

# THE HONG KONG UNIVERSITY OF SCIENCE AND TECHNOLOGY

## PROCEDURES FOR HANDLING DISCRIMINATION/HARASSMENT COMPLAINTS

### A. APPLICABILITY

1. These Procedures apply to complaints of discrimination/harassment by and against any current full-time or part-time students and staff members of the University, as well as those who conduct activities in the name of the University, such as contract workers, service providers, interns and volunteers. The Procedures also apply to conducts and activities on campus, as well as work- or study-related activities including those that take place outside the campus, outside Hong Kong, or beyond working hours.
2. Whilst the University will endeavour to follow the below procedures as far as practicable, these procedures are not intended to be binding on the University and the University reserves the right to depart from them and to handle discrimination/harassment-related matters or complaints through administrative or other suitable means as appropriate. These procedures are also subject to amendments and updates by the University from time to time.

### B. DEFINITIONS OF PROHIBITED ACTS

3. Any staff member, student or other University community member has the right to make a complaint about discrimination, harassment or vilification which is unlawful under the four anti-discrimination ordinances in Hong Kong<sup>1</sup>, namely:
  - the [Sex Discrimination Ordinance](#) (SDO),
  - the [Disability Discrimination Ordinance](#) (DDO),
  - the [Family Status Discrimination Ordinance](#) (FSDO) and
  - the [Race Discrimination Ordinance](#) (RDO).

These ordinances prohibit discrimination and harassment on the grounds of sex, pregnancy, breastfeeding, marital status, disability, family status and race, in the prescribed areas of activities, including employment, education, provision of goods, services and/or facilities, disposal and/or management of premises, and participation in clubs and sporting activities.

4. There are two kinds of discrimination – direct discrimination and indirect discrimination:

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<sup>1</sup> For details, please visit the website of the Equal Opportunities Commission: <https://www.eoc.org.hk/en/about-the-eoc/introduction-to-eoc>.

- (a) Direct discrimination occurs when a person is treated less favourably than another person because of a protected characteristic, such as a person's sex, pregnancy, breastfeeding, marital status, disability, family status or race; and
- (b) Indirect discrimination occurs when a condition or requirement, which is not justifiable, is applied to everyone but in practice adversely affects persons who possess the aforementioned protected characteristic(s).

The legislation also provides protection from harassment and vilification, including but not limited to sexual harassment and racial vilification.

5. The following forms of a prohibited act of discrimination/harassment under the four anti-discrimination ordinances shall apply to the University:

- (a) Sexual harassment
- (b) Sex discrimination
- (c) Marital status discrimination
- (d) Pregnancy discrimination
- (e) Breastfeeding discrimination and harassment
- (f) Disability discrimination, harassment and vilification
- (g) Family status discrimination
- (h) Racial discrimination, harassment and vilification
- (i) Discrimination by way of victimization

### **C. PROTECTION AGAINST VICTIMIZATION**

- 6. Victimization arises where a person (the discriminator) treats another person (the person victimised) less favourably than persons in comparable circumstances because the person victimised or a third person has sought or intends to enforce the four anti-discrimination ordinances (including but not limited to making any complaint to the University under this Policy) or to assist any person to do so, e.g. firing the person victimized, transferring him/her to a less desirable position, denying him/her a promotion or raise to which he/she would otherwise have been entitled, subjecting him/her to undue criticism, giving him/her an unusually heavy workload, or putting negative comments on his/her personal file. Nevertheless, the aforesaid protection against victimization does not apply if the allegation turns out to be "false and not made in good faith".
- 7. The complainant and the witnesses should be protected against victimization for making or being involved in a discrimination complaint. No retaliatory measure by anyone will be

allowed against a person who reports discrimination or cooperates in an investigation in good faith. Disciplinary action will be taken against persons who engage in acts of victimization.

8. A victimized person may file a complaint on the ground of victimization. The procedure for handling complaints of victimization will broadly replicate the process of handling discrimination/harassment complaints. During the investigation process, the University will make its best efforts, to the extent practicable, to arrange for a separation of the complainant and the respondent so as to minimize the risk of further victimization. However, at appropriate times or after the conclusion of the investigations has been drawn, reintegration into work/study of the various parties and witness(es) may occur.

