

Committee Against Discrimination and Sexual Harassment

Guidelines for someone who has a concern or complaint in relation to sexual harassment

1. What is sexual harassment?

Sexual harassment is an unwelcome sexual advance, unwelcome request for sexual favours and other conduct of a sexual nature in which a reasonable person would anticipate that the person being harassed would be offended, humiliated or intimidated. Any sex-related language, action or physical contact that is unwelcome may constitute sexual harassment. A sexually hostile environment will also constitute sexual harassment which takes place in the form of an environment where there are actions, language or pictures that makes a person feel sexually threatened or harassed.

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. The unwelcome behaviour needs not be repeated or continuous. A single incident may be sufficient to constitute sexual harassment.

The following are some examples of sexual harassment acts:

- Repeated attempts to make a date, despite being told "NO" each time
- Comments with sexual innuendoes and suggestive or insulting sounds
- Relentless humour and jokes about sex or gender in general
- Sexual propositions or other pressure for sex
- Implied or overt threats for sex
- Obscene gestures or inappropriate touching (e.g. patting, touching, kissing or pitching)
- Offensive communications of a sexual nature (letters, phone calls, faxes, e-mail messages, etc.)
- Displaying sexually obscene or suggestive photographs or literature
- Staring or leering at a person or at parts of his/her body

2. What should you do if you feel being sexually harassed?

Sexual harassment is unlawful. Ignoring sexual harassment does not make it go away, but may make it worse because the harasser may misinterpret no response as approval of the behaviour. There are a number of things you can do to address the issue:

- Try to sort it out, where practicable, with the person or people involved. Speak up at the time. Tell the harasser that his/her behaviour is unwelcome and should be stopped immediately.

- Keep a written record of the incidents, including the dates, time, location, witnesses (if any) and nature (what the harasser has said or done) and your own response.
- Tell someone you trust or a counsellor, and ask for emotional support and advice.
- Seek advice and assistance from the designated officers of the Panel Against Discrimination and Sexual Harassment. The current designated officers are:

<u>Name</u>	<u>Phone</u>	<u>Email</u>
a) Professor Margaret Ip, Convenor	3505 1265	margaretip@cuhk.edu.hk
b) Professor Lam Hon-ming, Member	3943 6336	honming@cuhk.edu.hk
c) Secretary	3943 8716	padsh@cuhk.edu.hk

You are encouraged to come forward with complaints as soon as possible after the alleged incidents as a lapse in time may, in certain circumstances, present difficulties for the University in conducting a thorough investigation and establishing the facts of the case.

3. What can the University do?

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 University has procedures to deal with allegations or complaints of sexual harassment and to provide proper redress if and when sexual harassment occurs.

There are three stages to the complaints procedures:

- Stage 1 Advising and Early Resolution
- Stage 2 Conciliation
- Stage 3 Formal Investigation

Stages 1 and 2 are both informal procedures. You may elect to bypass conciliation and proceed directly with formal investigation.

Stage 1 Advising and Early resolution

The designated officers of the Panel Against Discrimination and Sexual Harassment are available to address your concern with a view to clarifying the concern and facilitating early resolution. The officers can assist you by:

- Clarifying what has occurred and whether the behaviour might constitute sexual harassment under the policy;
- Providing information about the policy and the complaint procedures;
- Advising of your rights under the relevant laws and regulations including victimization;
- Informing about available options which include
 - (a) Early resolution e.g. speaking to or writing a letter to the harasser. The purpose would be to make the harasser aware of the way his/her behaviour has been perceived and ask him/her to stop the behaviour immediately;

- (b) Conciliation and complaint investigation by the University;
 - (c) Your right to lodge complaints with the Equal Opportunities Commission or to take civil action in the District Court of Hong Kong or to make a complaint to the police.
- Providing information and advice about where you can go to get more help, e.g. counselling and how to initiate a complaint.

Stage 2 Conciliation

What is conciliation?

Conciliation is a voluntary process. It will only be arranged where both the complainant and the complaine e are willing to take part in the conciliation. If the parties reach a settlement, the agreement signed by the parties is legally binding. Under normal circumstances, attempts at conciliation do not require the filing of a written complaint.

Who will conciliate sexual harassment?

The Panel Against Discrimination and Sexual Harassment will offer to facilitate conciliation of a dispute upon request of the complainant or the complaine e. The Panel Convenor will appoint two panellists of different gender to conduct conciliation. The Secretary of the Committee Against Discrimination and Sexual Harassment will act as Secretary of the conciliation team.

What role will a conciliation team play?

The conciliation team will serve as facilitator to help the parties identify issues, explore possible ways to resolve the dispute, and help them reach an agreement that both find satisfactory. The team will interview the complainant and the complaine e separately. In the conciliation process, no meeting notes will be taken.

What are the possible outcomes of conciliation?

If the conciliation fails to reach a settlement, the complainant can continue to enforce his/her rights. If a settlement has been reached during the conciliation, the parties may enter into a legally binding agreement to record the terms of the settlement. The settlement can contain:

- an apology;
- a guarantee that no further offending behaviour will occur;
- a statement that the parties will have no further contact with each other; and
- an agreed procedure for monitoring the situation and resolving any future concerns.

