad hoc human resources for the purpose).

On completion of the inquiry, a report should be made to the Vice-Chancellor as to the results of the inquiry, which should include recommendations for further action (if any) to be taken by the University.

(5) An inquiry under paragraphs (2) and (3) above should not be conducted with a view to assigning individual responsibility but with a view to improving management practices so as to avoid the recurrence of the underlying causes of the complaint.

(6) These procedures need not preclude the re-instatement of the established procedures for handling allegations of sexual harassment – including informal resolution and investigation – should the complainant’s stated position change during the currency of the inquiry.

4.2 Anonymous complaints

The Committee has also considered the issues that may arise where an anonymous complaint is made about sexual harassment. Anonymous complaints vary in their nature. A complaint may be a “one-off” single complaint, or it may be part of a series or pattern of complaints. Anonymous complaints may sometimes name the person or persons against whom the allegation is being made, but equally they may not.

At the moment the University’s procedures for handling allegations of sexual harassment give no specific guidance on how anonymous complaints should be dealt with. However, as a matter of general policy, the University does not take formal action on anonymous complaints.

While the Committee recognises the reasons for this general position, it has reached the conclusion that there should be the possibility of action being taken in the case of anonymous complaints of sexual harassment.

The reason why the Committee believes this is that in some cases an individual may not have sufficient confidence to bring forward a complaint following the usual procedures, especially if the allegation is one that may reveal a significant power imbalance between the alleged victim of the harassment (if identified) and the alleged harasser (if identified). The Committee does, however, recognise that there are good reasons for not departing, routinely, from the general policy of not action on anonymous complaints. The Committee also recognises that many of the practical considerations surrounding cases where the complainant does not wish to participate in a formal investigation may present themselves in the case of anonymous complaints and that the University’s response to anonymous complaints should, broadly, follow its recommendations set out above in section 4.1.

The Committee therefore **recommends** that the University procedures should make provision for the examination of anonymous complaints under the following conditions:

- (1) Where the allegations are of repeated misconduct by an identified individual or individuals (whether involving the same or different victims);
- (2) Where the allegation is made against a senior member of the University;

- (3) Where the allegation potentially discloses a serious abuse of authority;
- (4) The examination of anonymous complaints should be undertaken by the Designated Pro-Vice Chancellor and the Convenor of the Panel Against Sexual Harassment ;
- (5) The examination of anonymous complaints should not be directed towards assigning individual responsibility but with a view to improving management practices so as to avoid the recurrence of the underlying causes of the complaint.

4.3 Third party complaints

Somewhat similar issues to those discussed above arise in what can be described as “third party” complaints, that is, where a complaint alleging sexual harassment is made by someone other than the alleged victim. Where the complaint arises in this way, there is no complainant with the authority to take forward the complaint, and the question arises as to whether, and if so under what conditions, the University could initiate an investigation based on a third party complaint.

The Committee believes that in certain circumstances third party complaints should be made the subject of formal investigation. A third party complaint may, indeed, be the only route through which allegations of sexual harassment are brought to the attention of the University where the alleged victim is too afraid or too embarrassed to raise the matter personally.

The Committee does, however, recognise that there may be difficulties involved in pursuing a complaint, especially where the alleged victim is unaware of the complaint and has, indeed, taken the decision not to act personally.

The Committee therefore **recommends** that the University procedures should make provision for the investigation of third party complaints, subject to the conditions noted above in relation to anonymous complaints.

4.4 The situation of the alleged offender in such cases

An issue that is common to all of the above is that an allegation of sexual harassment may be made against an identified individual and yet, under the current procedures, in the absence of a complainant in person, there is no opportunity for the alleged offender to address the allegations. Indeed, he or she is in all probability unaware of the allegations.

The Committee believes that the recommendations that it has made in sections 4.1, 4.2 and 4.3 will address most of the concerns about the position of a person identified as potentially guilty of sexual harassment since it will not be possible for individual responsibility to be attributed outside the normal process of investigation.

However, the question remains as to whether a person identified in any such case should be made aware of the allegations against him or her. There are arguments on both sides of this issue.

On the one hand it may be argued that it is unfair for a person to be made the subject of an allegation of sexual harassment without having the opportunity at the very least to deny that allegation. Arguably, this is an item of personal data to which

the “data subject (i.e. the person against whom an allegation has been made) is entitled under the Data Privacy Ordinance.¹⁰

Conversely, it may be argued that notifying an individual that he or she has been the subject of a complaint, without providing a means to challenge that complaint, may offer little to the alleged offender, while at the same time provoking inquiries on his or her part, for example as to the identity of the complainant.

The Committee recognises that, in principle, a person who is made the subject of an allegation of sexual harassment should have the right to be informed of the allegation, and to respond to it. However, the Committee also recognises that where the case is not being pursued under the normal procedures, and a decision is taken not to proceed with an alternative form of inquiry there may be reasons not to inform the person identified.

The Committee therefore **recommends** that where an individual has been the subject of a complaint about sexual harassment which is not dealt with under the normal procedures, he or she should normally be notified in writing of the complaint, and be given the opportunity to respond to it.

However, the Committee further **recommends** that where a decision not to proceed with an inquiry has been reached, the designated Pro-Vice-Chancellor may decide not to inform the identified individual of the allegations, and that in such case no record should be kept that could identify the person concerned.

4.5 Advice and support

The University is committed to supporting any person who wishes to raise a complaint of sexual harassment, and also to providing support for any person against whom such an allegation has been made. At the early stages of a complaint the complainant will be advised of the procedures and the options open to her or him. Advice will also be given, as appropriate, on the availability of counseling and advisory services which, in the case of staff, are provided to the University by an outside agency and in the case of students by the University counseling service. Similar advice and support will be offered to the complainee upon notification to him or her of the complaint.

