

CITY UNIVERSITY OF HONG KONG

Procedures for Handling Formal Sexual Harassment Complaints

1. The **formal** mechanism is suitable for more serious or repetitive sexual harassment complaints, or when sexual harassment continues or the conflict between the two parties cannot be resolved using an informal mechanism. Whether to adopt the formal complaint procedures depends on the preference of the complainant.
2. The **formal** mechanism involves investigation where the complainant will be formally interviewed. The alleged harasser will be informed about the complaint and be given the opportunity to respond to the allegations and raise any matters in his/her own defence. Witnesses, if any, may also be interviewed.
3. Designated persons charged with handling a formal complaint must not pre-judge the matter. In conducting the investigation, full accounts from all parties of the matter must be obtained before the **Investigating Panel** says, implies or does anything that could be perceived as judging the matter. The allegations should be properly investigated, all parties being heard and relevant submission considered. Irrelevant matters should not be taken into account.
4. It also involves making a finding on the balance of probability (i.e. whether it is more likely than not that the sexual harassment had occurred). Until a formal complaint has been investigated and a decision made, the claims of the person who believes he/she has been harassed are allegations only. A person who makes an allegation cannot be involved in determining it.
5. The victim-complainant(s) and the alleged harasser(s) must be kept informed throughout the process. All relevant and interested parties must have access to information about the range of resolution outcomes available, e.g. whether the case is to be dismissed. However, a complainant who is not a victim himself/herself would not be informed of the result of the investigation, and/or the recommended disciplinary action, if any.
6. Outcomes should be consistent and fit the breach of policy that has occurred.
7. Depending on the identity (*staff or student*) of the alleged harasser, complaints of sexual harassment should be lodged with the following respective personnel (the **Designated Complaint Recipient**):
 - (a) the Director of Human Resources (or nominee) when the alleged harasser is a staff member; or
 - (b) the Dean of Students (or nominee) when the alleged harasser is a student at or below undergraduate level; or
 - (c) the Dean of Graduate Studies (or nominee) when the alleged harasser is a student at postgraduate level.

The nominee shall be chosen from Members of CASH.

8. When the Director of Human Resources, the Dean of Students, the Dean of Graduate Studies, the Head of Department or any other person comes into knowledge of a sexual harassment complaint of which they are not the **Designated Complaint Recipient**, he/she should direct the case to the **Designated Complaint Recipient**.
9. The **Designated Complaint Recipient** or his/her nominee (who is a Member of CASH) shall become the **Subject Officer** of the case. In appropriate circumstances or at the request of the complainant, the gender of the delegated **Subject Officer** should be taken into consideration.
10. On receiving the sexual harassment complaint, the **Subject Officer** shall acknowledge a written complaint in writing within two weeks of receipt. In case of an oral complaint, the **Subject Officer** shall record it in writing and confirm the record with the complainant as soon as possible, and in any case within two weeks.
11. The **Subject Officer** shall report the complaint to the **Chairperson of CASH** (with a copy to the President).
12. If, upon receipt of the complaint or at any time during the course of investigation, the **Subject Officer** discovers that the complaint is of a criminal nature, e.g. the substance of the complaint may amount to an indecent assault, the complainant will be informed of his/her right to report to the Police. Investigation and/or any ongoing procedures by the University should be suspended once referral has been made to the Police and the **Subject Officer** should inform the **Chairperson of CASH** and the President immediately.
13. The **Subject Officer** should maintain case files and records of the formal complaints received to facilitate the monitoring of progress in processing the formal complaints. All such files and records should be accorded confidential status and passed to the Secretary of CASH on completion of the procedures for retention.
14. The **Subject Officer** shall form an **Investigation Panel (Investigation Panel)** to carry out investigations. The **Investigation Panel** shall comprise the **Subject Officer** as the Chairperson and at least two more Members chosen from CASH by the **Subject Officer**. The total number of members of the **Investigation Panel** should be an odd number. In appropriate circumstances and in consultation with the **Chairperson of CASH**, the **Subject Officer** has the authority to appoint other staff members, instead of Members from CASH, to serve as Members of the **Investigation Panel**. A student or other persons may be co-opted on the **Investigation Panel** as decided by the **Subject Officer** in consultation with the **Chairperson of CASH**. The **Subject Officer** shall nominate a person to be the Secretary of the **Investigation Panel**. A fair distribution of members in both genders should be observed as far as practicable. No members of an **Investigation Panel** shall have any direct working or educational relationship with the complainant/alleged harasser.
15. The **Investigation Panel** shall carry out the investigations as soon as practicable in accordance with the principles set out in the Sexual Harassment Policy and Procedures and notify the alleged harasser of the carrying out of the investigations. A set of Standard Terms of Reference of **Investigation Panel** is provided in the [Annex](#) which the **Investigation Panel** may consider to adopt or amend as appropriate. The investigation should include the following:

(a) *Interviewing the complainant*

The nature of the details of the complaint should be ascertained. To facilitate subsequent investigations, a written statement should be taken which should be signed and confirmed to be accurate by the complainant. If the complainant is a minor, he/she is entitled to be accompanied by his/her parents and/or guardians when attending interviews so as to safeguard his/her rights.

(b) *Interviewing the alleged harasser*

Details of the allegations should be given in writing to the alleged harasser who should then be interviewed to give explanations or comments. The interview should be recorded in writing and signed and confirmed to be accurate by the alleged harasser. If the alleged harasser is a minor, he/she is entitled to be accompanied by his/her parents and/or guardians when attending interviews so as to safeguard his/her rights.

(c) *Provisions during the interview*

- Given that cases of sexual harassment involve issues of a sensitive and embarrassing nature, both the complainant and the alleged harasser may need help and support during the interview. Under such circumstances, both parties may be accompanied by another person⁶ throughout the proceedings (see paragraph 4.1.4 of the Sexual Harassment Policy and Procedures).
- Reasonable measures should be taken to avoid the complainant and the alleged harasser to appear in the same meeting as far as practicable.
- Both parties have the right to give evidence in their preferred language and an interpreter will be provided by the Chairperson of the **Panel** if necessary.
- The Secretary of the **Investigation Panel** shall maintain a record of proceedings as the Chairperson considers appropriate.

(d) *Interviewing witnesses*

- Both the complainant and the alleged harasser may call witness(es) to give evidence on their behalf. The **Investigation Panel** shall have the discretion to call any other witnesses (if any).
- All interviews should be recorded in writing and, where practicable, signed and confirmed to be accurate by each witness.

(e) *Provision of information materials*

- The **Investigation Panel** shall determine the information, documents and other materials, including the written statements collected and records of interview conducted by the **Investigation Panel**, to be passed on to the complainant and

⁶ The accompanying person is to provide advice and moral support to the staff/student member concerned. He/she shall have no right to address the **Investigation Panel**. Notes-taking for personal use may be allowed in appropriate circumstances as determined by the **Investigation Panel**.

alleged harasser to facilitate the investigation.

- The complainant, alleged harasser and witnesses should be made aware that the information they provide to the **Investigation Panel** in writing or during interviews, with personal data redacted, may be provided to the complainant and the alleged harasser.
- In making its findings and decisions, the **Investigation Panel** can take into account its interview record even if such interview record is, for any reason, not signed and confirmed to be accurate by the complainant, alleged harasser or witnesses.

(f) *Findings*

- Both parties must be given an opportunity to present their cases in detail and to comment on the allegations and responses made by the other party (including their responses provided under paragraph 23 below, if any). The **Investigation Panel** will analyse the information and ascertain the facts of the case.
- The standard of proof required should be based on the balance of probabilities and commensurate with the gravity of the breach of standards of behaviour.
- In determining whether certain conduct constitutes sexual harassment, the entire record and the totality of the circumstances shall be considered.