#### **D. TIMING OF MAKING COMPLAINT**

9. A complaint should be made at the very earliest opportunity after the act of discrimination occurs, and normally within 6 months from the date of the last incident of the alleged discrimination. Complainants are encouraged to report the case without delay. Delay in filing complaint may cause difficulty, or even inability, to properly investigate into the matter.

#### **E. CONFIDENTIALITY AND RECORDS**

10. All complaints and inquiries will be received and handled in a confidential manner, and any related information will as far as practicable be held in confidence by those to whom it is divulged.
11. However, investigation of such complaints will in most cases require disclosure to the respondent and/or other witnesses in order to gather pertinent facts, but the complainant should rest assured that information will only be shared with the essential parties on a need-to-know basis. In exceptional circumstances, the University may have to disclose information but it would, as far as possible, make every effort to do so with the knowledge and consent of the party involved. Examples of these exceptions include circumstances where:
  - there is risk of harm to self or others, or
  - the University is required by law, or law-enforcing agencies, to disclose information, e.g. for prevention or detection of crime.
12. The University will not normally report a matter to the police without the complainant's consent, except in those rare scenarios where the circumstances present an exceptional risk. Where police is involved or if legal proceedings on the matter have been commenced, the University may need to withhold taking further internal action pending resolution of the former.

13. The University reserves the right to take disciplinary action against any staff member or student making a false or malicious complaint or intentionally providing false information in any complaint or conciliation process.

## **F. HANDLING OF DISCRIMINATION COMPLAINTS**

14. The University takes all reports and complaints of discrimination/harassment seriously. It is important that the matter is dealt with expeditiously, confidentially and effectively for everyone involved.
15. Anonymous complaints will only be considered in exceptional circumstances where, for instance, evidence from other sources is compelling, or the matter underlying the complaint is of a serious nature, or of such importance that it warrants investigation by the University in the interests of good governance or accountability. Complainants should however understand that the University's ability to consider an anonymous complaint will inevitably be limited, and it is often difficult, if not impossible, for these complaints to be properly dealt with in the absence of direct evidence from the person who is subject to the discrimination/harassment. There might also be occasions where the University is unable to continue with the investigation should the anonymity cause injustice to any of the parties involved.

### **Stage 1 – Initial enquiry**

16. The first point of contact for any student or staff member who wishes to make a discrimination/harassment report or complaint is the Equal Opportunities Officer (EOO), via email ([ead@ust.hk](mailto:ead@ust.hk)). Staff members or units who receive any such report or complaint are encouraged to reach out to the EOO for assistance.
17. Depending on the capacity of the party against whom the complaint is made (the respondent), the EOO will refer the matter to the corresponding Designated Officer (DO) who shall be:
  - (a) a staff from the Human Resources Office (HRO), where the respondent is a member of the staff, and
  - (b) a staff from the Dean of Students' Office (DSTO), where the respondent is a student.
18. The DO will conduct an initial assessment of the matter which purposes are three-fold:
  - (a) to determine if the subject matter is a possible discrimination/harassment case, and to screen out matters which fall outside the scope of this Policy;
  - (b) to screen out matters which are demonstrably frivolous or vexatious, and
  - (c) where the matter is a possible discrimination/harassment case appropriate to be dealt with by the DEOC, to decide if there exists a prima facie case against the respondent.