The evidence received by the Committee suggested that these arrangements appeared to be working well, and that there were no major proposals for change. The Committee did receive one suggestion to the effect that there were psychological advisory services available within the University that might be made available to staff. Having considered that possibility, the Committee reached the conclusion that there might be reluctance on the part of staff to seek advice or support from a department within the University, and therefore concluded that it was not appropriate to pursue that suggestion.

The Committee therefore **recommends** that there should be no immediate change to the current arrangements for counseling and advisory support for complainants and complainees.

¹⁰ It will, in any event, be necessary for the University to develop guidance to ensure that its policy and procedures in relation to sexual harassment are aligned with its obligations under the Data Privacy Ordinance.

The Committee does, however, recognise the importance of keeping these issues under review in order to ensure that the University's support for parties involved in sexual harassment cases is tailored to the needs of such individuals, and therefore **recommends** that a mechanism should be developed to check the effectiveness of services provided under the current arrangements. In making this recommendation, the Committee recognises that it is not easy, particularly while respecting individual choice and confidentiality, to determine the extent to which complainants and complainees, use the services offered, or their level of satisfaction with them. One possible solution is that an assessment of the ability to meet the particular needs of complainants and complainees should form part of any renewal or tendering process associated with the appointment of external counseling and advisory services.

4.6 Volunteer advisers

Under the current arrangements, the Panel Against Sexual Harassment designates an officer to deal with inquiries and complaints regarding sexual harassment. This means that, in practice, the first point of contact for a person wishing to make an inquiry or complaint is typically a member of the central administrative staff (who is also the Secretary to the Committee Against Sexual Harassment). This arrangement has worked well, although it is open to the challenge that this person is not "independent" of the University.

In some organisations this initial point of contact is provided through a network of trained volunteer advisers, drawn from different parts of the workforce. These individuals are available to provide initial advice on how an allegation of sexual harassment may be dealt with, and on the formal advice and support available to the individual concerned. They are not expected to act for the complainant, or the complainee, on the case itself, nor are they trained to offer counseling.

An example of the type of support that could be provided in this way is to be found in the University of Aberdeen's information about its Harassment Adviser Network:

"The University Harassment Adviser Service aims to provide support to employees who feel they are experiencing bullying or harassment in the workplace. If you feel you are being bullied or harassed at work then you may find a discussion with a Harassment Adviser to be beneficial.

You can contact any of the Harassment Advisers and request to meet with them. The discussion will take place in a location that you are fully comfortable with. Your Harassment Adviser will listen to your concerns and will be guided by your preferences regarding how you wish to proceed. The Adviser may provide you with alternative sources of support which you had not previously considered. Together you will decide what your next steps could be and your Harassment Adviser will provide information on the routes open to you.

Harassment Advisers are not trained counsellors or mediators and so their remit does not include these activities. They will, however, be able to provide advice on the University providers of these services.

The conversations will, unless in very exceptional circumstances, be kept in the strictest confidence.”¹¹

Involving members of the University in this informal capacity has the added advantage that it helps to raise awareness across the University of the University’s policy and procedures. The Committee **recommends** that the Committee Against Sexual Harassment give consideration to the development of such support mechanisms within the University.

4.7 Gender balance

The University’s procedures for dealing with sexual harassment seek to ensure that there is appropriate gender-balance in the process of mediation and investigation by providing that both women and men are appointed to conduct mediations and investigations. At present that commitment to gender balance is not reflected in the initial advisory stages of the procedures since the persons designated by the Panel Against Sexual Harassment to deal with enquiries and complaints are both women. The Committee recognises that this is an accident of personnel, but **recommends** that wherever possible a male member of staff or a male student involved in a case of sexual harassment (whether as complainant or complaine) should have the option of being referred to a male member of the Panel Against Sexual Harassment, and that a member of the Panel should be designated by the Panel for that purpose.

4.8 Legal advice

As a general rule the University does not permit direct involvement of legal advisers in internal procedures. It is, however, recognised that the University cannot prevent a member of staff or indeed a student seeking legal advice in relation to such matters. This general practice is followed in relation to the handling of sexual harassment cases. The consistent position adopted by those people to whom we spoke who had experience of handling sexual harassment cases in the University was that there should be no change in this regard. It is clear, in any case, that if the University were to offer legal advice in respect of an allegation of sexual harassment, it would have to offer it to both the complainant and the complaine on equal terms (which in some cases may not be done objectively or mutually agreed), which would expose the University to potentially significant legal costs. The Committee noted, however, that the University did offer legal advice to the Panel Against Sexual Harassment in respect of legal issues that might arise during the course of dealing with an individual complaint.

The Committee therefore **recommends** that there be no change to the current practice in respect of legal advice.

4.9 Resolution of complaints

¹¹ <http://www.abdn.ac.uk/staffnet/working-here/harassment-advisers-network-329.php>Harassment Advisers Network See also Northwestern University’s “Discrimination and Harassment Prevention Advisers”: <http://www.northwestern.edu/sexual-harassment/help/index.html>; Stanford University’s sexual harassment policy advisers (distributed across academic and administrative units): <http://harass.stanford.edu/SHadvisers.html>

As was noted above, once a complaint of sexual harassment has been lodged it may be dealt with in two different ways – either by mediation or by formal investigation.

4.9.1 Mediation

It is important to appreciate that these are alternative ways of resolving the matter. Mediation may be requested by either the complainant or the complainee, and both parties must agree to mediation before it may be attempted. Neither party may be required to enter into mediation. But in the event that mediation is not attempted or is unsuccessful, the complainant, but not the complainee, can request that the matter be formally investigated.

Although the Committee noted that in some systems for dealing with sexual harassment there is a requirement that mediation be attempted before there is resort to a more formal process of investigation, this is not an approach that the Committee would favour. Some cases of sexual harassment may be wholly unsuitable for mediation, and the current position of permitting, but not requiring, a complainant to enter into mediation appropriately recognises this, as does the provision in the current procedures which allows the Convenor of the Panel to direct that a case is not appropriate for mediation. The Committee therefore **recommends** that the current practice of permitting but not requiring mediation be maintained.

