

The University of Cape Town

Sexual Harassment Policy

PREAMBLE

The University is committed to providing an institutional environment where all may pursue their studies, careers, duties and activities free from sexual harassment. Sexual harassment constitutes serious misconduct, and will result in disciplinary action... The University will not tolerate sexual harassment.

The focus of the Policy on Sexual Harassment is on the prevention and management of sexual harassment in the University; it should be understood in the context: of other University policies and statements, including the policies on race and racism, and on sexual offences; of constitutional protections against discrimination; and of specific laws governing equality and labour practice (Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000; Basic Conditions of Employment Act 75 of 1997; Labour Relations Act 66 of 1995).

The University is committed to ensuring that contractors providing services on the campus of the University adopt similar policies and make these binding on all their employees and agents; and to ensuring that all future contracts between UCT and third parties for the supply by the third party of services on campus will require this of contractors.

1 DEFINITIONS

- 1.1 **‘Alleged perpetrator’** means a person alleged to have committed an act of sexual harassment;
- 1.2 **‘Case Officer’** means the person assigned to present the University’s case in formal internal disciplinary proceedings, who may also be the person assigned to investigate the case ;
- 1.3 **‘CCMA’** means the Commission for Conciliation, Mediation and Arbitration;
- 1.4 **‘Complainant’** means a person who lodges a complaint under this policy, or a person against whom an act or acts of sexual harassment as defined in the policy has or have allegedly been perpetrated;
- 1.5 **‘Confidentiality’** means ensuring that information is accessible only to those authorised to have access to it;
- 1.6 **‘Employee disciplinary procedure’** means the disciplinary procedure that applies to a category of staff;
- 1.7 **‘Employee’** means an employee of the University or a person who has agreed to be bound by the rules and policies of the University relating to staff;

- 1.8 **'PASS Staff'** means Professional Administrative Service and Support staff of the University;
- 1.9 **'Manager'** means any employee of the university with managerial, supervisory or Warden's responsibilities;
- 1.10 **'RO'** means the Reporting Office, as may be designated by the Vice-Chancellor from time to time;
- 1.11 **'Rules on conduct for students'** means the rules on the conduct of students adopted by the Council from time to time;
- 1.12 **'Same-sex harassment'** means harassment where the alleged perpetrator and the victim are of the same sex;
- 1.13 **'SAPS'** means South African Police Service;
- 1.14 **'Serious misconduct'** means conduct as defined in the Employee Disciplinary Procedure and the Rules on Conduct for Students;
- 1.15 **'Sexual assault'** means conduct as defined in the Sexual Offences Policy;
- 1.16 **'Sexual harassment'** is unwelcome conduct of a sexual nature that violates the rights of a person. In determining whether conduct constitutes sexual harassment the following factors are to be taken into account:
- (a) whether the harassment is on the grounds of sex and/ or gender (regardless of the sexual orientation of either the complainant or the alleged perpetrator);
 - (b) the impact of the sexual conduct on the complainant;
 - (c) whether the sexual conduct was unwelcome;
 - (d) the nature and extent of the sexual conduct.
- Unwelcome sexual conduct** includes behaviour that is perceived by the complainant as demeaning, compromising, embarrassing, threatening and/or offensive:
- (aa) the assessment of what is unwelcome should be informed by context, including culture and language;
 - (bb) previous consensual participation in sexual conduct does not mean that the conduct continues to be welcome;

- (cc) when a victim has difficulty indicating to the alleged perpetrator that the conduct is unwelcome, the victim may seek the assistance and intervention of another person in order to make it clear that the conduct is unwelcome;
- (dd) some forms of sexual harassment are such that the alleged perpetrator should have known that the behaviour would be unwelcome.

Unwelcome sexual conduct includes physical, verbal and non-verbal conduct. Such conduct may be direct or indirect and may include technological devices, images and weapons. A single incident of unwelcome sexual conduct can constitute sexual harassment.

Unwelcome physical conduct ranges from touching to sexual assault and rape;

Unwelcome verbal conduct includes innuendos, suggestions or hints of a sexual nature, sexual advances, sexual threats, comments with sexual overtones, sex-related jokes or insults, graphic comments about a person's body, inappropriate enquiries about a person's sex life, whistling of a sexual nature and the sending by electronic means or otherwise of sexually explicit text;

Unwelcome non-verbal conduct includes gestures, indecent exposure and the display or sending by electronic or other means sexually explicit pictures or objects.

