

LINGNAN UNIVERSITY

Paper on the Issue of Sexual Harassment

1. *Preamble*

- 1.1 Public attention has been drawn to the issue of sexual harassment in the workplace, the occurrence of which seriously undermines the opportunity of those affected to fully realize their capabilities. Major institutions including the civil service, tertiary institutions and private sector organizations are also responding on their own part. The Sex Discrimination Ordinance (SDO) aiming at eliminating discrimination and hence sexual harassment was enacted by the Legislative Council in July 1995.
- 1.2 Sexual harassment is both an ethical and legal issue for members of staff and students as well as an issue of discrimination which educational institutions cannot ignore. This form of discrimination is an economic issue as well as one of equity in that it not only damages the harassee economically but also the institution which may lose its best students or employees.

2. *Position of the University on the issue*

The University is committed to equal opportunity in academic pursuit and employment, and hence to the elimination of any form of discrimination by members of the University community, including members of staff and students. Since sexual harassment is prohibited by law and it degrades the harassee and inhibits his/her academic and work performance, it will be taken very seriously whenever it is known to occur.

3. *Definition*¹

According to Section 2(5) of the SDO “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.”

According to Section 2(8) of the SDO:

“A provision of Part 3 or 4 framed with reference to sexual harassment of women

¹ Quoted from Section 2(5) and 2(8) of the Sex Discrimination Ordinance.

shall be treated as applying equally to the treatment of men and for that purpose that provision, and subsections (5) and (7), shall have effect with such modifications as are necessary.”

4. *Sexual harassment in employment*²

4.1 Under the provision of Section 23 of the SDO, various forms of sexual harassment in the field of employment are unlawful. This shall be applicable to all staff members of the University, contract workers, commission agent or any person who is seeking to be employed by the University. Under the SDO, sexual harassment in employment includes but not limited to the following situations:

- 4.1.1 sexually harassing a person who is employed or seeking to be employed either by the employer or by someone else within the same organization;
- 4.1.2 sexually harassing a contract worker or a commission agent;
- 4.1.3 sexually harassing a fellow contract worker or a fellow commission agent;
- 4.1.4 sexually harassing an employer or potential employer;
- 4.1.5 sexually harassing a person who is a partner or is seeking partnership and is applicable to persons proposing to form themselves into a partnership;
- 4.1.6 sexually harassing a person whose employment requires him or her to carry out his or her duties in any premises where the harasser is a person residing in the premises;
- 4.1.7 sexually harassing a person who is seeking to be, or is a member of, an organisation of workers or employers or professionals;
- 4.1.8 sexually harassing a person seeking an authorization or qualification which is needed for a particular profession or trade;
- 4.1.9 sexually harassing a person seeking or undergoing training which would help the person to fit for employment; and
- 4.1.10 sexually harassing a person in relation to services offered by an employment agency.

4.2 A series of incidents may constitute sexual harassment. However, depending on the circumstances, it is not necessary for there to be a series of incidents. One

² Quoted from Section 6 of the Code of Practice on Employment Under the Sex Discrimination Ordinance.

incident is sufficient to constitute sexual harassment.

- 4.3 On the other hand, an employee may be the victim of a hostile work environment where he or she is harassed in a pattern of incidents that may not be, in and of themselves, offensive, but when considered together amount to harassment.

5. *Sexual Harassment in Educational Establishments*³

Under the provision of Section 39 of the SDO, 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 as well as a student or a 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. Under the SDO, sexual harassment in educational establishments includes the following situations:

- (a) a person who is, or is a member of, the responsible body for an educational establishment sexually harassing a person who is seeking to be, or who is, a student of the establishment;
- (b) a person who is a member of the staff of an educational establishment sexually harassing a person who is seeking to be, or who is, a student of the establishment;
- (c) a person who is a student of an educational establishment sexually harassing a person who is seeking to be, or who is, a student of the establishment;
- (d) a person who is seeking to be, or who is, a student of an educational establishment sexually harassing a person (i) who is, or is a member of, the responsible body for; or (ii) who is a member of the staff of, the establishment.