19. Whilst the DO may, in appropriate cases, reach out to the complainant, respondent or other witnesses to gather key information, the initial assessment is not intended to be a detailed nor full-scale investigation.
20. Following the initial assessment, the EOO will consider the available evidence, and decide to proceed as follows:
  - (a) where the EOO finds that a prima facie case is established, that the matter is of a nature that is suitable for informal resolution, and the complainant is willing to so attempt an informal resolution, **Stage 2** of the Procedures (Informal Resolution) will be followed;
  - (b) where a prima facie case is established, but the EOO considers it inappropriate for informal resolution to be attempted due to, for instance, the nature or seriousness of the matter, or the unwillingness of the complainant, the matter will go directly to **Stage 3** (Formal Complaint);
  - (c) where the EOO finds that the allegations fall outside the scope of this Policy, the complainant will be so advised and, where appropriate, be provided with information as to the proper avenue(s) to follow up with the matter, or
  - (d) where the EOO finds that the matter disclosed is frivolous or vexatious, or is lacking in merits, the complainant will be so advised, and the matter will be deemed closed.

## **Stage 2 – Informal Resolution**

21. The Informal resolution process aims at resolving a complaint through negotiations and private conciliation. There are occasions where, for instance, a party might not have been aware that their behavior was unwelcome or has been viewed as inappropriate; in such cases, informal resolution may help the parties to improve understanding and for agreement to be reached to cease the offending behavior. Normally, informal resolution may be more suitable for relatively minor or a single incident of discrimination/harassment. Engaging in informal resolution is not a barrier to bringing a formal complaint at a later stage should informal resolution fail.
22. Informal resolution may take different forms including talking directly to the respondent or through an appropriate intermediary for instance, one's supervisor, a student counsellor, a residence master, or any other personnel with whom the parties might feel comfortable.
23. During the informal resolution process, the DO would not act as advocate for either party, but he/she would endeavour to facilitate an open and honest discussion between the parties with a view to reaching an amicable agreement and, where appropriate, agreeing upon suitable preventive or remedial measures to address any concerns raised.
24. If an informal resolution of the matter is reached between the parties, the matter will be treated as closed. For the avoidance of doubt, the University will not be involved in the

enforcement of any agreement reached between the parties as part of the informal resolution; such matter will be handled between the parties.

25. Informal resolution should normally conclude within 14 days after the complainant has confirmed his/her agreement to so attempt informal resolution, failing which the matter shall move on to **Stage 3**, unless the DO is of the view that the parties are constructively moving towards a successful resolution of the matter.

### **Stage 3 – Formal Complaint**

26. Where informal resolution is not suitable, not proceeded with, or attempted but fails, the case will be handled as a formal complaint.
27. On the basis of the information furnished by the complainant in the form of the proforma at [Attachment 1](#), the EOO, with the assistance of the DO, shall conduct an enquiry into the matter. The respondent will be given an opportunity to respond to the allegations and present evidence. The EOO and/or DO may also, where considered appropriate, interview the complainant, the respondent or other witness(es) to gather evidence.
28. On conclusion of the enquiry, the EOO will report to the Chair of the DEOC the factual findings, relevant observations and his/her recommendations on the matter.
29. Upon considering the report from the EOO, the Chair of the DEOC will take appropriate action(s) which may include, amongst others, the following:
- (a) Where the Chair is satisfied that there is insufficient evidence to substantiate the allegations against the respondent, the complaint shall be dismissed. The complainant and respondent will be informed of the decision in writing.
  - (b) Where the Chair is satisfied that the respondent has committed act(s) of discrimination/harassment:
    - (i) where the respondent is a student -

the Chair may refer the matter, together with his/her recommended sanctions, to the Academic Registrar for determination pursuant to the University's "[Regulations for Student Conduct and Academic Integrity](#)" ("**Student Conduct Regulations**"). Sanctions which the Chair of DEOC may recommend include one or more of the following:

- verbal or written reprimand that will be held in the student's record until graduation;
- University community service;

- attendance of any mandatory training or counselling;
- withdrawal or suspension of academic or other University privileges, benefits, or rights (except the right to continue with the student's academic studies);

(For more serious sanctions, for instance, suspension or expulsion from the University, these would be handled following the procedures at **Stage 4.**)

(ii) Where the respondent is a staff member -

the Chair may make recommendations to the respondent's supervisor or, as appropriate, head of the respondent's department/office/unit/School, as well as the HRO, as to the appropriate sanction(s) to be imposed on the respondent, which may include, amongst others:

- issuance of warning letter (which shall be kept in the personnel file of the staff);
- directing the staff to attend any mandatory training or counselling;
- reassigning the staff to another post, team or office;
- deferring or reversing any salary increment or promotion which may otherwise be, or have been, enjoyed by the respondent.