Each party will sign the agreement and keep a copy. Information about the complaint and resolution including a copy of the agreement will be kept in the office of the Secretary of the Committee Against Discrimination and Sexual Harassment for purpose of record and shall

be dealt with by all the parties concerned in strict confidence and in accordance with the University's existing policies and applicable laws.

Will the conciliation team monitor the performance of the agreement?

No. But the conciliation team would inform the parties that if a breach occurs, the complainant has the right to file a written complaint pursuing a formal investigation.

Stage 3 Investigation

What is investigation?

Investigation is a formal procedure. If you wish the University to initiate an investigation into an act of sexual harassment, you should file a written complaint with the Panel Against Discrimination and Sexual Harassment. The complaint should include –

- personal details
- information identifying the complainee(s)
- date(s) when alleged act(s) occurred
- brief facts of incident
- any information in support of the complaint
- names of witnesses (if any)
- loss or harm experienced

You should note that, apart from background or certain personal information, details of the complaint, including your name and the allegation made, will be sent to the complainee.

Upon receipt of a written complaint, the Panel Convenor will appoint at least two panellists of different gender to investigate the complaint. The Secretary of the Committee Against Discrimination and Sexual Harassment will be appointed as Secretary of the Investigation Team. No member of the Investigation Team should be from the department/unit in which the complainant or the complainee works.

Under special circumstances as deemed necessary by the Panel Convenor, a non-staff Council member, an external member or a student representative may be invited to join the Investigation Team to assist the process and secure the confidence of the parties. In cases in which both parties are students, the Investigation Team shall include a student representative wherever possible.

The Investigation Team will interview you and the complainee separately. You will usually be interviewed first. If necessary, witnesses and any other parties concerned will also be interviewed individually in conformance with the privacy and confidentiality laws.

What role will an investigation team play?

The Investigation Team will conduct a full and impartial investigation to determine whether the complaint can be substantiated. Upon completion of the investigation, the Investigation Team will submit a fact-finding report to the Panel Convenor. The Investigation Team would not play any role in recommending sanction, penalty, or disciplinary action which will rest on the relevant disciplinary committee(s).

What are the possible outcomes of an investigation?

The Panel Convenor shall review the fact-finding report submitted by the Investigation Team and notify both the parties concerned in writing of the fact-finding report. If the decision of the Investigation Team is that the allegation of sexual harassment is established, then the complainee may submit an appeal to the Panel Convenor. If the decision is that the allegation of sexual harassment is not established, then you may submit an appeal to the Panel Convenor. If there is no appeal, the Panel Convenor shall report the matter to a Pro-Vice-Chancellor/Vice-President designated to handle matters relating to sexual harassment (“the designated Pro-Vice-Chancellor/Vice-President”).

If there is a finding of sexual harassment, then the Panel Convenor shall make recommendations to the designated Pro-Vice-Chancellor/Vice-President on disposal of the case and submit a final report to the designated Pro-Vice-Chancellor/Vice-President for consideration. The designated Pro-Vice-Chancellor/Vice-President shall convey his/her decision in writing to the complainant and the complainee.

Will you have the right to appeal against the decision of the investigation team?

Yes. If the decision of the Investigation Team is that the complaint of sexual harassment is not established, you will have the right to appeal in writing to the Panel Convenor.

Upon receipt of your appeal, the Panel Convenor will establish an Ad Hoc Panel to review the fact-finding report, taking into account the written appeal stated in your written submission (“Grounds of Appeal”). The Ad Hoc Panel shall include a panel of three members of the Panel Against Discrimination and 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 Panel Convenor.

What action will the University take if the complaint is found to be substantiated?

The University is entitled to invoke formal disciplinary procedures and take appropriate disciplinary action against the staff member or student concerned.

Will anyone be punished if the complaint is found to be unsubstantiated?

No staff member or student of the University will be punished for initiating a good faith complaint or for providing information in the complaint investigation processes. 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 complaint process.

4. Is there a time limit for lodging a complaint?

Yes. There are time limits for lodging a complaint with the University's Panel Against Discrimination and Sexual Harassment, the Equal Opportunities Commission (EOC) and taking court action. The Panel Convenor may decide not to conduct an investigation into a complaint if a period of more than 6 months has elapsed beginning when the act was done or thirty (30) working days after conciliation has been ended.

If you want to lodge a complaint with EOC, you should do it within 12 months after the incident has taken place. Any decision to take legal proceedings to the District Court should be made within 2 years after the incident has taken place.

5. What are the support and advice available?

The University is committed to providing support to any person who has a concern, problem or complaint in relation to sexual harassment. The designated officers are available to provide advice on the mechanism and options for dealing with allegations or complaints of sexual harassment and to offer assistance, including counselling, in the subsequent conciliation or investigation processes. The contact details of the designated officers are available in the Policy Against Sexual Harassment.

If you are a staff member, you can also get support and counselling through the University's Employee Assistance Programme providing 24-hour service (Hotline: 2721 3939). If you are a student, you may go to the Office of Student Affairs for help with counselling (Phone: 3943 7208 / 3943 3493). All the information provided will be kept in strict confidence.