

The University of the West Indies
Report of the ad hoc Committee established
to review the Policy and Procedures on Sexual Harassment

Background

In 1993, a small committee was convened to formulate a paper which proposed that The University of the West Indies adopt a policy position on sexual harassment, in the light of increasing reports at the time. The paper so formulated was accepted at the July 1993 meeting of the University Academic Committee (UAC). The draft policy guidelines were disseminated to a number of interests (both individuals and groups) for comment. Finance and General Purposes Committee (F & GPC) accepted the relevant changes based on the feedback received, and submitted the modified guidelines to the Senate Committee on Ordinances and Regulations (SCOR) to draft the relevant amendment to Ordinance 8. The resulting paper, *Sexual Harassment Amendment to Ordinance No. 8* (UAC Paper 17) explicitly designating sexual harassment in The UWI as misconduct, was tabled and approved at the UAC's October 1994 meeting.

Since then, the procedures approved by F & GPC (FGP.P7D) in 1996 to guide action in reported cases of sexual harassment, lapsed due to the non-appointment of advisors on two of the three campuses, Mona having been the only campus to make such appointments. The latter fact coupled with The UWI's resolve to provide a conducive environment for both students and staff, have made it necessary to revisit the issue with a view to making its scope and contents more in line with contemporary national, regional and international practice.

Current Policy

The Policy on Sexual Harassment is contained in FGP.P7D and reflected in the Sexual Harassment Amendment to Ordinance 8 (thereafter referred to as Ordinance 8). The University of the West Indies is committed to providing a conducive learning, working and living environment to ALL its students and staff, irrespective of race, colour, national origin, sex, age, disability, health status, creed, religion, and sexual orientation/preference. In light of this, the University does not tolerate acts of sexual harassment or any act of retaliation arising from the reporting of such incidents. The policy approved seeks to: (1) define sexual harassment and retaliation, as well as other related terms; (2) forbid sexual harassment in addition to retaliation that might have resulted from the report of such harassment; and (3) specify the procedures to be pursued when a member of the University community claims that a violation of the Policy had taken place. Clause 40 (a) of Ordinance 8, which speaks to "Misconduct" in general, as well as the Rights and Responsibilities of Students, would also be invoked where someone deliberately and irresponsibly, made either a false complaint of sexual harassment or provided misleading information concerning a complaint. It should be noted that there is need for similar provisions to address sexual harassment incidents involving other categories of staff not covered by Ordinance 8.

The University's Policy takes a "zero tolerance" approach toward sexual harassment. Incidents of sexual harassment may result in disciplinary and corrective action, which includes termination or expulsion and possibly legal action according to the national laws of the country in which the violation has been perpetrated.

In revisiting the procedures, the following are borne in mind:

1. The sexual harassment policy applies to all members of the University community - students and staff;
2. While the policy on sexual harassment applies to all members of the University community, there are specific issues that are pertinent and unique to each group as reflected in Ordinance 8 and 'Rights and Responsibilities of Students'. In this regard, there is also a need to develop comparable regulations to address any incidents of sexual harassment with regard to Administrative, Technical and Service (ATS) staff.
3. Implementation of the Policy and Procedures must take into account the fact that victims of sexual harassment are usually reluctant to report and record their experiences.

Definitions

- **Sexual harassment** - includes sexual advances, requests for sexual favours, and other similar verbal, non-verbal or physical conduct of a sexual nature whether it is recurrent behaviour or a single incident and is made by a person, whether male or female, who knows or ought reasonably to know that such behaviour is unwanted by the person to whom the conduct is directed; and where:
 - i. such conduct has the purpose or effect of:
 - A. interfering with an individual's personal safety, work or academic performance; or
 - B. creating an intimidating, hostile or offensive living, working or academic environment; or
 - ii. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's personal safety, employment status, academic status or academic achievement and certification; or
 - iii. rejection of such conduct by an individual is used as the basis for adverse personal safety, employment, or academic achievement and certification decisions affecting such individual.
- **Consensual relationship** – a romantic and/or intimate and/or sexual involvement based on a mutual agreement of both parties.

