THE UNIVERSITY OF HONG KONG

Procedures for Handling Discrimination/Harassment Complaints

Preamble

1. The Equal Opportunity Policy ("the Policy"), contained in a separate document, sets out the University's commitment to creating, promoting and maintaining an environment of equality of opportunity for members of the University community, free of any discrimination/harassment. The Council of the University adopts this set of Procedures for Handling Discrimination/Harassment Complaints ("the Procedures"), which shall apply to all full-time or part-time staff and students of the University. The Procedures shall be read in conjunction with the Policy.

Scope[1]

2. The Procedures shall apply to complaints made by and against current full-time or part-time employees and students of the University about any discrimination/harassment covered by the Policy.

Definitions

Complainant

3. A complainant is a person who has made a complaint under the Procedures, alleging that he or she has been subject to discrimination or harassment.

Respondent

4. A respondent is the person against whom a complaint of discrimination/harassment has been made under the Procedures.

Request for Advice or Assistance

5. Any employee or student of the University who considers that he or she has been or is being subjected to discrimination/harassment by any other employee or student of the

[1] Complaints made by or against persons other than those specified in paragraph 2, for example, other workplace participants, including contract workers, interns and volunteers, as defined and provided for under the anti-discrimination ordinances of Hong Kong, may be handled under the University's "Whistle-blowing" Procedures, where applicable.

University may seek advice or assistance confidentially from the Equal Opportunity Unit, the relevant Dean, Head of Department/Unit, Hall Warden or College Master, the Equal Opportunity Advisors[2] in the relevant Faculty, Department/Unit, or Hall/College, or the Counselling and Person Enrichment Section on how to deal with the situation he or she encounters.

6. In handling requests for advice or assistance and complaints, the Equal Opportunity Officer, the Equal Opportunity Unit, Deans, Heads of Departments/Units, Hall Wardens, College Masters, and Equal Opportunity Advisors are impartial and do not act as an advocate of any person seeking advice or assistance with informal resolution, any complainant, or any respondent.

7. The Equal Opportunity Officer, the relevant Dean, Head of Department/Unit, Hall Warden, College Master, or Equal Opportunity Advisor may provide assistance to attempt to resolve the matter informally, if so requested by the person seeking advice/assistance.

8. While the information received from a person seeking advice or assistance with informal resolution will be treated in strict confidence, some or all of the information may need to be disclosed to responsible staff of the University, for example, the Dean, Head of Department/Unit, Hall Warden or College Master concerned, on a need-to-know basis in order to proceed with the attempt at informal resolution. Informed consent of the person seeking assistance with informal resolution should be sought before his or her identity and any information provided by him or her is disclosed to the alleged person.

9. If the person seeking assistance with informal resolution wishes to remain anonymous, he or she should understand that this may limit the ability of the relevant department/unit or hall/college to look into the issues raised. In some circumstances, the relevant department/unit or hall/college may only be able to look into any systemic issues that may exist, if applicable and as far as practicable.

10. The informal resolution process should normally take no more than two months from the date of receipt of such a request. When the informal resolution process fails, the person seeking assistance with informal resolution may decide whether to lodge a formal complaint on the case.

[2] References to Equal Opportunity Advisors include Senior Equal Opportunity Advisors.

Lodging a Complaint[3]

11. When the informal process of resolving the matter fails, or if a complainant decides not to attempt any informal resolution, the complainant may make a formal complaint to the University through the Equal Opportunity Officer.

12. The Equal Opportunity Officer shall acknowledge receipt of a complaint.

13. A complaint shall:

    i. be in writing;

    ii. provide the identity of the complainant; and

    iii. provide all the relevant details of the alleged discrimination/harassment and the identity of the person alleged to be responsible for the discrimination/harassment.

14. Subject to paragraph 15 below, where a staff member receives a formal complaint under the Procedures, that staff member shall refer the complaint to the Equal Opportunity Officer.

15. Where the President and Vice-Chancellor receives a complaint which is anonymous, the President and Vice-Chancellor shall not proceed further with such a complaint unless the President and Vice-Chancellor considers that the complaint alleges matters which are of such a nature that they should, in the interests of good administration, good governance or accountability, be investigated. In the event that the President and Vice-Chancellor considers that an anonymous complaint should be investigated in the interests of good administration, good governance or accountability, the President and Vice-Chancellor shall communicate the substance of the complaint to the person(s) alleged by the complaint to have engaged in discrimination/harassment and offer the person(s) an opportunity to respond to the complaint.