6. *Examples of Sexual Harassment*

Sexual harassment can involve physical, visual, verbal or non-verbal conduct of a sexual nature which is uninvited and unwelcome. Sexual harassment can be through the form of spoken words, letters, phone calls, faxes, e-mail messages, etc. The behaviour does not need to be intentionally, directly or consciously targeted at an individual person. The unwelcome behaviour needs not be repeated or continuous. A single incident can amount to sexual harassment. Without limiting the meaning of sexual harassment as defined in the SDO, the following behaviour can be regarded as *sexual harassment*:

- (a) unwelcome sexual advances - e.g. repeated attempts to make a date; leering or lewd gestures; touching, grabbing or deliberately brushing up against another person;

³ Quoted from Section 39 of the Sex Discrimination Ordinance. Subsequent to the amendment to the SDO in 1998, sexually hostile environment applies not only to work environment but also to educational establishments.

- (b) unwelcome requests for sexual favours - e.g. 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 stereotyped remarks; persistent questioning about a person's sex life; and
- (d) conduct of a sexual nature that creates a hostile or intimidating work or educational environment - e.g. sexual or obscene remarks or jokes in the workplace/classrooms/hostels; displaying sexist or other sexually offensive pictures or posters.

7. *Promotion and Education*

In order to promote the awareness on the issue of sexual harassment, the University will from time to time organize publicity and education programmes for new comers, all staff and students through seminars and talks. The Equal Opportunities Commission (EOC) will organize training seminars for tertiary institutions to develop and administer educational programmes and will also act as an information centre for exchange of information on the progress of the educational programmes.

8. *Mediation and Complaint Processes*

- 8.1 Mediation and complaint investigation processes are available to students and staff members through informal resolution or the Sexual Harassment Investigation Panel (SHIP) which will be appointed by the President.

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. If any staff member or student believes that he/she is a victim of sexual harassment, he/she should act promptly and may first try to seek an informal resolution. Informal resolution might include talking directly with the complainee or seeking an advocate such as one's supervisor, counsellor, hostel warden, or any other supervisory personnel with whom one feels comfortable. The advocate may provide advice and support to the complainant as well as serve as informal mediator between the complainant and the complainee. Under normal circumstances, attempts at informal resolution do not require the filing of a written complaint.

The University encourages the use of the informal resolution and/or mediation process as the initial step to resolve complaints relating to sexual harassment. If informal means fail to resolve the case or any parties involved in the case decide to stop the informal resolution, the complainant may pursue the case through mediation or formal investigation conducted by the SHIP. Any formal written complaint should be made to the President either directly or through the Office of the President. If the President is involved in the alleged case of sexual harassment, the complainant shall report the case to the Chairman of the Council. Notwithstanding that the University would normally not consider anonymous

complaints, anonymous sexual harassment complaint filed in confidence would be considered, and the President shall, in consultation with an ad hoc panel, decide where there is evidence that justifies further inquiry into the anonymous complaint. However, students and staff members are encouraged to come forward if he/she wishes to file a sexual harassment complaint as anonymous allegation will be more difficult for the University to follow up simply because it will not be able to obtain further information from the complainant and to make a proper assessment.

The SHIP will be designated to carry out the responsibilities as detailed in Annex 1 and to report to the President. For each allegation/complaint, the SHIP will conduct mediation and/or investigation. If it can be demonstrated *prima facie* that the conduct of a student or employee of the University warrants disciplinary investigations, formal disciplinary procedures may be invoked.

If, at any stage of the mediation/investigation process, any parties involved in the allegation/complaint report the case to the EOC, the law enforcement agency or institutes any legal proceedings in connection with the allegation/complaint, the SHIP may stay further mediation/investigation until after the conclusion of criminal or civil proceedings.