One question that has arisen during the Committee's deliberations is whether the complainee should be entitled to request a formal investigation (either where mediation has been successful or as an alternative to attempting mediation) in the same manner as the complainant. Although it appears that this has not hitherto happened in practice, there appears to be no reason in principle why the complainee should not have access to the formal process of investigation in this way.

The process of mediation is conducted by two members of the Panel Against Sexual Harassment. The Committee noted that in practice there is no guarantee that anyone involved in the process of mediation has any formal qualification as a mediator, or, indeed, any formal training in mediation. The Committee recognises that training in mediation, and professional qualification in mediation, has developed significantly over recent years, and **recommends** that the University should no longer rely on members of the Panel Against Sexual Harassment as mediators, but should seek support from professionally qualified mediators either from outside the University or, if such are available, within the University.

As noted above, the term "mediation" has acquired a specific statutory meaning in Hong Kong. On the assumption that the University will wish to retain "mediation" as an informal mechanism for the resolution of allegations sexual harassment, it will be necessary to develop guidelines to ensure consistency between the University procedures and the Mediation Ordinance.

4.9.2 Formal Investigation

Investigation is conducted by at least two members of the Panel. We have noted above some of the views that were expressed about the appropriateness of relying upon members of the academic staff to conduct the investigatory stage, and our reasons for rejecting the concerns that were raised.

However, the Committee does acknowledge that the investigation team may be faced with very difficult issues of fact and credibility in a given case, and that this will

impose a burden on individual team members. One way of perhaps addressing this is by enlarging the size of the investigation team in a given case. In fact the current procedures do permit the Convenor of the Panel to appoint more than two members to an investigation, and it may be that more frequent use of this power might serve to address some of these concerns. For instance, if an external member or a student joins an investigation, the team may consist of at least three persons. The Committee does note, however, that adding one member to an investigation team significantly affects the gender balance of the team even though as a general rule it is better for a committee to consist of an odd number of members, and adding additional members to address this runs the risk of enlarging the team to the point where it becomes difficult to manage the investigation, and potentially intimidating for the parties. The Committee therefore **recommends** that there be no change to the rules regarding the minimum size or composition of the investigation team.

4.9.3 Role of the investigation team

Under the current procedures the role of the investigation team is strictly confined to fact finding – to determining whether or not the allegation of sexual harassment has been made out. The decision of the investigation team on this question is subject to a process of confirmation and review, as set out above.

Two questions arise in relation to the role of the investigating team.

The first is whether the decisions of the investigation team on whether sexual harassment has been established should be subject to the type of review that is currently provided for. The second is whether the investigation team should have any role in relation to recommending disposal of the case.

So far as concerns the first question, the Committee has noted that the decision on the facts may be subject to three reviews – one by an independent reviewer and two by the Panel Convenor before it is confirmed and reported to the Vice-Chancellor. One of these reviews may be conducted after the parties have been given the opportunity to comment upon and, as appropriate, appeal, the findings of the team (upon which observations of the independent reviewer will have been received).

While the importance and sensitivity of the issue under consideration by the investigation team cannot be over-stated, it is open to question whether these repeated reviews, into which a form of appeal is also inserted, are ideal. Not only is the process of review repeated, but it is potentially quite lengthy. The Committee **recommends** that the process of review be simplified as follows:

- (1) The investigation team will report its findings to the Convenor of the Panel Against Sexual Harassment who will notify them to the parties.
- (2) If the decision is that the allegation of sexual harassment is made out, then the person complained against will have the right to appeal to a panel of three members of the Panel Against Sexual Harassment who have not had any prior involvement in the case. Their decision on the facts will be final, and will be reported to the Convenor of the Panel.
- (3) If the decision of the investigation team is that the allegation of sexual harassment is not made out, then the complainant will have the right to appeal to a panel of three members of the Panel Against Sexual Harassment

who have not had any prior involvement in the case. Their decision on the facts will be final and will be reported to the Convenor of the Panel.

- (4) If there is no appeal, the Convenor of the Panel Against Sexual Harassment will report the matter to the Pro-Vice-Chancellor.
- (5) If there is a finding of sexual harassment, and that finding is not appealed, or upheld on appeal, then the Convenor will make a recommendation to the Pro-Vice-Chancellor on disposal of the case.
- (6) The person complained against will have the right to appeal to the Vice-Chancellor on the Pro-Vice-Chancellor's specific decision on the disposal of the case, but may not appeal to the Vice-Chancellor against the findings of the Panel.

So far as concerns the second issue – whether the investigation team should have any role to play in relation to the disposal of the case, the Committee recognises that the investigation team is not likely to be equipped by virtue of their experience or background knowledge to make recommendations on disposal of the case. Recommendations on disposal may well involve consideration of factors that are not within the knowledge of the investigation team, and which, indeed, it might be inappropriate to reveal to them. The Committee therefore **recommends** that the investigation team should not play any role in determining the final disposal of the case.

5. Separation measures

The possibility of measures to separate the complainant and the complainees has been mentioned to the Committee, both as measures that might be taken during the determination of an allegation of sexual harassment, or as part of the process of resolving a complaint. Indeed, such measures are referred to in the current policy.

Separation at any stage of the process raises practical questions of how this might be achieved, particularly where removing an individual from a work place may significantly impact upon the effectiveness of his or her work, or the work of other members of his or her team. Separation will also make it necessary to explain the reasons for doing so to third parties, thereby compromising the confidentiality that has to be maintained in such circumstances.

Separation during the investigation of a case presents the additional issue of fairness to the complainees. A measure of separation undertaken in good faith and in the interests of the investigation might nonetheless be interpreted as an assumption that the allegation is justified. While that interpretation is certainly possible, it should not be over-emphasised since any decision to separate the parties would not be taken by anyone directly involved in the resolution of the allegation.