Sexual harassment may take the form of special victimization, *quid pro quo* harassment and the creation of a hostile environment.

- (i) Special victimization occurs when a person is victimized or intimidated for failing to submit to sexual advances;
- (ii) *quid pro quo* harassment occurs when an alleged perpetrator influences or attempts to influence a person's employment circumstances by coercing or attempting to coerce that person to engage in sexual activities;
- (iii) *quid pro quo* harassment occurs when an alleged perpetrator influences or attempts to influence the admission of a student to the University or to University residences by coercing or attempting to coerce that person to engage in sexual activities. *Quid pro quo* harassment also occurs when an alleged perpetrator influences or attempts to influence the access of a student to training, organizational or funding opportunities, or interferes in grading or evaluation, by coercing or attempting to coerce a student to engage in sexual activities;

- (iv) creation of a hostile environment occurs where the purpose or effect is to interfere with another's performance at work or in study.

1.17 **'SHA'** means Sexual Harassment Adviser;

1.18 **'Student'** means a registered student of the University or a person who has agreed to be bound by the rules and policies of the university relating to students; and

1.19 **'University'** means the University of Cape Town.

2. THE ROLE OF MANAGERS

2.1. Every Manager shall take all reasonable steps to create and maintain an environment that is free from sexual harassment. In this regard managers are required to:

- (a) exercise leadership by knowing and understanding the terms of this policy, and by assuming responsibility for implementing the policy;
- (b) attend training and educational sessions on this policy offered by the RO;
- (c) communicate the policy to all employees, students and third parties in their respective areas of responsibility;
- (d) ensure that all new staff, students and third parties have been informed about the policy and given the opportunity to discuss its implications.

2.2 Every Manager shall take appropriate action when instances of sexual harassment occur and act in accordance with the reporting and disciplinary processes laid down in this policy. In this regard managers are required to:

- (a) treat all complaints as confidential and all concerned with dignity and respect;
- (b) refer all complaints to the RO;
- (c) when conduct in breach of this policy is observed but no complaint is lodged, report the matter to the RO;
- (d) when appropriate, take steps in consultation with the RO to prevent sexual harassment from occurring.

3. COMMUNICATION

- 3.1 The University shall take all reasonable steps to communicate this policy to all employees, students and third parties on a regular basis and to raise awareness about the need to prevent sexual harassment.
- 3.2 The University shall make this policy available on its Web pages, and provide regular and current information on its implementation via its Web pages.
- 3.3 The Vice-Chancellor shall ensure that 3.1 and 3.2 occur.
- 3.4 The Deans shall:
 - (a) communicate regularly by written and oral means the seriousness of the issue and the existence of this policy and its salient features to employees, students and third parties within their Faculties;
 - (b) communicate regularly with Heads of Departments (HODs) and all other managers in the Faculty concerning their responsibilities in the implementation of this policy.
- 3.5 The Executive Director. Student Affairs shall:
 - (a) communicate regularly by written and oral means the seriousness of the issue and the existence of this policy and its salient features to employees, students and third parties within the residences of the University;
 - (b) communicate by written and oral means the contents of this policy to the Students' Representative Council (SRC).
- 3.6 The RO shall:
 - (a) provide the Communication and Marketing Department with information that will enable the University community to be informed regularly about the implementation of this policy;
 - (b) send an e-mail to all employees, students and third parties at least once a year informing them about this policy;
 - (c) report annually to the Vice-Chancellor about the effectiveness of communication of this policy.

4. EDUCATION AND TRAINING

- 4.1 Continuing education and training are necessary to ensure that employees, students and third parties are aware of the contents of this policy and are able, as appropriate, to implement it and to prevent sexual harassment.
- 4.2 Within three months of the adoption of this policy, all existing staff of the RO shall be trained appropriately.

- 4.3 Within three months of the adoption of this policy, the RO shall appoint and train SHAs. This training shall be repeated for new SHAs and new members of the staff of the RO within the first three months of each calendar year.
- 4.4 In addition to initial training, all SHAs shall attend update training sessions at least annually.
- 4.5 Within six months of the adoption of this policy the RO shall present workshops on this policy that will be available for the senior leadership of the University, heads of academic and PASS departments, staff in the Human Resources Department, and Campus Protection Services. Staff representative bodies and the SRC shall be entitled to nominate representatives to attend workshops offered by the RO. The RO shall repeat the programme of workshops annually. The RO shall integrate this policy into staff induction and student orientation programmes.