If the allegation/complaint of sexual harassment appears to constitute a criminal offence, such as indecent assault, distribute and display indecent and obscene articles, the case should be referred to the law enforcement agency, in which the SHIP may stay further mediation/investigation until after the conclusion of criminal or civil proceedings.

During the mediation and complaint process, necessary arrangement/support would be provided to the complainant or the complainee if deemed appropriate, e.g. assistance to be provided to the complainant for the preparation of the written complaint, appropriate measures to deal with the situation that if no direct contact between the complainant or the complainee is deemed necessary, etc.

8.2 *Mediation Process*

The SHIP will offer to facilitate mediation of the dispute upon the request of any person involved or alleged to be involved in the dispute.

The mediation process will normally take no more than sixty (60) days.

In the course of mediation, the complainant may elect to bypass mediation and proceed directly with the filing of a written complaint.

8.3 *Complaint Investigation Process*

8.3.1. Investigation

Upon receipt of a signed complaint from any staff member or student of the University or referral from Head of Departments/Head of Units, the SHIP will conduct a full and impartial investigation only if the complaint is

filed by a staff member/student of the University who (a) has been sexually harassed by another staff member or student of the University; or (b) has witnessed an act of sexual harassment committed by another staff member or student of the University. Nevertheless, if the President deemed an anonymous sexual harassment complaint filed in confidence justifies further inquiry, the SHIP will also conduct an investigation. At least three staff members of different genders and preferably of different ranks shall be appointed on a roster basis with one Panelist appointed as the Convenor to investigate a complaint. Persons taking part in the informal resolution or mediation should not be appointed as Panelists. Under special circumstances as deemed necessary by the Convenor of the SHIP, 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.

In the course of the investigation, the following standards are observed:

- a) The complainee will be provided with a copy of the complaint by the investigation team and an opportunity to respond to the allegation.
- b) The complainant and the complainee may request that he/she be accompanied by a family member/staff member/fellow student, and the person accompanying the complainant and the complainee shall not be allowed to address the SHIP at any of its proceedings. The accompanying person shall not be a member of or participate in any discussion with the members of the SHIP or be a party to any report/decision subsequently made by the SHIP in respect thereof.
- c) Witnesses and concerned parties will be interviewed individually and in conformance with the privacy requirements of applicable laws. The rule of confidentiality will be observed and the rights of both the complainant and complainee respected.
- d) The written complaint and relevant documents, if any, will be considered, and will be provided to the parties concerned.

8.3.2. Report of the SHIP

The SHIP will submit a written report to the President or his/her designated officer. The report shall contain the following information:

- a) A statement of the issues under investigation.
- b) The positions of the parties as presented.
- c) The results of the investigation.

The complainant or the complainee may lodge an appeal against the investigation results conducted by SHIP within fifteen (15) working days of being notified thereof by receipt of the report of the SHIP, in writing to

the President, giving in full the grounds of his/her appeal. The appeal will normally be considered only on the basis of procedural irregularities or new evidence/information. The President shall review the case or refer the case to the designated authority for review. The decision of the President or the designated authority in relation to the appeal shall be final within the University. If the President is involved in the alleged case of sexual harassment, the complainant shall lodge an appeal against the investigation results to the Chairman of the Council.

8.3.3. Time Limits⁴

- a) The filing of a written complaint should be made within (i) ninety (90) days from the time of the occurrence which is known or should have been known to the complainant of an act(s) of sexual harassment or action taken as a result of alleged sexual harassment or (ii) thirty (30) days after mediation has been completed, whichever is later.
- b) The total time period for the investigation, from the filing of a written complaint to submission of the report and recommended action to the President, will not normally exceed sixty (60) days.
- c) The President will within six (6) days after receiving the report decide to accept or reject the recommendations or any part thereof contained in the report and will decide what actions, if any, should be taken. The President may request the SHIP to clarify or provide further information prior to making his/her decision.
- d) The filing of an appeal against the investigation results conducted by SHIP within fifteen (15) working days of being notified thereof by receipt of the report of the SHIP, in writing to the President, giving in full the grounds of his/her appeal.
- e) The President/the designated authority will issue the final decision on the appeal with thirty (30) days of receipt of the appeal.
- f) The time limit set forth herein may be extended if appropriate. If a case of sexual harassment is established, the case will be referred to the Ethics and Discipline Committee (EDC)/Student Disciplinary Committee (SDC) for consideration.
- g) The decision of the EDC/SDC will be made within sixty (60) days of receipt of the report.
- h) The time limits set forth herein may be extended by the EDC/SDC if appropriate.