16. On receiving a complaint under the Procedures, the Equal Opportunity Officer shall

    i. from then on become the main point of contact for the complainant;

    ii. inform the complainant of any options, assistance and services available in relation to his or her complaint;

[3] These complaints procedures are without prejudice to the rights of a person to lodge a complaint directly with the Equal Opportunities Commission, or to take civil action in the District Court; and in potential criminal cases, to make a report to the police.

iii. ascertain whether the complainant is aware of the steps to resolve the complaint informally and whether the complainant wishes to make use of such steps to attempt to resolve the complaint informally;

iv. ascertain whether the complainant wishes to proceed with the complaint under the formal procedures; and

v. obtain permission in writing from the complainant for the disclosure of his or her identity and his or her submissions (including any supporting evidence to be provided) in relation to the complaint to the respondent and to other persons to whom disclosure is necessary for the informal resolution process and/or the proper investigation and consideration of the complaint under the formal procedures.

17. If the complainant decides to proceed with the complaint under the formal procedures, the Equal Opportunity Officer shall undertake a preliminary inquiry into the complaint in order to determine whether there is prima facie evidence that the respondent may have engaged in discrimination/harassment. The purposes of the preliminary inquiry are to ensure that there are sufficient materials which warrant a full investigation and to screen out obviously unfounded allegations. It is not intended to be a preliminary hearing and the Equal Opportunity Officer is not expected to engage in a full-scale enquiry or extensive hearing of witnesses.

18. Where the complainant or the respondent has objected to the involvement of the Equal Opportunity Officer with valid reason, the President and Vice-Chancellor shall determine whether to reject the objection, or to appoint another person to replace the Equal Opportunity Officer, or exceptionally to allow the case to go directly to the Discrimination Complaints Committee for a full-scale investigation.

19. The Equal Opportunity Officer shall submit a written report of the preliminary inquiry to the President and Vice-Chancellor, normally within four weeks of the receipt of all the relevant details of the complaint and the complainant's confirmation to proceed with the formal procedures together with his or her permission pursuant to paragraph 16(v), setting out the allegations made, a brief summary of the evidence available to the preliminary inquiry, and the conclusion on whether there are sufficient materials to warrant a full-scale investigation into whether the respondent has engaged in discrimination/harassment.

20. Upon receipt of a report from the Equal Opportunity Officer, the President and Vice-Chancellor shall take appropriate action(s) which may include the following:

i. referring the matter to the Discrimination Complaints Committee for a full-scale investigation; and/or

ii. referring the matter to an outside body; or

iii. dismissing the complaint.

21. In the event the President and Vice-Chancellor decides to dismiss the complaint, the President and Vice-Chancellor shall, through the Equal Opportunity Officer, inform both the complainant and the respondent of his or her decision and the reason for it.

Membership of the Discrimination Complaints Committee

22. The Discrimination Complaints Committee ("the Committee") shall consist of:

i. a Chairperson who shall be a lay member of the Council, appointed by the Council for a period of two years;

ii. a staff member, appointed by the Council for a period of two years;

iii. one student from a panel of four students, comprising two undergraduate students and two postgraduate students, elected from among their own respective number for a period of one year, who shall take turn to serve as a member for each case of the Committee;

iv. one Senior Equal Opportunity Advisor, nominated by the Equal Opportunity Committee, for a period of two years;

and the following additional members in conducting investigation of each case referred to the Committee by the President and Vice-Chancellor:

v. one member appointed by the President and Vice-Chancellor from a list of Equal Opportunity Advisors who shall not have been previously involved in the case in any manner (There should be two categories in the list of Equal Opportunity Advisors. Equal Opportunity Advisors who have not been involved in any cases investigated by the Committee before shall be listed under Category A, and any Equal Opportunity Advisor who has been involved in any investigation shall be moved to Category B. The President and Vice-Chancellor shall normally appoint members from Category A, and shall not appoint a member from Category B unless a period of three years has lapsed since the appointee's last appointment to the Committee.);

vi. the Equal Opportunity Officer, as an observing member.

23. At least one of the members of the Committee for each case for investigation shall be a woman and at least one of the members shall be a man.