16. The investigation of a complaint by the **Investigation Panel** shall normally be completed and a reply shall be issued to the victim-complainant within three months after receipt of the complaint. If an investigation cannot be completed within three months, the **Investigation Panel** will send an interim reply to the victim-complainant and the alleged harasser, informing them of the progress of the investigation. Any investigation which cannot be completed within four months should be drawn to the attention of the **Chairperson of CASH** and the President.
17. If at any time during the investigation, the **Investigation Panel** discovers that the same complaint has been lodged with any statutory bodies or police, internal investigation shall be suspended. The **Subject Officer** should inform the **Chairperson of CASH** and the President. Internal investigation may resume upon conclusion of the external proceedings.
18. It is the responsibility of the **Investigation Panel** to obtain and scrutinise all relevant information concerning the case to see whether an act of sexual harassment might have been committed.
19. The investigation can be discontinued if the **Investigation Panel** is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking substance; or if at any time during the investigation the complainant does not desire the investigation be conducted or continued. If the **Investigation Panel** has decided to discontinue the investigation, the complainant and the alleged harasser should be advised of the reasons for that decision.
20. The **Investigation Panel** shall, upon the conclusion of the investigations and thereafter as soon as practicable, determine and conclude whether the complaint is established.
21. Both the victim-complainant and the alleged harasser should be informed by the

Investigation Panel whether the complaint has been established. If the complaint is not established, the reasons and the outcome of the investigation should be given to both the victim-complainant and the alleged harasser. For the avoidance of doubt, the conclusion that the complaint is not established is a decision of the **Investigation Panel**.

22. If the complaint is established, the **Investigation Panel** shall also make recommendation on whether consideration should be given to instituting disciplinary action against the alleged harasser and have the option to make recommendation on the penalties to be imposed when considered appropriate.
23. In cases where the complainant is a victim of wrongdoing committed by the alleged harasser, both the victim-complainant ⁷ and the alleged harasser should be informed of whether disciplinary action will be recommended against the alleged harasser and the penalties recommended, if any. Both the victim-complainant and the alleged harasser should be given a period of one week to respond. The response, if any, shall be considered by the **Investigation Panel** before it reports the findings and recommendations to the relevant disciplinary authority for consideration. A complainant who is not a victim to the sexual harassment act would not be informed of the results and/or recommendations.
24. In the event that the complaint has been established, the **Investigation Panel** shall write to the relevant disciplinary authority ⁸ in accordance with the University's Regulations Governing Staff Discipline or Code of Student Conduct and Disciplinary Procedure, with copies to the **Chairperson of CASH** and the President, providing a full report on the investigation, outcome and recommendations. For the avoidance of doubt, the **Investigation Panel's** conclusion that a complaint is established is a recommendation to be made to the appropriate disciplinary authority. The decision power rests with the appropriate disciplinary authority.

⁷ Victim-complainant means a complainant who is a victim of the alleged sexual harassment and has a legitimate and direct personal interest in receiving information relating to the disciplinary process in question, including not only the outcome of a complaint but also the penalty imposed.

⁸ According to the Regulations Governing Staff Discipline, the respective Dean (for Colleges)/Line Manager at Vice- President or equivalent level is the Responsible Authority to instigate final disciplinary action. He/She may decide to take one or more of the courses of action set out below which are not meant to be exhaustive, or alternatively, he/she may form a Disciplinary Committee to assist and advise him/her in reviewing the case:

- to issue a written warning to the staff member concerned;
- to order the staff member concerned to indemnify the costs of the disciplinary process;
- to order stoppage or deferment of salary increase which may otherwise be enjoyed by the staff member concerned;
- to suspend or to forfeit the entitlement of the staff member concerned to one or more of the named fringe benefits which may otherwise be enjoyed by the staff member;
- to vary the grade and/or terms of appointment of the staff member concerned with or without reduction or forfeiture of the privileges and/or benefits;
- to dismiss the staff member concerned with or without reduction or forfeiture of the privileges and/or benefits.