5 THIRD PARTIES

While the University has no jurisdiction over third parties who are neither students nor employees of the University, the University intends that this and related policies will be upheld and respected by all who work at, or visit, the University or who take part in the University's activities at any location. Visitors who are neither registered at the University as students nor employed by the University may be invited to and may agree to abide by the rules and conditions for students and staff. Any individual agreeing to abide by student and staff rules and conditions will be deemed to have consented to be subject to the University's disciplinary jurisdiction. Where such third parties are not subject either to the rules or procedures for staff or students, or the provisions of the Code of Conduct, the RO will keep a record of complaints and reported violations of this and related policies, and will report these to appropriate procurement offices so that the information can be taken into account in considering whether to continue to contract for services.

6 THE ROLE OF THE REPORTING OFFICE

- 6.1 The RO's shall provide a comprehensive sexual harassment response for the University. This will include the provision of supportive and protective measures to complainant, whether or not disciplinary proceedings are instituted.
- 6.2 Supportive measures may include, but are not limited to:
 - (a) crisis counselling;

- (b) emergency medical services, para-legal advice and other relevant services;
- (c) measures to mitigate the impact of sexual harassment or the reporting thereof upon the complainant.

6.3 Protective measures may include, but are not limited to:

- (a) no-contact orders, where appropriate;
- (b) change of University student residence, where appropriate;
- (c) change of academic classes and academic concessions, where appropriate;
- (d) special leave (staff) or leave of absence (students), where appropriate.

6.4 While the primary aim of this policy is to assist complainants who allege sexual harassment, an alleged perpetrator may at any stage approach the RO for advice on the application and interpretation of this policy. In such instances the RO shall:

- (a) provide the alleged perpetrator with a copy of this policy and of the University's disciplinary rules;
- (b) advise the alleged perpetrator of her/his right to obtain legal representation and of the availability of counselling;
- (c) advise the alleged perpetrator that the University may choose to follow the University disciplinary rules even if the complainant does not wish to do so;
- (d) explain to the alleged perpetrator the protective measures available to the complainant.

7. SEXUAL HARASSMENT ADVISORS

7.1 The RO shall appoint and train SHAs, drawn from employees of the University,

7.2 A SHA shall have the following responsibilities:

- (a) to receive complaints of sexual harassment from the RO;
- (b) in consultation with the Case Officer, to assist, support, consult and liaise with complainants, alleged perpetrators and those initiating complaints into sexual harassment;

- (c) to provide reports and records to the RO on all referred cases;
- (d) to represent the best interests of a complainant, or alleged perpetrator in formal communications with the RO where such representation is required;
- (e) to liaise with the case officer in relation to responsibilities that may arise from disciplinary hearings;
- (f) to support the educational work of the RO where practical and reasonable.

7.3 The SHAs should, as a group, be diverse in terms of gender, race and background.

7.4 While a complainant will be entitled to ask that another SHA be assigned to his or her case every effort should be made to ensure that the same SHA deals with the case throughout.

7.5 The RO shall:

- (a) provide general support and guidance to the SHAs;
- (b) monitor cases;
- (c) ensure that the SHAs are appropriately trained.

8 ADVISORY PANEL

8.1 With respect to any report of sexual harassment made under this policy ,or in general the RO may appoint an Advisory Panel to assist the RO with information, suggestions and expertise.

8.2 An Advisory Panel may consist of the following persons:

- (a) the SHA representing a complainant or victim;
- (b) the Case Officer assigned to the complainant or victim;
- (c) a representative of the Dean of Student Affairs, if the complainant or alleged perpetrator is a student;
- (d) a representative of the Executive Director Human Resources, if the complainant or alleged perpetrator is a staff member;
- (e) a person, not necessarily a staff member of the University, with expert knowledge in the field.

- 8.3 The Advisory Panel may not make decisions on behalf of a complainant nor give advice in a manner that might be construed as prescriptive or unduly influencing by the complainant.