- **Staff** – a full-time or part-time member of the Academic, Senior Administrative, Professional, Administrative, Technical or Service categories of University employees.
- **Student** – a person registered at the University during a current academic year for a first or higher degree, certificate or diploma, but does not include a student of an affiliated institution who is registered for examinations leading to the degrees, diplomas, certificates and other academic awards of the University.
- **Conciliation** – the settlement of the issue usually after the complainant and respondent have undergone mediation.
- **Complainant** – a person who alleges that she/he has been sexually harassed.
- **Consultation** - the process by which an individual may seek clarification or advice on matters pertaining to sexual harassment.
- **Counselling** - the process by which persons who have been involved in an incident of sexual harassment are assisted by a professional counsellor following the incident, through the use of various intervention strategies based on the application of mental health, psychological or human development principles.
- **False representation** – a report or statement made with the knowledge that it is untrue.
- **Sexual Harassment Advisor (SHA)** – a person so designated by the University to provide CONFIDENTIAL consultation to those seeking clarification or advice on matters pertaining to sexual harassment.
- **Mediation** – a confidential and voluntary process aimed at arriving at a mutually agreed settlement at which the parties are facilitated by a person trained for this purpose.
- **Mentoring** - the process by which a person who has been involved in an incident of sexual harassment is given individual guidance/supervision/direction and ongoing education with respect to issues relating to sexual harassment.
- **Respondent** – a person whose alleged conduct is the subject of a complaint.
- **Retaliation** – any action taken by a respondent against a complainant or third party to penalize the latter (complainant and/or third party) for participating in any process related to the pursuit of a sexual harassment complaint.
- **Advisory Committee on Sexual Harassment** - a team of seven persons, at least three of each sex and widely representative of the University/Campus community, appointed by the Vice-Chancellor or Campus Principal. There shall be a University Advisory Committee, appointed by the Vice-Chancellor, to deal with Centre staff and one Campus Advisory Committee at each Campus, appointed by the respective

Campus Principals, for Campus staff. Their main functions are to: (1) receive complaints for which a formal procedure is required; (2) appoint a Complaint Panel (see definition below); (3) periodically review the Sexual Harassment Policy and Procedures. SHAs are not eligible to be members of the Advisory Committee.

- **Complaint Panel (CP)** ¹ – a team of four persons and a chair appointed by the Advisory Committee on Sexual Harassment to conduct a formal hearing and investigation into a case of sexual harassment which has not been resolved through mediation and conciliation. The Centre Advisory Committee appoints a Centre Complaint Panel which deals with Centre staff and the three Campus Advisory Committees appoint their respective Complaint Panels to deal with Campus staff.

Procedures

Below are procedures which might be followed at The University of the West Indies when it is perceived that sexual harassment has taken place. Persons who so perceive may or may not themselves be the victims. The steps need not be followed successively although informal methods at the beginning can serve to identify whether sexual harassment has taken place, its extent, and the most appropriate approach to be taken.

1. Consultation

- 1.1 Any member of the University community may seek informal assistance, advice or counselling from a Sexual Harassment Advisor (SHA) to discuss matters of sexual harassment, in circumstances where harassment may or may not have actually occurred and where the person seeking advice is a:
 - complainant;
 - a person who thinks his or her actions may be at fault or is the subject of criticism (even if unjustifiably); or
 - a third party.
- 1.2 All such consultations will be confidential, and no proceedings involving any individual beyond the SHA and complainant will commence until a formal complaint has been made by a person willing to be identified. The SHA shall not disclose information obtained or shared in a consultation with anyone unless the expressed permission of the person who provided the information has been secured.
- 1.3 Individuals may opt to seek consultations about sexual harassment from SHAs who are obligated by law and/or their professional status, not to divulge information they have received in confidence.

¹ The remit of the Complaint Panel is specifically to deal with sexual harassment cases. Its *raison d'être* is to extend coverage to all categories of staff – not just Academic and Senior Administrative – as well as students, not covered under Ordinance 8.

- 1.4 During confidential consultations, individuals may discuss matters about sexual harassment, without identifying the persons involved, including themselves.
- 1.5 Where it receives information, the University may, however, take appropriate action, within the context of its policies and procedures, to protect members of the University community.

2. Mediation and Conciliation

- 2.1 A complainant may opt for mediation between herself/himself and the respondent. This may, at the discretion of the complainant, remain off-record.
- 2.2 The complainant, if s/he wishes to pursue this route, must contact the SHA giving details of the alleged harassment, including dates, times, places, names of individuals involved and the names of any witnesses. S/he will also advise of her/his intention to pursue mediation.
- 2.3 The mediator will immediately, with the agreement of the complainant, make contact with the respondent to advise her/him of the allegations. Following this, the mediator will Either:
 - meet with the complainant and respondent separately;

Or

 - seek a meeting between the two.
- 2.4 The complainant's wishes should determine the procedure to be followed.
- 2.5 Whereas the mediator's role is to facilitate a resolution of the issue, s/he should not seek to discourage the complainant from proceeding to a formal complaint if s/he feels this is warranted.
- 2.6 The mediator may, given the evidence and with the agreement of the complainant, recommend conciliation. Once conciliation has been accepted, the mediator must apprise the respondent of the consequences of retaliatory acts. This may be a written document or a verbal agreement between the complainant and respondent, witnessed by the mediator.

3. Mentoring and Counselling

- 3.1 Whether or not conciliation is achieved, the mediator may recommend that the complainant go through mentoring and/or counselling. A mentor or counsellor may

be a SHA or other suitable person who may or may not be an employee of the University.