According to the Code of Student Conduct and Disciplinary Procedure, major cases warranting disciplinary action will be referred to the Secretary of the Student Discipline Committee for consideration by a Student Discipline Panel. Penalties imposed by the Student Discipline Panel may consist of:

- withholding a student's eligibility for receipt of a scholarship, prize or financial award; or for inclusion on the Dean's List, or to represent the University in any external activity, for a specified period of time;
- exclusion from use of University amenities/facilities for any specified period of time*;
- suspension from the University for a specified period of time;
- expulsion from the University, which may include specification of a period within which a student may not be readmitted as a student of the University;
- the withdrawal of an award already made; etc.

25. Upon receipt of the report and recommendations of the **Investigation Panel**, the disciplinary authority concerned shall decide whether to adopt the recommendations including whether to take disciplinary action against the harasser. The Regulations Governing Staff Discipline or Code of Student Conduct and Disciplinary Procedure, as appropriate, (including the type of disciplinary action against the person in breach of disciplinary rules) shall apply.
26. Both the victim-complainant and the alleged harasser shall be informed by the disciplinary authority concerned whether the complaint is established, and whether disciplinary action will be taken and the penalties imposed.
27. If the harasser wants to appeal against the recommendations of the **Investigation Panel** and/or the decision of the disciplinary authority concerned, the appeal should be lodged with the relevant appeal authority in accordance with the Regulations Governing Staff Discipline or Code of Student Conduct and Disciplinary Procedure as appropriate (and, for the avoidance of doubt, the conditions in relation to the grounds of appeal such as new evidence or that the disciplinary procedures were not correctly followed shall apply). The appeal should be submitted in writing within the time limit specified in the Regulations Governing Staff Discipline or Code of Student Conduct and Disciplinary Procedure as appropriate, with full and complete details of the ground for the appeal.
28. If the complaint is not established by the **Investigation Panel** and the victim-complainant wants to appeal against such decision, the appeal should be submitted to the **Chairperson of CASH** in writing within three weeks after receiving the notification with full and complete details of the ground for the appeal. The **Chairperson of CASH** shall determine normally within three weeks whether to accept the appeal based on either or both of the grounds that:
 - (a) new evidence has come to light which was not previously considered by the **Investigation Panel**; and/or
 - (b) there is procedural irregularity in handling sexual harassment complaint.
29. If the **Chairperson of CASH** does not accept the victim-complainant's appeal, the decision of the **Chairperson of CASH** is final. Should the **Chairperson of CASH** decide to accept the victim-complainant's appeal, he/she shall appoint a **Review Committee** (comprising the Chairperson of the **Review Committee** and two persons) to review the appeal. Both the appellant (victim-complainant) and the alleged harasser should be informed by the **Chairperson of CASH** of the review.
30. The **Review Committee** shall review the case and make recommendation to the **Chairperson of CASH** as soon as practicable and normally within two months from the date the **Review Committee** is appointed. The **Review Committee's** recommendations shall include whether the complaint is established and if so, whether consideration should be given to instituting disciplinary action against the alleged harasser. The **Review Committee** shall, if the complaint is established, also make recommendation on the penalties to be imposed when the **Review Committee** considers appropriate in a particular case. The Chairperson of the **Review Committee** shall determine the procedures of review and the standard of proof required should be based on the balance of probabilities and commensurate with the gravity of the breach of standards of behaviour.
31. If the complaint is not established, the **Chairperson of CASH** shall convey the outcome of the

review to the appellant (victim-complainant) and the alleged harasser normally within three weeks after receiving the recommendation of the **Review Committee**. If the complaint is not established, the decision of the **Chairperson of CASH** is final.