9 RESPONSE TO A COMPLAINT

- 9.1 Complaints of sexual harassment must be brought to the attention of the RO as soon as is reasonably possible.
- 9.2 If a complaint is brought to the attention of a manager, the manager shall notify the RO immediately.
- 9.3 Sexual harassment may be brought to the attention of the RO by the complainant or any other person aware of the sexual harassment. However, if the incident is of a serious nature, the complainant is encouraged to inform the RO in person.
- 9.4 Any complaint of sexual harassment will be recorded in writing by the RO and will be assigned to a case officer. The case officer will manage the complaint.
- 9.5 The RO will also assign an appropriate and available SHA to the case.
- 9.6 The steps to be taken by the case officer on receipt of a complaint should include, but are not limited to, the following:
- (a) advise the complainant that there are formal and informal procedures which can be followed;
 - (b) explain the formal and informal procedures to the complainant;
 - (c) advise the complainant that he/she may choose which procedure should be followed by the University;
 - (d) advise the complainant that the SHA assisting him or her may not be called as a witness during any formal procedure;
 - (e) reassure the complainant that she or he will not face any adverse consequences in choosing to follow either the formal or informal procedure;
 - (f) advise the complainant that he or she is not bound by the outcome of the informal procedure and will have the right to appeal directly to the VC within seven days of the conclusion of that process;
 - (g) advise the complainant that the matter will be dealt with confidentially;

- (h) if applicable, advise the complainant that no negative inference on his/her credibility will follow as a result of late reporting;
- (i) provide the complainant with information about counselling available as well as information on how to access independent counselling services;
- (j) in appropriate circumstances, advise the complainant of her or his right to refer the matter to the SAPS and obtain further legal advice outside the University.

9.7 If a complainant, after consultation with the SHA, does not wish to pursue the matter, and the complaint is judged by the RO to be of a serious nature, the RO must refer the matter to an Advisory Panel. The RO, in consultation with an Advisory Panel, shall consider all relevant information, including but not limited to the following:

- (a) the risk to other persons in the University;
- (b) the severity of the sexual harassment;
- (c) the history of the alleged perpetrator with regard to previous cases and complaints of sexual harassment.

9.8 If it appears to the RO and the Advisory Panel that there is a significant risk of harm to other persons, they may advise the Case officer to follow a formal procedure, irrespective of the wishes of the complainant. In such an event the complainant must be advised accordingly and the RO, in consultation with the Advisory Panel, must prepare a written recommendation to the Vice-Chancellor. The recommendation shall include (but not be limited to) the following:

- (a) a description of the alleged sexual harassment or assault;
- (b) the complainant's reasons for his/her unwillingness to pursue the matter further or to be called as a witness;
- (c) compelling reasons in support of a formal procedure.

10 INFORMAL PROCEDURES

10.1 An informal procedure is a process, managed by the RO, in which relationships between complainant and alleged perpetrator(s) are explored with the consent of both, the aim of which is to reach resolution of a complaint in a manner that is satisfactory to all complainant and alleged perpetrator(s).

- 10.2 The complainant has the right to pursue formal proceedings after the conclusion of informal proceedings. The choice to pursue informal proceedings shall not in any way diminish the force of the original complaint.
- 10.3 The alleged perpetrator has the right to refuse participation in informal proceedings, and may exercise this right during any stage of the informal process. No negative inference shall be drawn from refusal to consider, participate or withdraw from the informal process.
- 10.4 An informal procedure may be followed by a formal procedure if the RO in consultation with an Advisory Panel believes that there are compelling reasons for this as specified in paragraph 9.
- 10.5 In an informal procedure only the following information is recorded:
- (a) the fact that the informal procedure took place;
 - (b) the names of the participants;
 - (c) the date, time and location of the alleged incident;
 - (d) the outcome of the informal procedure.
- 10.6 Informal proceedings require the written consent of both the complainant and the alleged perpetrator, and
- (a) the availability and implications of informal proceedings shall be explained to the complainant by the appointed SHA, before such proceedings;
 - (b) with the consent of the complainant preparatory interviews with the alleged perpetrator may be held in the absence of the complainant and with any other person or persons that may provide information to assist with the informal process;
 - (c) the structure, procedure and facilitation of any informal procedure will be agreed upon beforehand by the case officer, complainant alleged perpetrator and SHA.
- 10.7 The informal procedure may include
- (a) an approach to the alleged perpetrator with or without revealing the identity of the complainant (depending on the choice of the complainant) with information that certain forms of conduct constitute sexual harassment;
 - (b) a discussion where the objective is to give the alleged perpetrator an opportunity to apologise. The terms, conditions and acceptance of such an apology will be facilitated by the case officer and SHA;

- (c) the presentation of the case in confidence to a group of not more than four persons (including the case facilitator), to consider suggestions and to make recommendations that may achieve a resolution based on agreement between the alleged perpetrator and the complainant. The choice of participants in the discussion will be at the discretion of the case officer in consultation with the SHA.
- 10.8 Every endeavour must be made to conclude the informal procedure within fourteen days of the incident being reported to the RO.
- 10.9 Strict confidentiality regarding the process, participants and report will be maintained throughout this process.
- 10.10 No part of the informal procedure may be used as evidence in a subsequent hearing following the outcome of this process.