While recognizing these difficulties, the Committee **recommends** that the University should, wherever practical, give sympathetic consideration to a request for separation, whether during the process of mediation or investigation, or as part of the resolution of the complaint.

THE CHINESE UNIVERSITY OF HONG KONG

Policy Against Sexual Harassment
Executive Summary

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

actions. The Vice-Chancellor or his/her designate will convey this decision in writing to the complainant and the complainee as soon as it is made.

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

June 28, 2011

THE CHINESE UNIVERSITY OF HONG KONG

CUHK Policy Against Sexual Harassment

Preamble

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

Legal Definition of Sexual Harassment

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

"A person (howsoever described) sexually harasses a woman if -

(a) the person –

- (i) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to her; or*
- (ii) engages in other unwelcome conduct of a sexual nature in relation to her,*

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that she would be offended, humiliated or intimidated; or

(b) the person, alone or together with other persons, engages in conduct of a sexual nature which creates a hostile or intimidating environment for her."

5. It should be noted that the Ordinance covers sexual harassment of both men and women, and the above definition shall have effect regarding sexual harassment of men with such modifications as are necessary. (Section 2(8) of the Ordinance)
6. Section 23 of the Ordinance further provides that various forms of sexual harassment in the field of employment are unlawful. This will cover a fellow staff member, a contract worker, a commission agent or any person who is seeking to be employed by the University.
7. Section 39 of the Ordinance applies specifically to educational establishments. In the context of the University, it is unlawful for an employee of the University to sexually harass a person who is a student or a prospective student of the University. Additionally, it is unlawful for a student or prospective student of the University to sexually harass any fellow student or prospective student of the University; or to sexually harass any staff of the University.
8. The full text of the Ordinance can be obtained at the Department of Justice's website www.legislation.gov.hk.

Examples of Sexual Harassment

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

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

Publicity and Education

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

Victimization

12. Victimization occurs when a person treats another person (“the victimized person”) less favourably than in those circumstances he or she treats or would treat other persons, and does so by reason that the victimized person or any other person (“the third person”)
- a) has made, or intends to make, a complaint under the Policy; or
 - b) has furnished, or intends to furnish, information or documents in relation to a complaint; or
 - c) has appeared, or intends to appear as a witness in a complaint investigation process; or
 - d) has reasonably asserted his/her own or another person’s rights under the Policy.

Under the above circumstances, the victimized person or the third person may file a complaint on the ground of victimization.

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

Mediation, Investigation and Appeal

16. Any staff member or student who believes that he or she is a victim of sexual harassment should act promptly. Correcting the situation immediately is in everyone's best interests. Ignoring sexual harassment may make the situation worse because the harasser may misinterpret a lack of response as approval or condonation of the behaviour. Delay in making a complaint may also present difficulties for the University in conducting a thorough investigation and establishing the facts of the case.
17. Mediation and complaint investigation processes are available to staff or students through the Panel Against Sexual Harassment. A flow chart on handling sexual harassment complaints is appended in Annex 2. The Panel Against Sexual Harassment shall have the responsibilities as detailed in Annex 3 and shall report to the Committee Against Sexual Harassment. For each allegation/complaint, a team of at least two panelists will be appointed by the Panel Convenor to conduct mediation or investigation. The primary purpose of the mediation and complaint investigation processes is to deal with the complaint fairly and expeditiously.
18. Any staff member or student of the University who (a) has been sexually harassed by another staff member or student; (b) has witnessed an act of sexual harassment committed by another staff member or student of the University; or (c) has been expressly authorized by a victim to act on his/her behalf may approach the Panel Against Sexual Harassment. The current officers designated by the Panel Against Sexual Harassment to deal with enquiries and complaints are:

	<u>Name</u>	<u>Phone</u>	<u>Email</u>
a)	Professor Helene Fung, Convenor	3943 6464	hhlfung@psy.cuhk.edu.hk
b)	Ms. Yvonne Luk, Secretary	3943 8716	yvonneluk@cuhk.edu.hk

The designated officers shall inform the staff member or student concerned of the mechanism and options for dealing with allegations or complaints of sexual harassment and may offer assistance, including counseling, to the individuals concerned in the subsequent mediation or investigation processes.

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

Mediation

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

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

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

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

Complaint Investigation and Appeal Procedure

24. Investigation

- a) If the complainant * wishes the University to initiate an investigation into an act of sexual harassment, he/she should file a written complaint with the Panel Against Sexual Harassment.

The officer designated by the Panel Against Sexual Harassment may help to record an oral complaint which has to be signed and confirmed by the complainant.

- b) Upon receipt of a written complaint, the Panel Against Sexual Harassment will conduct a full and impartial investigation. At least two panelists of different gender shall be appointed on a roster basis by the Panel Convenor to investigate a complaint (the "Investigation Team"). Under special

* **The Panel Against Sexual Harassment will conduct an investigation only if the complaint is filed by a staff member or student of the University who (a) has been sexually harassed by another staff member or student of the University; (b) has witnessed an act of sexual harassment committed by another staff member or student of the University; or (c) has been expressly authorized by the victim to act on his/her behalf. The Panel may also conduct an investigation in respect of a complaint filed by a person who alleges that he/she was sexually harassed when he/she was seeking to be employed by the University or to be a student of the University.**

circumstances, as deemed necessary by the Panel Convenor, a non-staff Council member may be invited to join the Investigation Team to assist the process and secure the confidence of the parties.