⁴ Unless otherwise specified, the number of days referred in this Paper refers to calendar day.

A flow chart on handling formal sexual harassment complaints is appended in Annex 2.

9. Confidentiality

- 9.1 In the processes of mediation/investigation every reasonable effort is made to protect the privacy of all parties involved and the confidentiality of all information and documents used in accordance with existing University policies and applicable laws.
- 9.2 In the mediation process, no record kept in relation to the case shall include the names of individuals or other information which would permit identification.

10. Conflict of Interest

Any person who has an actual or potential conflict of interest in the allegation/complaint shall declare his/her interest or shall not take part in the processes of mediation/investigation.

11. Victimization

The University prohibits victimization or retaliation of any kind against any staff/student for lodging a complaint in good faith, or for participating in the processes of mediation/investigation. Disciplinary action may be taken against any staff/student who is found to have (i) committed any act of victimization or retaliation; and/or (ii) lodged a false complaint or provided false information on purpose during the processes of medication/investigation.

12. Lodge a complaint with the EOC or take legal action

Apart from filing a complaint through internal University procedures, the complainant may decide to lodge a complaint directly with the EOC or to the law enforcement agency or to file a law suit in the District Court of Hong Kong.

If the person who is sexually harassed intends to lodge a complaint with the EOC, he/she should take action within twelve months after the incident occurred. Otherwise, the EOC will not handle the case unless there are justifiable reasons for the delay.

Any decision to take legal proceedings to the District Court should be made within two years after the incident occurred.

13. Review of the Paper

The Paper will be subject to review every five years, or earlier if warranted. Any variations and amendments made by the Council will be announced to members of the University as soon as possible.

14. Enquiries

Any staff member or students, who have any enquiries and/or would like to obtain more information on this subject, may contact the Director of the Office of Council/Court Business and Governance Administration (Telephone: 2616 8969, Email: jenmok@LN.edu.hk).