3.2 Mentoring and/or counselling may also be recommended for the respondent.

4. Complaint in Writing

- 4.1 A complainant wishing to pursue the complaint may or may not choose to do so in writing. If s/he chooses not to write, and if the SHA determines that the complainant will forgo the process rather than write, the SHA will interview the complainant, probing details of the alleged harassment, including dates, times, places, names of individuals involved and the names of any witnesses.
- 4.2 If however the complainant is inclined to write, s/he will be advised that, normally, written complaints must be filed within 12 months of the occurrence of the incident, or, where there has been more than one related incident, within 12 months of the latest incident. In the case of a student, complaints must be filed within 6 months of graduating from the University. The SHA may, at the request of the complainant, waive the deadline if, in her/his opinion, the circumstances warrant.
- 4.3 The SHA will immediately forward a copy of (i) the complaint, (ii) the Sexual Harassment Policy and (iii) the Sexual Harassment Procedures (present document), to the respondent and request a response within 10 days. A copy of this response will be forwarded to the complainant immediately upon request.
- 4.4 If a response is not received within 10 days, the respondent will be advised that, failing co-operation or response within another 10 days, the complainant may request a formal hearing.
- 4.5 Subsequent responses by the complainant or respondent shall normally be prepared and sent to the SHA within 10 days. This time period may be lengthened, on request by either party, for extenuating circumstances which may include *inter alia*, illness, paid or no paid leave, examinations. The SHA will grant such requests at her/his discretion.
- 4.6 Additionally, on request of either party and at the discretion of the SHA, both parties can be asked to consider waiving the 20-days' response time and proceed directly to a formal hearing.
- 4.7 Alternatively, the complainant may opt for mediation (see **Mediation and Conciliation**) at this stage.
- 4.8 If conciliation has been achieved after a written complaint, the latter document as well as any other associated written material gathered with the complaint may be destroyed on the agreement of the complainant. If not destroyed, the written complaint and such other accumulated written material will be retained in confidence in the SHA's office and will not be released to any person except in

accordance with existing University policy on personal files or where required by law.

5. Formal Hearing

- 5.1 If the matter is not settled to the satisfaction of both complainant and respondent (or where conciliation has not been accomplished), either party may request a formal hearing.
- 5.2 When a formal hearing is requested, the Advisory Committee on Sexual Harassment will appoint a Complaint Panel (CP) of four plus a chair to conduct a formal hearing and investigation. All deliberations of the CP shall be held in strict confidence. The panel shall be constituted as follows:
 - The chair appointed by the Advisory Committee shall be a member of this Committee;
 - Two of the four other panel members shall be members of the Advisory Committee;
 - Two shall be appointed by the Advisory Committee from the University community – one from the constituent group of the complainant and one from the constituent group of the respondent;
 - There shall be at least two persons of each sex on the panel.
- 5.3 The chair will not cast a vote, except to break a tie.
- 5.4 Within 15 days of the receipt of the request for a formal hearing, the CP shall establish a date for the hearing and invite both parties to attend and make oral or written submissions. A written “notice of hearing”, which will include the time, place and purpose of the hearing, will be provided to the complainant and the respondent at least 7 days in advance.
- 5.5 A statement of the complaint will normally be made available to each panel member at least three working days before the hearing. Any conflict of interest must be declared immediately.
- 5.6 The hearing shall be in camera.
- 5.7 Either party may be accompanied by a friend or representative or legal counsel. Notice of at least 3 working days shall be given to the CP of the intention to be accompanied by legal counsel. Such intent must be shared with the other party by the CP.

- 5.8 In the event that either the complainant or respondent fails to appear at the hearing despite reasonable notice, the CP may proceed at its discretion with the hearing in the absence of that party.
- 5.9 The CP has the power to call witnesses. The parties have the right to present submissions to the CP and to call, examine and cross-examine any witnesses except the SHA, who cannot appear as a witness in these proceedings.
- 5.10 The CP shall hear both parties and conduct a thorough investigation of the charges, then complete its deliberations and make its recommendations within 30 days from the date of the first hearing.
- 5.11 The CP shall issue a written decision with findings of fact and reasons to all parties, either:
- dismissing the complaint;
 - or upholding the complaint of sexual harassment.
- 5.12 In the latter case the CP shall make recommendations on disciplinary action to the relevant Disciplinary Committees. Such action could include a reprimand, a private or public apology, relief from specific duties, suspension, dismissal, expulsion, and/or reimbursement of costs related to the distress of either party, and shall be undertaken pursuant to the relevant University policy or agreement.
- 5.13 Where dismissal of staff is recommended, the Vice Chancellor or her/his nominee shall instruct the Registrar to proceed in accordance with the relevant University regulation.
- 5.14 If the CP finds that the complaint, in its judgment, has no basis in fact and is frivolous or mischievous in nature, it will dismiss the complaint and will recommend that disciplinary action be taken through the relevant process.

6. Appeals

- 6.1 A decision may be appealed through the University's established grievance and discipline procedures for the various categories of staff and students. Such appeal shall be lodged with the relevant Registrar within 30 days of the receipt of the decision.