- c) In the course of the investigation:
 - i) The complainee will be given a copy of the complaint by the Investigation Team and will be provided with an opportunity to respond to the allegation.
 - ii) The complainant, complainee, witnesses and any other parties concerned will be interviewed individually, separately and in private by the Investigation Team. Neither the parties nor witnesses will be subject to questioning except by members of the Investigation Team.
 - iii) Subject to the approval of the Investigation Team, any individual attending an interview may ask to be allowed to be accompanied by one person other than a legal representative. A witness in the case is not a suitable accompanying person. Such a request must be submitted in writing in advance and set out the reasons for requesting an accompanying person together with the name and occupation of the individual proposed for the Investigation Team's consideration. The Investigation Team's decision on such a request shall be final. If the request is granted, the accompanying person will not be entitled to address the Investigation Team.
 - iv) Documents and/or any evidence may be produced and reviewed.
 - v) A contemporaneous record will be kept of all oral evidence given to the Investigation Team.

25. Fact-Finding Report

- a) The Investigation Team will submit a written fact-finding report to the Panel Convenor. The fact-finding report shall consist of the following:
 - i) A statement of the issues under review.
 - ii) The allegation(s) made by the complainant.
 - iii) The evidence adduced in support of the allegation(s).
 - iv) The response of the person of whom complaint is made to the allegation(s).
 - v) The evidence adduced in rebuttal of the allegation(s).
 - vi) The finding of facts following the investigation.
 - vii) A determination as to whether the complaint (s) is established.
 - viii) Recommended course(s) of action.
- b) The Panel Convenor will appoint at least one panelist independent of the investigation (the "Independent Reviewer") to review the fact-finding report. The Independent Reviewer will review the fact-finding report to ensure that

the procedures have been complied with, that the report is set out in accordance with 25(a) above and that the determination on the complaint is in accordance with the facts as found. The Independent Reviewer may (i) endorse the report for submission to the Panel Convenor or (ii) remit the report to the Investigating Team for clarification or further explanation or re-consideration of all or any part of the report before agreeing to forward it to the Panel Convenor; and in the event of either (i) or (ii) the Independent Reviewer may add any comment or observation for consideration by the Panel Convenor.

- c) The fact-finding report of the Investigation Team together with any comment or observation by the Independent Reviewer shall be submitted to the Panel Convenor.

26. Follow-up and Appeal Procedures

- a) The Panel Convenor shall review the fact-finding report (having taken into account any comment or observation by the Independent Reviewer) and notify the complainant and the complaine in writing of the fact-finding report.
- b) The complainant and the complaine may make written observations or submit a written appeal to the Panel Convenor.
- c) The Panel Convenor shall review the fact-finding report, taking into account the observations or written appeal stated in the complainant and/or complaine's written submission ("Grounds of Appeal"), if any, and submit the final report together with the Grounds of Appeal to the Vice-Chancellor (or his/her designate) for consideration.
- d) The Vice-Chancellor (or designate) shall decide to accept or reject the recommendations or any part thereof contained in the final report and shall decide what actions, if any, should be taken. The Vice-Chancellor (or designate) may make a written request to the Investigation Team and/or the Panel Convenor for clarification or further information prior to making his/her final decision.
- e) The decision of the Vice-Chancellor or designate is final and will be conveyed in writing to the complainant and the complaine. The University is entitled to invoke formal disciplinary procedures if a case of sexual harassment is established.

Time Limits

- 27. The filing of a written complaint should normally be made within (i) ninety (90) calendar days from the time the complainant knew or should have known of an act(s) of sexual harassment or action taken as a result of alleged sexual harassment or (ii) thirty (30) working days after mediation has been completed, whichever is later.

28. Unless an extension of time is granted by the Panel Convenor, the total time period for the investigation, from the filing of a written complaint to submission of the fact-finding report and recommended action to the Panel Convenor, will not exceed eighty (80) working days.
29. The Panel Convenor shall convey to the complainant and the complainee the findings and recommendations of the fact-finding report within fifteen (15) working days after receipt of the fact-finding report.
30. The complainant and the complainee shall submit their observations/appeal to the Panel Convenor within fifteen (15) working days after being notified of the findings and recommendations of the fact-finding report.
31. The Panel Convenor shall submit a final report to the Vice-Chancellor within fifteen (15) working days after receipt of the responses or the Grounds of Appeal from the complainant and the complainee. If no responses or Grounds of Appeal are received, the Panel Convenor shall review the fact-finding report and submit a final report to the Vice-Chancellor within fifteen (15) working days.
32. The decision of the Vice-Chancellor (or designate) will be made as soon as practicable following receipt of the final report together with the Grounds of Appeal.
33. The time limits set forth herein may be extended by the Panel Convenor on reasonable grounds. The Panel Convenor may consider a complaint which is out of time if he/she considers that it is fair to do so.

Confidentiality

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

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

Conflict of Interest

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

Formal Disciplinary Procedures

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

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

38. The internal University procedures do not affect the right to lodge a complaint directly with the Equal Opportunities Commission (EOC) or to take civil action in the District Court of Hong Kong or to make a complaint to the police or other investigating agency.
39. Under the Ordinance, the EOC may decide not to take up an investigation into an act of alleged sexual harassment if the complaint is not lodged within 12 months of the alleged incident. If a complainant decides to take court action in respect of a claim of sexual harassment, he/she normally has to commence the legal proceedings within 24 months of the incident.
40. If a complainant wishes to make a claim in court, it is advised that this is done within the prescribed time limit. If the complainant wishes to report the incident to the Police and needs advice and assistance on the procedure, the Panel Convenor may offer help.

Policy Review

41. The content of this policy and procedure is subject to periodic review and amendment.

(The Policy has been last approved by the Administrative and Planning Committee on June 28, 2011.)