11 FORMAL PROCEDURES

- 11.1 A complainant may choose to initiate formal proceedings, either with or without first following an informal procedure. The purpose of formal proceedings is to test the complainant's allegations through the disciplinary process.
- 11.2 If a complainant, following an informal procedure that does not result in a mutually acceptable outcome, does not wish to follow a formal procedure, the case officer will establish whether the complainant requires any further advice or support as contemplated in (the section dealing with the RO).
- 11.3 If the complainant wishes to proceed with a formal procedure, he or she shall advise the case officer of this, and prepare and sign a written statement providing full particulars of the alleged sexual harassment.
- 11.4 The formal processes for the presentation of the complainant's case within University Disciplinary Processes for staff and for students will be initiated through the RO.

12 NO-CONTACT ORDERS

- 12.1 A no-contact order is intended to protect a complainant from sexual harassment, or the possibility of sexual harassment, whether or not a formal disciplinary process is instituted or contemplated.
- 12.2 A no-contact order (a) for staff is issued by the Vice-Chancellor or nominee after considering the recommendation of the RO, following the procedures laid down for this; (b) for students, by the Vice-Chancellor or his or her nominee in terms of the provisions of the rules

on Disciplinary Jurisdiction and Procedures (DJP). Rule DJP 3.1 is hereby amended to allow such an order where there are grounds for an order to protect a complainant from sexual harassment whether or not there is an allegation of a breach of the student code, and to allow for such a no contact order to be valid for an initial period of up to six months and (c) for an employee of a contracted-in third parties is issued by line management of the contractor following the procedure laid down for this by the third party.

- 12.3 The issuing of a no-contact order does not, in itself, imply guilt on the part of an alleged perpetrator.
- 12.4 A no-contact order (a) for staff is valid for an initial period of not more than six months and may be renewed by the Vice-Chancellor or nominee, after consultation with the RO and after consultation with the complainant, and after hearing the alleged perpetrator, until the Vice-Chancellor or nominee deems it is no longer necessary or any disciplinary hearing has been concluded; (b) for students is for such period or periods as is determined under the DJP rules.
- 12.5 The terms of a no-contact order may vary depending on the circumstances of the case. The terms of a staff no-contact order may be varied by Vice-Chancellor or nominee either after appeal by the staff member or after a recommendation by the RO
- 12.6 Violation of a no-contact order constitutes serious misconduct and may be subject to disciplinary action.

13 FORMAL PROCEDURES

13.1 Students

Where the formal procedure is to be followed the RO will report the matter to the Vice-Chancellor's nominee in terms of Rule DJP1.1 and the matter will be dealt with in terms of the DJP rules. The RO will provide such assistance to the Vice-Chancellor's nominee and the case officer appointed to present the case to the Tribunal as they may require. The Powers of the Tribunal are hereby extended to permit University Student Disciplinary Tribunal acting in terms of Rule DJP 5 to include in any sanction a no-contact order of such duration as it may decide.

The Senior Proctor will ensure that proctors are trained to handle sexual harassment matters and will not assign a case to a proctor who has not been so trained.

13.2 Staff

Where the formal procedure is to be followed the existing negotiated or approved disciplinary procedures for staff will be used. The

procedures for academic staff are under revision, but will be used until revised. Revisions to the negotiated procedures may be proposed in the near future, but until any negotiations on these have been completed the existing procedures will be used. Management representatives must consult the RO before instituting disciplinary action for sexual harassment. The RO shall assist the management representative where this assistance is required. For PASS staff Line Managers shall ensure that the line manager appointed to chair the disciplinary committee has been trained to handle sexual harassment matters.

13.3 Employees or agents of contracted-in Third parties

Where the formal; procedure is to be followed the disciplinary procedures agreed between the University and the contracting-in third party will be used by the contracting-in third party. The RO will offer such assistance to the management of the third party concerned as may be required.

30 January 2008

Revised 18 February 2008 for submission to Council on 5 March 2008