24. Three members of the Committee shall form a quorum of any meeting of the Committee.

25. Any person who has a direct interest in the complaint shall not be involved in the investigation of that case.

26. In appointing the Committee, due regard shall be given to the desirability of appointing members with relevant expertise or background in the field of equal opportunities or related fields.

27. The Registrar or his or her deputy shall be the secretary to the Committee.

Powers of the Discrimination Complaints Committee

28. Where a discrimination/harassment complaint against any employee or student of the University has been referred to the Discrimination Complaints Committee by the President and Vice-Chancellor, the Committee shall investigate the complaint and make relevant findings of fact, conclusions and recommendations. The written report of the preliminary inquiry of the Equal Opportunity Officer shall be provided to the Committee.

29. The Committee shall have power to provide for and regulate:

    i. the procedures to be followed in connection with its meetings;

    ii. the conduct of all persons at any meeting of the Committee; and

    iii. the procedure for conducting investigation, and shall not be bound by the rules of evidence.

30. The Committee may,

    i. where the respondent is a student, order the imposition of any of the following penalties:

        (a) reprimand (and such reprimand shall form part of the student's official record for the remainder of his or her studies in the curriculum concerned);

        (b) fine (maximum to be determined from time to time by the Council);

(c) withdrawal of any academic or other University privilege, benefit, right or facility other than the right to follow courses of instruction and present himself or herself for examinations;

(d) suspension;

(e) expulsion; and/or

(f) make any other recommendations to the President and Vice-Chancellor as appropriate;

ii. where the respondent is a staff member, make recommendations for action to the President and Vice-Chancellor, which may include initiating appropriate proceedings as provided for in the University Ordinance and Statutes, Terms/Conditions of Service and Staff Handbook.

Procedures of the Discrimination Complaints Committee

31. Following the appointment of the Committee, the Committee shall notify the complainant and the respondent of the proceedings of the Committee and provide both the complainant and the respondent with:

i. a copy of the Policy;

ii. a copy of the Procedures;

iii. membership of the Committee;

iv. a copy of the complainant's written complaint;

v. a copy of the report of the preliminary inquiry from the Equal Opportunity Officer; and

vi. any other documents considered relevant by the Committee.

32. Either the complainant or the respondent may object to the composition of the Committee with valid reason. The Registrar shall consider any objection made to the composition and shall, if he or she considers that the valid reason for the objection is substantiated, appoint another member to the Committee to replace the person whose membership of the Committee has been objected to.

33. The Committee may take legal advice at any time and may invite the presence of a legal adviser at its meetings who shall not be a member of the Committee.

34. The Committee may exercise all powers necessary for the performance of its functions, and shall carry out its inquiry based on the general fairness principle.

35. The Committee may require the complainant, the respondent and any other parties to give evidence and information, orally or in writing.

36. The complainant and the respondent shall inform the Committee in writing, no later than two weeks after the receipt of the notice of the proceedings of the Committee issued pursuant to paragraph 31:

    i. whether he or she will appear in person (with or without a colleague or an adviser), or whether he or she will be legally represented;

    ii. whether he or she wishes to submit any evidence or other material to the Committee, or to call any witnesses (and, if so, the names of those witnesses);

    iii. whether he or she wishes the Committee to call any witnesses on his or her behalf (and, if so, the names of those witnesses).

37. The Committee shall give the complainant and the respondent not less than seven days' notice of the date, time and place of the first meeting of the Committee, and of any meeting at which the complainant or the respondent is required to be present, and shall give the complainant and the respondent reasonable notice of other meetings of the Committee.

38. Where the Committee has given notice of a meeting to the complainant and the respondent in accordance with the Procedures, but one of those parties is not present at the commencement and/or any part of the meeting, the Committee may still proceed with and/or continue the meeting.

39. The complainant and the respondent shall be given an opportunity to respond to any information or evidence which is brought to the attention of the Committee by either party, or by any third party, during the course of the investigation, and which appears to call for response, clarification and confirmation. The complainant and the respondent shall be entitled:

    i. to be present at all meetings of the Committee at which evidence or submissions are presented on behalf of one of the parties;

    ii. to appear before the Committee in person and to be accompanied by a colleague or an adviser, who may speak on his or her behalf, or to be legally represented before the Committee;

iii. to present evidence to the Committee;

iv. to call witnesses or to request the Committee to do so on his or her behalf.