THE CHINESE UNIVERSITY OF HONG KONG

Publicity and Education

1. Importance of Awareness, Promotion, and Education

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

2. Targets

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

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

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

- b) Policies, procedures and guidelines for the reporting, receiving and filing of complaints should be included in the Staff Handbooks and Student Handbook.
- c) To implement the policy, procedure and guidelines and to increase awareness of sexual harassment problems, educational seminars and programmes should be arranged for various target groups:
 - i) Seminars for Department/Unit Heads, administrators and other selected personnel who may help to promote the policy and serve as resource persons and as advisors of their respective units.
 - ii) Talks may be arranged for staff members through CUTA, staff unions, CUWO, Staff Common Room, etc., to heighten their sensitivity to the issue and their awareness of their role in discouraging harassing behaviour.
 - iii) Programmes for similar purposes may be arranged for students by the Office of Student Affairs and the Colleges' Dean of Students' Offices.
 - iv) The Colleges may also support the Policy by including talks on the subject during their weekly/monthly assemblies.
- d) A session in the training programmes for new staff members (e.g., Executive Orientation Programme, Orientation Programme for newly recruited clerical and secretarial staff) and orientation programmes for students may be used for discussion of the topic and dissemination of information to the new comers.

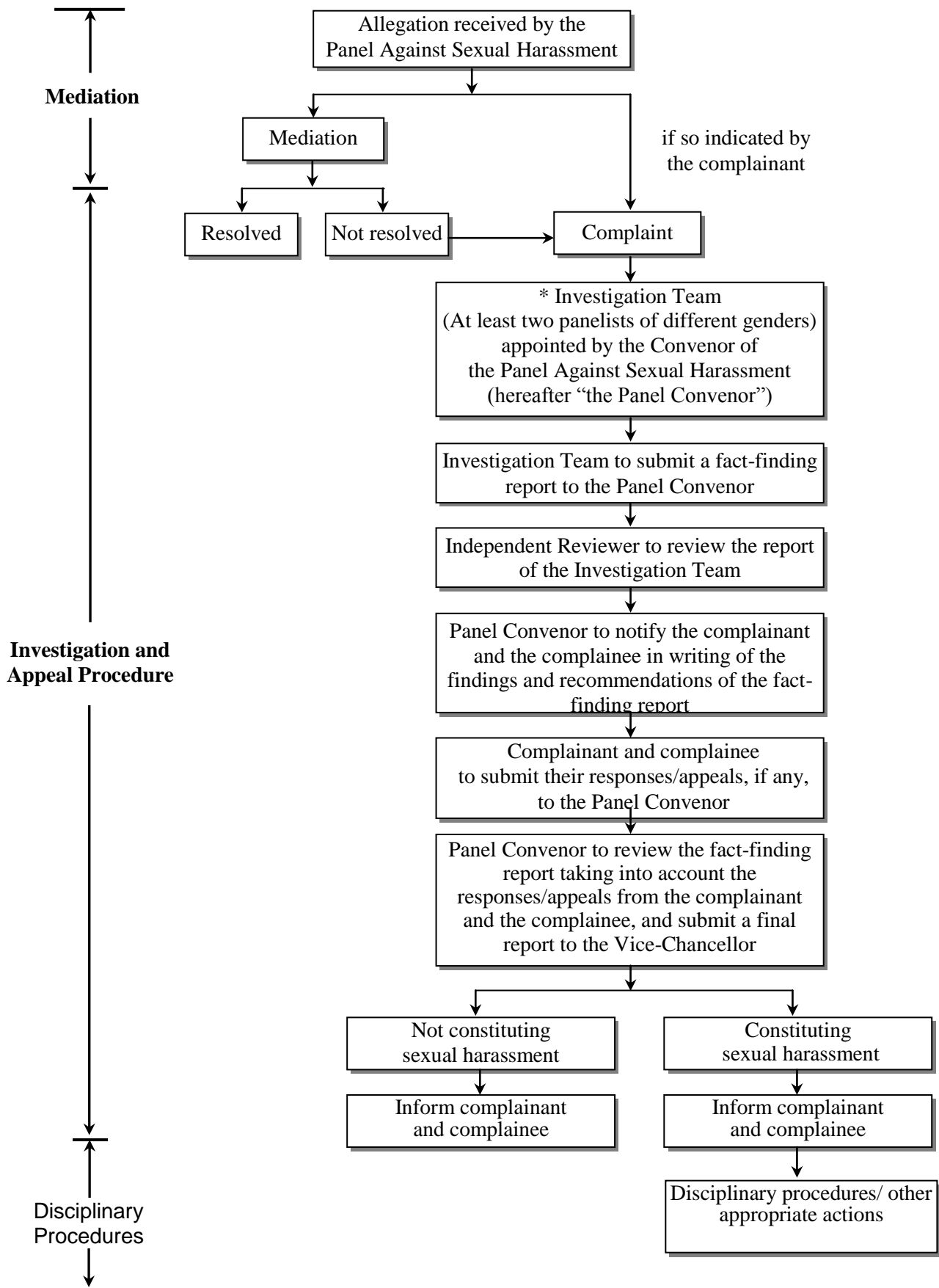
4. Promotional Literature and Educational Tools

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

5. Maintenance of the Policy

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

Flow Chart on Handling Sexual Harassment Complaints



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

THE CHINESE UNIVERSITY OF HONG KONG

Panel Against Sexual Harassment

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

THE CHINESE UNIVERSITY OF HONG KONG

Review Committee on the Handling of Sexual Harassment

Interview List

No.	Name	Faculty/Department/Unit/Member	Remarks
1.	Professor Lee Tan	<ul style="list-style-type: none"> - Department of Electronic Engineering - Member of the Panel Against Sexual Harassment 	Interview conducted on 4 Sept
	Dr. Lau Yuk-king	<ul style="list-style-type: none"> - Department of Social Work - Member of the Panel Against Sexual Harassment - Member of the Task Force on Education and Training 	
2.	Professor Wong Woo Jean	<ul style="list-style-type: none"> - Head of the Division of Geriatrics, Faculty of Medicine - Former Convenor of the Panel Against Sexual Harassment (2003 - 2005) 	Interview conducted on 5 Sept
	Professor Fung Hoi-lam, Helene	<ul style="list-style-type: none"> - Department of Psychology - Current Convenor of the Panel Against Sexual Harassment - Member of the Task Force on Education and Training - Member of the Committee Against Sexual Harassment 	
3.	Professor Cheung Mui-ching, Fanny	<ul style="list-style-type: none"> - Chairperson of the Department of Psychology - Founding Chairperson of the Committee Against Sexual Harassment (1995 – 1996) 	Interview conducted on 7 Sept