(For more serious sanctions, for instance, dismissal, these would be dealt with following the procedures at **Stage 4.**)

The DEOC Secretary will inform the respondent of the outcome of the matter. The complainant will also be informed as to whether or not the complaint is found proven.

(c) Where the complaint concerns matter which are of a more serious nature and/or the Chair is of the view that the interest of the parties concerned or that of the University will be best served, he/she shall appoint a hearing panel and refer the matter thereto for further review, in which case, the steps in **Stage 4** will be followed.

#### **Stage 4 – Hearing Panel & DEOC's deliberation**

30. The hearing panel (the "**Panel**") will be appointed by the Chair of the DEO Committee:

- (a) The Panel shall consist of no less than 3 members, with at least 1 member from the DEOC.
- (b) If one or more respondents is a faculty, the Panel should include at least one faculty member from another school. Where the respondent is a staff member, the Panel should include at least one staff member from another department/office.
- (c) Where one or more respondents is a student, the Panel should then include at least one student.
- (d) Members who are from the same school/department/office/unit where either the complainant or the respondent is from shall not be appointed onto the Panel.
- (e) If any Panel member so appointed has, or will likely be perceived to have, an actual, potential or apparent conflict of interest, he/she shall so declare and shall not act as member of the Panel.
- (f) The EOO or his/her designate shall be the Secretary to the Panel. He/she will not participate in the deliberation process.

*The hearing*

- 31. The Panel shall conduct a full review of the matter, taking into account, but not in any way bound by, the findings and observations of the EOO.
- 32. The Panel shall invite the respondent to appear before the Panel to respond to the complaint. The respondent has the right to submit evidence or written statements, be it statement by himself/herself or by others. Such statements or evidence should reach the Panel no less than 3 calendar days (excluding Saturdays, Sundays, and public holidays) before the hearing.
- 33. The complainant, respondent and relevant witnesses will be interviewed separately and in private by the Panel. Neither the parties nor witnesses will be subject to questioning, except by members of the Panel. Any person attending the hearing must keep all matters discussed or transpired from the hearing strictly confidential. They must not discuss any such matters with, or divulge any information to, any third party/parties without the prior written consent of the Panel. A failure to comply with this confidentiality obligation may result in disciplinary action being taken.
- 34. With the prior approval of the Panel, the complainant and respondent are permitted to be accompanied by a person of their choice (other than a legal representative, or anyone serving as a witness in the matter). The request to have an accompanying person shall be made to the Panel in writing at least 3 calendar days (excluding Saturdays, Sundays, and public holidays) before the scheduled hearing, with details of the accompanying person provided including, amongst others, his/her name, relationship with the requesting party, occupation etc. The Panel's decision on such arrangement is final. If the request is



approved, the accompanying person shall not answer any question on behalf of the party, address the Panel nor express any view during the hearing. Any non-compliance may result in the accompanying person being invited to leave the hearing. The accompanying person will also be required to sign a declaration confirming his/her agreement to keep all matters related to the meeting strictly confidential.

35. No audio and video recording can be made of the hearing by any party.
36. Upon the conclusion of the hearing, the Panel will submit a written report to the Chair of the DEOC within 10 calendar days (excluding Saturdays, Sundays, and public holidays). The report will usually set out the Panel's factual findings, a summary of the available evidence, the Panel's determination as to whether or not the complaint is established and its recommendations on sanctions.
37. The Panel shall normally complete the hearing within 2 months unless exceptional complication occurs.