40. The rights set out above apply both to hearings of the Committee at which the issue of whether the respondent has engaged in discrimination/harassment is being examined and to hearings at which the Committee is considering the steps that should be taken following a determination that the respondent has engaged in discrimination/harassment. For the avoidance of doubt, paragraph 39 shall not apply to the private and/or working meetings of the Committee.

41. In the conduct of its inquiry, the Committee may adopt such measures as it considers necessary to protect the complainant and any other persons from intimidation or humiliation, particularly in the presentation of evidence or during examination.

42. For the purposes of its investigation, the Committee shall have access to such University documents, materials and information as it sees fit.

43. The Committee may decline to inquire into a complaint or may suspend or discontinue its inquiry into a complaint if:

i. it considers that the complaint does not allege facts which, if proved, would amount to discrimination/harassment;

ii. the substance of the complaint of discrimination/harassment has been examined or is being examined under another University procedure, or by any public body which has responsibility for receiving complaints of discrimination/harassment, or by a court or tribunal;

iii. the complainant and the respondent have agreed to resolve the matter, and the Committee considers that the terms of the agreement are consistent with respect for the principles of equal opportunity.

44. At the conclusion of the investigation, the Committee shall make findings of fact and determine whether the complaint (or one or more of the complaints, as the case may be) is substantiated and whether the respondent has engaged in discrimination/harassment. The Committee shall dismiss the complaint if it concludes that the complaint is not substantiated, the respondent has not engaged in discrimination/harassment, or the alleged act constitutes an exception under the Policy. The Committee may, whether it finds a complaint substantiated or not, make any specific recommendation in relation to the complaint and any general recommendation that would enhance and uphold the Policy, or

promote good governance and accountability.

45. Where the Committee finds the respondent has engaged in discrimination/harassment and

    i. where the respondent is a student, it shall exercise its powers provided in paragraph 30(i). A right of appeal against the finding of and penalty imposed by the Committee on the ground of serious procedural irregularities shall lie within 14 days to the Council. The decision of the Council shall be final;

    ii. where the respondent is a staff member, the Committee may make recommendations to the President and Vice-Chancellor for action consistent with University Statutes and Regulations, and terms and conditions of employment. The President and Vice-Chancellor, upon receipt of the Committee's report, shall decide what appropriate sanction or proceedings shall be taken in light of the recommendations of the Committee.

46. Subject to the appeal procedure under paragraph 45(i) which shall be pursued if available as the sole and exclusive remedy in respect of the subject matter of the appeal, any person who is aggrieved by a decision and/or recommendation of the Committee under paragraph 44 or 45 or by a decision of the President and Vice-Chancellor under paragraph 18 or 45(ii) may seek redress through the relevant formal grievance/complaint procedure of the University.

Report of the Committee

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

Confidentiality

48. All the information, materials, communications, discussions, records, reports and documents in respect of and/or in connection with any request for advice/assistance, complaint, inquiry and investigation under the Procedures (including but not limited to those generated or produced in relation to any request for advice, any request for assistance with informal resolution, and any proceedings) are strictly confidential and shall be dealt with by all parties concerned in strict confidence and in accordance with applicable laws on the protection of personal information. Unauthorised disclosure of any information may result in appropriate action by the relevant authorities of the University, including the Council.

49. Retaliation, including dissemination of any information in a manner to pressure, or cause harm to the reputation of either party in a complaint, any witness, or any University staff or member of the Committee involved in handling a case under the Procedures, is strictly prohibited and may result in legal and/or disciplinary action(s).

False Allegation

50. If a complainant knowingly makes a false allegation or makes an allegation not in good faith, disciplinary action may be taken against him or her. No action will be taken if a complaint which proves to be unfounded is judged to have been made in good faith.

President and Vice-Chancellor

51. Notwithstanding any provision in the Procedures, the President and Vice-Chancellor may at any time make any necessary administrative decision as he or she thinks appropriate to facilitate consideration of a complaint and/or introduce such temporary measures as may be necessary to protect any employee or student of the University, any other parties, or the proper functioning of the University, including measures at the departmental level relating to work arrangements.

52. If a complaint is made against the President and Vice-Chancellor under the Procedures, the powers of the President and Vice-Chancellor shall be exercised by the Chairman of the Council.

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