		- Founding Chairperson of Hong Kong's Equal Opportunities Commission (1996-99)	
4.	President/ representatives	- The Chinese University Teachers' Association (CUTA)	Interview conducted on 7 Sept
5.	Presidents/ representatives	- The Chinese University Staff Association (CUSA) - The Chinese University of Hong Kong Employees General Union (CUEGU)	Interview conducted on 12 Sept
6.	Alumni and Director of AAO	- Convocation and its Sub-Committee and Alumni Affairs Office	Interview conducted on 15 Oct
7.	Professor Wong Suk-ying	- Department of Sociology - Former Chairperson of the Committee Against Sexual Harassment (2006 – 2007)	Interview conducted on 16 Oct
8.	Deans/ Representatives	- Colleges Deans of Students	Interview conducted on 17 Oct
9.	Presidents/ Representatives	- Student Hostels Association	Interview conducted on 18 Oct
10.	Presidents/ Representatives	- University and College Students Union - Mainland Undergraduate Association (MUA) - The Chinese University Postgraduate Student Association (CUPSA)	Interview conducted on 19 Oct
11.	Professor Yip Hon-ming	- Department of History - Former Convenor of the Panel Against Sexual Harassment (2005 - 2008)	Interview conducted on 19 Oct

THE CHINESE UNIVERSITY OF HONG KONG
Review Committee on the Handling of Sexual Harassment
Statistics on Sexual Harassment Enquiry
1997 - 2012

Year	Advice Sought on Alleged Case	Policy & Procedure	Publicity and Education	Others (e.g. press/institutes/external organizations)	Unclassified	Total
1997	0	0	0	0	2	2
1998	0	0	0	3	0	3
1999	0	0	0	1	6	7
2000	0	0	0	0	2	2
2001	1	0	0	0	2	3
2002	6	0	3	3	5	17
2003	6	4	3	3	0	16
2004	3	5	2	1	0	11
2005	2	3	1	2	0	8
2006	1	1	1	1	0	4
2007	2	5	3	2	0	12
2008	2	3	14	3	0	22
2009	9	6	11	4	0	30
2010	10	3	6	3	0	22
2011	12	2	9	4	0	27
2012	10	1	1	2	0	14
Total	64	33	54	32	17	200

THE CHINESE UNIVERSITY OF HONG KONG
Review Committee on the Handling of Sexual Harassment
Statistics on Sexual Harassment Complaints Handled
1995 - 2012

No.	Complainant	Complainees	Action Taken
1996			
1.	A female staff	A male staff	Resolved by mediation
1997			
2.	A female staff	A male staff	Resolved by mediation
1999			
3.	CU Student Union	Student Hostel Association	Case established after investigation
2000			
4.	A female staff	A male staff	Case not established after investigation
2002			
5.	A female student	Organisers of Orientation Camps	Case established after investigation
2003			
6.	A student body	A male teaching staff	Case not established after investigation
2005			
7.	Three students	CU Campus Radio	Case established after investigation
8.	A female staff	A male staff	Case not established after investigation
9.	A male staff	A female staff	Case not established after investigation
10.	A female staff	A female staff	Case not established after investigation

2006			
11.	A male staff	A male staff	Case established after investigation
12.	A female staff	A male staff	Case established after investigation
13.	A female student	A male student	Case established after investigation
14.	A female staff	A male staff	Case established after investigation
15.	A female student	A male staff	Resolved by mediation
2008			
16.	A female staff	A male staff	Case not established after investigation
2009			
17.	A female staff	A male staff	Resolved by mediation
2010			
18.	A female student	A male student	Resolved by mediation
19.	A female student	A male student	Case established after investigation
20.	A female staff	A male staff	Resolved by mediation
2011			
21.	A female staff	A male teaching staff	Resolved by mediation
22.	A female student	A male teaching staff	Resolved by mediation
23.	A female staff	A male teaching staff	Case established after investigation
2012			
24.	A female student	A male staff	Case established after investigation
25.	A female student	A male student	Resolved by mediation

November 27, 2012

THE CHINESE UNIVERSITY OF HONG KONG

**Review Committee on the Handling of Sexual Harassment
Summary of Recommendations**

Section /Para.	Issue	Recommendation
Section 3 -- Policy Matters		
3.2	The role of the Vice-Chancellor	The role of the Vice-Chancellor in the “procedural” aspects of the case should be replaced by a designated Pro-Vice-Chancellor (except in relation to the matters referred to below in paragraph 4.9.3)
3.3	Composition of the Panel Against Sexual Harassment (PASH)	<p>PASH should continue to be composed of members of the academic and non-academic staff.</p> <p>Academic and administrative units should be invited to propose the names of persons for service in the Panel. Such nomination should be subject to approval by the AAPC.</p> <p>An appropriate number of external members should be appointed to serve on the Panel. The question whether an external member should be appointed to serve in a given case is a matter that should be left to the Convenor of the Panel when establishing the investigation team.</p> <p>The Panel should include an appropriate number of students. In cases in which both parties are students the investigation team should include a student wherever possible.</p>
3.4	Training	Staff in certain roles should be required to undertake training in relation to sexual harassment and in particular the University’s policy and procedures for handling the issue.
3.5	Communication and awareness-raising	The University should review its communication strategy with regard to sexual harassment to determine what measures might be taken to improve communication of its policy and procedures to the University community as a whole.