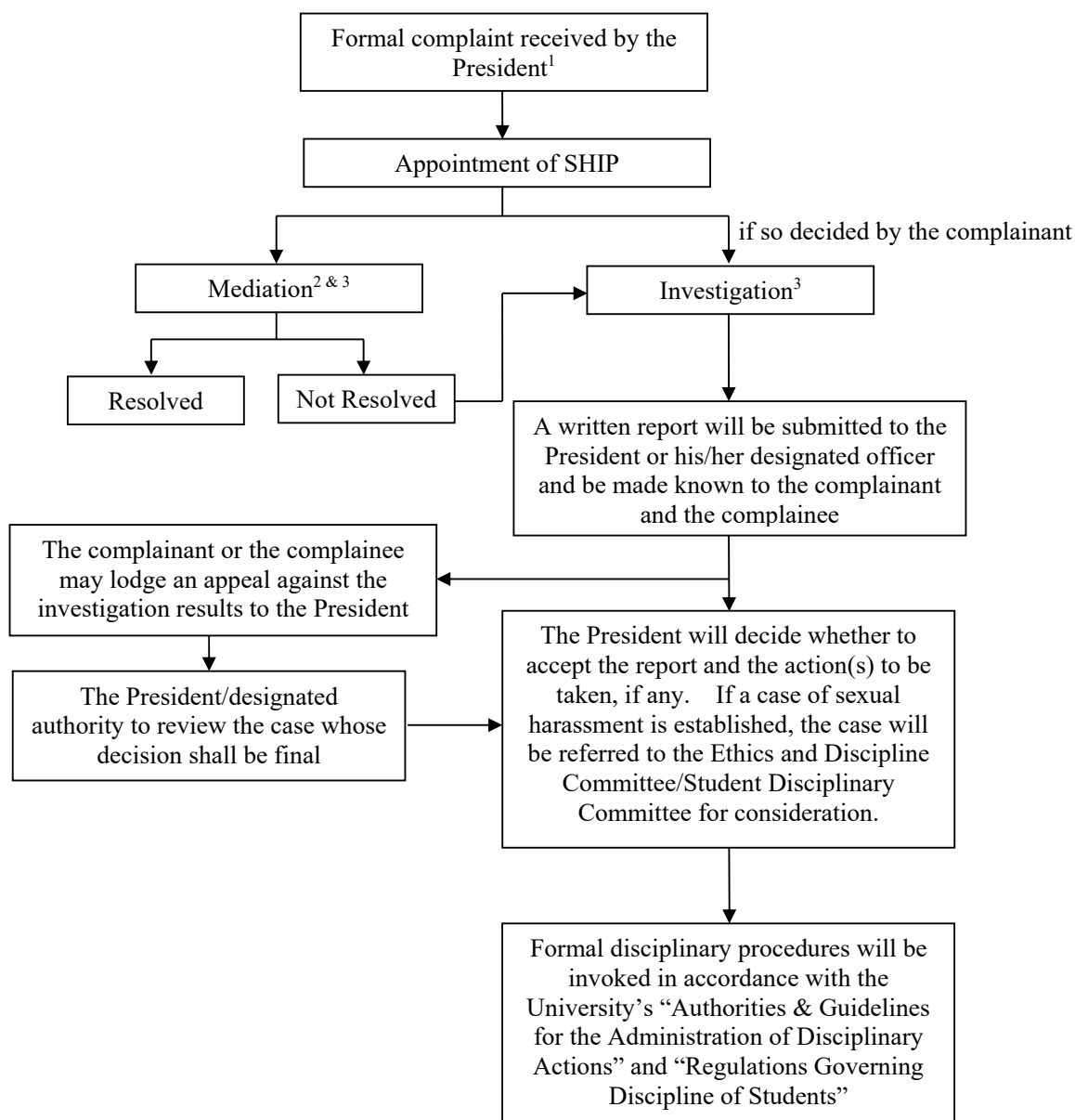
SEXUAL HARASSMENT INVESTIGATION PANEL

Sexual Harassment Investigation Panel shall consist of:

At least three staff members of different genders and preferably of different ranks shall be appointed by the President on an ad hoc basis, with one Panelist appointed as the Convenor. Persons taking part in the informal resolution or mediation should not be appointed as Panelists. The responsibilities of the Sexual Harassment Investigation Panel include:

1. Informing individuals of available options, including but not limited to mediation and compliant investigation.
2. Informing all parties involved or alleged to be involved in a complaint of available formal disciplinary procedures if the complaint is not resolved through the processes on **Mediation**.
3. Informing the individual wishing to initiate 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.
4. Informing all parties involved or alleged to be involved in a complaint that the written report will be submitted via the President to the Ethics and Discipline Committee/Student Disciplinary Committee.
5. Conducting mediation or investigation on receipt of allegation/complaint.
6. Maintaining records of complaints, reports, and subsequent management action in conformance with the privacy and confidentiality requirements of applicable laws.

Flow Chart on Handling Formal Sexual Harassment Complaints



¹ If an anonymous sexual harassment complaint is filed in confidence, the President shall, in consultation with the panel, decide where there is evidence that justifies further inquiry into the anonymous complaint.

² In the course of mediation, the complainant may elect to bypass mediation and proceed directly to complaint investigation.

³ If, at any stage of the mediation/investigation process, any parties involved in the allegation/complaint report the case to the EOC, the law enforcement agency or institutes any legal proceedings in connection with the allegation/complaint, the SHIP may stay further mediation/investigation until after the conclusion of criminal or civil proceedings.