32. In the event that the complaint is established, both the appellant (victim-complainant) and the alleged harasser shall be informed by the **Review Committee** as to whether the complaint is recommended to be established, and the appellant and the alleged harasser would also be informed as to whether consideration will be given to instituting disciplinary action against the alleged harasser and the penalties recommended (as the case may be). Both the appellant (victim-complainant) and the alleged harasser should be given a period of one week to respond. The response, if any, shall be considered by the **Review Committee** before it reports the findings and recommendations to the **Chairperson of CASH** for consideration. After considering the findings and recommendations of the **Review Committee**, the **Chairperson of CASH** may write to the relevant authorities (with a copy to the President), providing the full report and recommendations, to take disciplinary action as appropriate. For the avoidance of doubt, the **Chairperson of CASH's** conclusion that a complaint is established is a recommendation to be made to the appropriate disciplinary authority. The decision power rests with the appropriate disciplinary authority.
33. For appeal against disciplinary action taken, the appeal procedures applicable to the Regulations Governing Staff Discipline or Code of Student Conduct and Disciplinary Procedure, as appropriate, shall apply (including, for the avoidance of doubt, the conditions in relation to the grounds of appeal such as new evidence or that the disciplinary procedures were not correctly followed).
34. In order to prevent duplication of investigation resources and to avoid a complainant having to give evidence to different University committees on the same matter, the disciplinary authority or the **Chairperson of CASH** shall be entitled and have the discretion to accept all or part of the findings (including but not limited to findings of facts) and/or recommendations of the **Investigation Panel** or the **Review Committee** or the **Chairperson of CASH**, as the case may be.
35. If at the conclusion of an investigation or disciplinary proceedings, there is clear evidence to show that such complaint is frivolous or vexatious or malicious, which amounts to an abuse of process, the party concerned may be liable to disciplinary action, to be initiated by the **Chairperson of CASH**.
36. Whilst each party referred to in these procedures is expected to take all reasonable steps to comply with the time limits specified in this document, a failure to comply with one or more time limits (unless a material and culpable failure) will not in itself amount to the procedures being void or voidable.
37. A flow chart showing the process is presented at the [Appendix III \(b\)](#).