Section /Para.	Issue	Recommendation
3.5	Communication and awareness-raising	A more “user-friendly” set of guidance should be developed for both the complainant and the complainee as to how they should take forward their complaint or respond to a complaint.
3.6	Investigation by other responsible authorities	In any case in which a complaint is raised that may disclose an issue of sexual harassment, the complainant should be advised to refer the matter to the PASH.
Section 4 -- Procedure		
4.1	The complainant’s veto	<p>(1) The University should always seek to encourage and support a complaint to use the established procedures as described in section 2.3 above.</p> <p>(2) Where a complaint had been made but the complainant has declined to participate in the normal procedures, the University should review the case to determine whether further inquiry into the underlying circumstances is justified.</p> <p>(3) The University may undertake such an inquiry in any case, and should normally do so where any of the following conditions are satisfied:</p> <p>(a) The allegation potentially discloses the commission of a criminal offence;</p> <p>(b) The allegation is made against a senior member of the University;</p> <p>(c) The allegation potentially discloses a serious abuse of authority;</p> <p>(d) The circumstances of the case suggest that it would be contrary to the public interest (including the University’s policy of zero tolerance of sexual harassment) for the University to take no action.</p>

Section /Para.	Issue	Recommendation
4.1	The complainant's veto	<p>(4) The review mentioned in paragraph (2) above should be conducted jointly by the designated Pro-Vice-Chancellor and the Convenor of the Panel who should have full authority to determine whether to conduct a further inquiry, having regard to the terms of paragraph (3) above.</p> <p>(5) An inquiry under paragraphs (2) and (3) above should not be conducted with a view to assigning individual responsibility but with a view to improving management practices so as to avoid the recurrence of the underlying causes of the complaint.</p> <p>(6) These procedures need not preclude the re-instatement of the established procedures for handling allegations of sexual harassment – including informal resolution and investigation – should the complainant's stated position change during the currency of the inquiry.</p>
4.2	Anonymous complaints	<p>The University procedures should make provision for the examination of anonymous complaints under the following conditions:</p> <p>(1) Where the allegations are of repeated misconduct by an identified individual or individuals;</p> <p>(2) Where the allegation is made against a senior member of the University;</p> <p>(3) Where the allegation potentially discloses a serious abuse of authority;</p> <p>(4) The examination of anonymous complaints should be undertaken by the designated Pro-Vice-Chancellor and the Convenor of the PASH;</p>

Section /Para.	Issue	Recommendation
4.2	Anonymous complaints	(5) The examination of anonymous complaints should not be directed towards assigning individual responsibility but with a view to improving management practices so as to avoid the recurrence of the underlying causes of the complaint.
4.3	Third party complaints	The University procedures should make provision for the investigation of third party complaints, subject to the conditions noted above in relation to anonymous complaints.
4.4	The situation of the alleged offender in such cases	Where an individual has been the subject of a complaint about sexual harassment which is not dealt with under the normal procedures, he or she should normally be notified in writing of the complaint, and be given the opportunity to respond to it. Where a decision not to proceed with an inquiry has been reached, the designated Pro-Vice-Chancellor may decide not to inform the identified individual of the allegations, and that in such case no record should be kept that could identify the person concerned.
4.5	Advice and support	There should be no immediate change to the current arrangements for counseling and advisory support for complainants and complainees. A mechanism should be developed to check the effectiveness of services provided under the current arrangements.
4.6	Volunteer advisers	The Committee Against Sexual Harassment should give consideration to the development of a network of volunteer advisers within the University.
4.7	Gender balance	Wherever possible a male member of staff or a male student involved in a case of sexual harassment (whether as complainant or complainee) should have the option of being referred to a male member of the PASH, and that a member of the Panel should be designated by the Panel for that purpose.

Section /Para.	Issue	Recommendation
4.8	Legal advice	There should be no change to the current practice in respect of legal advice.
4.9	Resolution complaints of	<p>4.9.1 Mediation</p> <p>The current practice of permitting but not requiring mediation should be maintained.</p> <p>The University should no longer rely on members of the PASH as mediators, but should seek support from professionally qualified mediators either from outside the University or, if such are available, within the University.</p> <p>4.9.2 Formal Investigation</p> <p>There should be no change to the rules regarding the minimum size or composition of the investigation team.</p> <p>4.9.3 Role of the investigation team</p> <p>The process of the review of the decisions of the investigation team should be simplified as follows:</p> <ol style="list-style-type: none"> (1) The investigation team will report its findings to the Convenor of the PASH who will notify them to the parties; (2) If the decision is that the allegation of sexual harassment is made out, then the person complained against will have the right to appeal to a panel of three members of the PASH who have not had any prior involvement in the case. Their decision on the facts will be final, and will be reported to the Convenor of the Panel.

Section /Para.	Issue	Recommendation
4.9	Resolution of complaints	<p>(3) If the decision of the investigation team is that the allegation of sexual harassment is not made out, the complainant will have the right to appeal to a panel of three members of the PASH who have not had any prior involvement in the case. Their decision on the facts will be final and will be reported to the Convenor of the Panel.</p> <p>(4) If there is no appeal, the Convenor of the Panel will report the matter to the Pro-Vice-Chancellor.</p> <p>(5) If there is a finding of sexual harassment, and that finding is not appealed, or upheld on appeal, then the Convenor will make a recommendation to the Pro-Vice-Chancellor on disposal of the case.</p> <p>(6) The person complained against will have the right to appeal to the Vice-Chancellor on the Pro-Vice-Chancellor's specific decision on the disposal of the case, but may not appeal to the Vice-Chancellor against the findings of the Panel.</p> <p>The investigation team should not play any role in determining the final disposal of the case.</p>
Section 5 – Separation measures		
5.	Separation measures	The University should, wherever practical, give sympathetic consideration to a request for separation, whether during the process of mediation or investigation, or as part of the resolution of the complaint.