*Deliberation by the DEOC / Imposition of Sanctions by the Senate Student Disciplinary Committee (SDC) (where one or more respondents is a student)*

38. On receipt of the report from the Panel, the DEOC will convene a meeting to consider the report.
39. Where one or more respondents is a student, the meeting shall also be conducted in the presence of at least one but no more than 3 members of the SDC.
40. At the meeting, the attending members will deliberate if they are satisfied as to the findings and recommendations of the Panel, and if so, they may decide to adopt the same in whole or in part, and/or to recommend other/further sanctions as they consider appropriate. If the DEOC has concerns or questions regarding the findings of the Panel, they may seek clarification and/or elaboration from the Panel, or direct the Panel to further review the matter.
41. If the DEOC is satisfied that the complaint is established, it will refer the matter with the recommended sanctions to the SDC for consideration and, where appropriate, imposition of sanction(s) pursuant to the Student Conduct Regulations. Possible sanctions which the DEOC may recommend include, amongst others, the following:
  - verbal or written reprimand that will be held in the student's record until graduation;
  - University community service;
  - attendance of any mandatory training or counselling;

- withdrawal or suspension of academic or other University privileges, benefits, or rights, including rights to use the University's facilities, for a designated period;
- suspension from the University for a set period;
- expulsion from the University;
- reporting the matter to the Senate and Council of the University with a recommendation to revoke any degree or award previously conferred or granted to the student by the University.

42. Once a decision is made by the SDC with reference to DEOC recommendation, the DEOC Secretary will inform the respondent of the outcome of the matter. The complainant will also be informed by the DEOC Secretary as to whether or not the complaint is found proven.

*Deliberation by the DEOC and Recommendation on Sanctions (for staff)*

43. On receipt of the report from the Panel, the DEOC will convene a meeting to consider the report.

44. At the meeting, members of the DEOC will deliberate if they are satisfied as to the findings and recommendations of the Panel, and if so, they may decide to adopt the same in whole or in part, and/or to propose other/further sanctions as they consider appropriate. If the DEOC has concerns or questions regarding the findings of the Panel, they may seek clarification and/or elaboration from the Panel, or direct the Panel to further review the matter.

45. If the DEOC is satisfied that the complaint is established, it will put forward recommendations to the respondent's supervisor or, as appropriate, head of the respondent's department/office/unit/School, as well as the HRO, as to the appropriate sanction(s) to be imposed.

46. Possible sanctions which the DEOC may recommend include, amongst others, the following:

- issuance of warning letter (which shall be kept in the personnel file of the staff);
- directing the staff to attend any mandatory training or counselling;
- reassigning the staff to another post, team or office;
- deferring or reversing any salary increment or promotion which may otherwise be enjoyed by the subject staff;

- dismissal.

47. The DEOC Secretary will inform the respondent of the outcome of the matter. The complainant will also be informed as to whether or not the complaint is found proven.
48. Upon receipt of the recommendations of the Chair of the DEOC, HRO will work with the respondent's supervisor and relevant department/office/unit/School with regard to the matter, in accordance with the usual procedures adopted by the University.

### **Appeal**

49. With reference to paragraph 29(a) and (b), a party who is dissatisfied with the decision of the Chair of the DEOC may appeal to the Provost (or, in case a conflict occurs, the President) of the University within 14 days from his/her receipt of the said decision. The decision of the Provost or President is final.
50. With reference to paragraphs 41 and 45, any party who is dissatisfied with the decision of the DEOC may appeal to the President within 14 days upon receipt of the said decision. The President, or his/her deputy, will review the case before reaching a decision. The decision of the President is final.
51. The appeal referred to in paragraphs 49 and 50 above must be made in writing by the appellant, stating the grounds for the appeal and including any new evidence or specific information that was not previously considered by the respective decision-maker. Normally, appeals will only be considered on the basis of material procedural irregularities or the emergence of new evidence/information, and in the latter case, cogent evidence must be furnished as to why the evidence was not provided previously, failing which the appellant authority retains the right not to admit the new evidence. In each case, the decision of the appellant authority shall be final.

### **G. TIME LIMITS**

52. The time limits as set in the procedures may be extended by the Chair of the DEOC on reasonable grounds. These procedures will normally be concluded within a maximum of 9 months from the receipt of a complaint.