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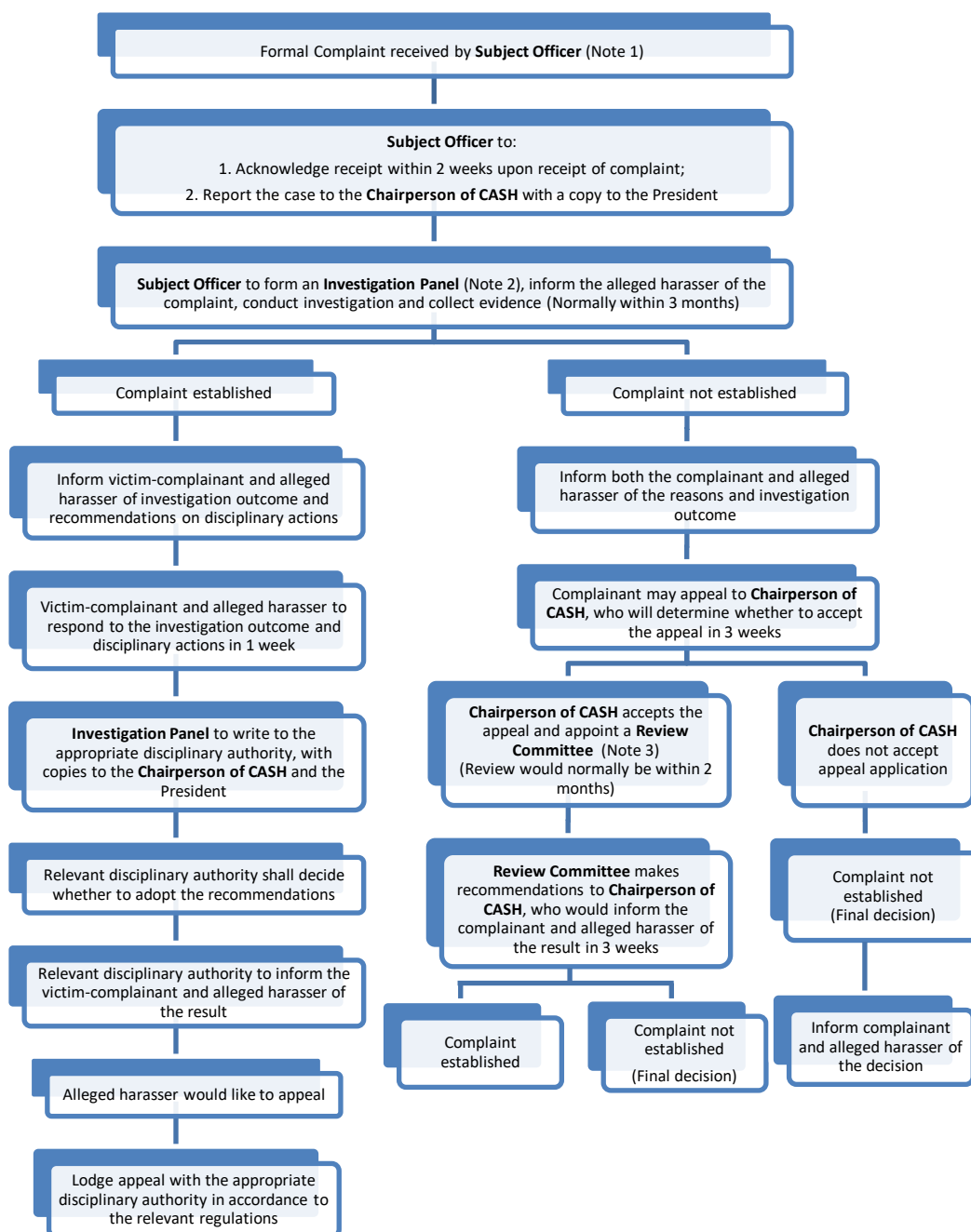
*Revised 10 August 2021 in accordance with the Code of Student Conduct and Disciplinary Procedure

Committee Against Sexual Harassment (CASH)
Standard Terms of Reference of Investigation Panel (IP)
[subject to adoption or modification by the IP as appropriate]

1. To carry out investigation on formal sexual harassment complaints in accordance with the University's Sexual Harassment Policy and Procedures.
2. To interview any relevant persons, including the complainant, the alleged harasser, and any witness(es), with a view to establishing all relevant facts.
3. To consider whether or not the complaints are established, with the power to decide when the complaints are not established and to make recommendations when the complaints are likely established.
4. To make recommendations on whether consideration should be given to instituting disciplinary action against the alleged harasser in accordance with the University's Regulations Governing Staff Discipline or Code of Student Conduct and Disciplinary Procedure.
5. To make recommendations on the penalties to be imposed if disciplinary action is recommended to be instituted against the alleged harasser.

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Flow Chart on Handling Formal Sexual Harassment Complaints



Note:

1. The Subject Officer will be:
 - (a) the Director of Human Resources (or nominee) when the alleged harasser is a staff member; or
 - (b) the Dean of Students (or nominee) when the alleged harasser is a student at or below undergraduate level; or
 - (c) the Dean of Graduate Studies (or nominee) when the alleged harasser is a student at postgraduate level.
2. The Investigation Panel shall comprise the Subject Officer as Chairperson and at least 2 more Members from CASH (the total number of members of the Investigation Panel should be an odd number). In appropriate

circumstances and in consultation with the Chairperson of CASH, the Subject Officer has the authority to appoint other staff members, instead of Members from CASH, to serve as Members of the Panel. A student or other persons may be co-opted on the Panel as decided by the Subject Officer in consultation with the Chairperson of CASH. The Subject Officer shall nominate a person to be the Secretary of the Investigation Panel.

3. The Review Committee shall be appointed by the Chairperson of CASH, comprising the Chairperson of the Review Committee and two persons.

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