



THE UNIVERSITY OF THE WEST INDIES

SEXUAL HARASSMENT POLICY AND PROCEDURES

Preamble

The University of the West-Indies is an equal opportunity institution. Accordingly, sexual harassment, an aspect of gender discrimination, is expressly prohibited and will not be tolerated. The University of the West-Indies will reflect this policy of non-tolerance of sexual harassment in the oversight of its students, employees, persons under its independent service arrangements, other persons who provide academic services to the University, as well as to its contractual agreements, independent service arrangements and its inter-action with members of the public.

Interpretation and Definitions

- **Consensual relationship** - a romantic and/or intimate and/or sexual involvement based on a mutual agreement of both parties.
- **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 by making a sexual harassment allegation or complaint to The University of the West Indies through established procedures.
- **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** – report or statement made with the knowledge that it is untrue.
- **Mediation** – a confidential and voluntary process aimed at arriving at a mutually agreed settlement at which the parties are facilitated by a person certified for this purpose, whether from the University or externally.
- **Member of the University Community** means any person who is employed by The University of the West Indies as academic staff, non-academic staff, or who provides academic services to The University of the West-Indies, and any person who is a registered student of The University of the West Indies, or who is entitled to be so registered, but whose registration is pending and, for the purposes of this Policy, includes any person who has been awarded a degree by, or otherwise left The University of the West Indies during the previous twelve months of lodging a sexual harassment complaint.
- **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 sexual harassment complaint.
- **Retaliation** – any action taken by a respondent against a complainant or third party to penalise the latter (complainant and/or third party) for participating in any process related to the pursuit of a sexual harassment complaint.
- **Sexual harassment** is a form of misconduct which includes sexual advances, requests for sexual favours, and other similar verbal, non-verbal or physical conduct of a sexual nature or based on sex, including same sex, whether it is recurrent behaviour or a single incident and is made by any person, who knows or ought reasonably to have known that such behaviour is unwanted by the person to whom the conduct is directed; and where:

Such conduct has the purpose or effect of:

- i. interfering with an individual's personal safety, work or academic performance; or

- ii. creating an intimidating, hostile or offensive living, working or academic environment; or
 - iii. 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
 - iv. 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.
- **Sexual Harassment Advisor (SHA)** – a person so designated by the University or the Campus to: (1) provide confidential consultation to those seeking clarification or advice on matters pertaining to sexual harassment; (2) receive and act on information on allegations of sexual harassment; (3) where appropriate initiate mediation or conciliation proceedings for resolution of sexual harassment claims; (4) where appropriate, refer reports of allegations of sexual harassment to the Campus Registrar or the University Registrar as the case may be, for the instigation of formal disciplinary proceedings in accordance with the established procedures of The University of the West Indies; and (5) periodically coordinate the review of the Sexual Harassment Policy and Procedures.
- **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 courses leading to the degrees, diplomas, certificates and other academic awards of the University.

1. Informal Consultation on Sexual Harassment

- 1.1 Any member of the University community may consult with a Sexual Harassment Advisor (SHA) in order to seek assistance, advice or counselling in relation to sexual harassment where that person believes that sexual harassment may have occurred in relation to himself or herself or to another person, or where the person seeking advice believes that his or her actions may amount to sexual harassment, or is the subject of criticism (even if unjustifiably) on the ground of sexual harassment.
- 1.2 All consultations on sexual harassment shall be confidential, and no further proceedings shall commence until a formal sexual harassment complaint has been made by a person willing to be identified.
- 1.3 The SHA may disclose information received in a consultation only if the expressed permission of the person who provided the information has been secured in writing.
- 1.4 During a consultation, an individual may discuss matters concerning sexual harassment, without identifying the persons involved, including themselves.
- 1.4 This Policy and relevant procedures shall not preclude the University from advising any member of the University Community to bring a claim of sexual harassment through national legal procedures when deemed appropriate.

2. Instituting Sexual Harassment Complaints

- 2.1 Any member of the University Community may make an allegation of sexual harassment to a SHA, or directly to the Campus Registrar, stating that he or she believes that sexual harassment has occurred, either against himself or herself, or with respect to another member of the University Community. Where the sexual harassment allegation is made directly to the Campus Registrar, it shall be forwarded to the SHA for action in accordance with Articles 2.3 – 2.11 of this Policy and Procedure and the Registrar shall keep a copy of the sexual harassment complaint on file.

- 2.2. A person may make an allegation of sexual harassment to a SHA whether or not he or she has sought or received informal assistance, or a consultation on sexual harassment. When an allegation of sexual harassment is made, the SHA must, for the record, provide the Registrar with a copy of the information received, before the SHA takes action in accordance with sections 2.4 -2.10.
- 2.3. Where the complainant is a person other than the individual alleged to be the victim of sexual harassment, the allegation of sexual harassment shall be in writing and may not be anonymous.
- 2.4. Where the complainant is the alleged victim of sexual harassment, the allegation of sexual harassment may or may not be in writing. If the complainant chooses to make an oral sexual harassment complaint, the SHA must conduct an interview of the complainant, probing details of the alleged harassment, including dates, times, places, names of individuals involved, the names of any witnesses and produce a record of the interview.
- 2.5. An allegation of sexual harassment must be filed within 12 months of the occurrence of the alleged incident of sexual harassment, or, where there has been more than one related incident, within 12 months of the latest incident. In the case of a student, sexual harassment allegations must be brought within 12 months of the award of the degree, or leaving the University. The SHA may, at the request of the complainant, waive the time deadline if, in her or his opinion, the circumstances warrant.
- 2.6. Upon receipt of a sexual harassment allegation, The SHA must immediately forward a copy of the sexual harassment allegation, together with the Sexual Harassment Policy and Procedures document, to the respondent and request a response in writing within 10 days.
- 2.7. 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 as described in section 3 of this policy.
- 2.8. A copy of the response of the respondent shall be forwarded to the complainant immediately upon receipt to enable the complainant to make a determination as to whether a hearing or mediation should be pursued, or whether the sexual harassment allegation should be dropped.

- 2.9 A complainant shall be given the opportunity to answer to any responses by the respondent within 5 days, after which the respondent must be given a further 5 days to respond. These time periods may be lengthened at the discretion of the SHA, on request by either party, or because of extenuating circumstances which may include *inter alia*, illness, paid or no paid leave, or because of examinations.
- 2.10 Upon the request of either party and at the discretion of the SHA, the parties may be asked to consider waiving any of the response times and proceed directly to a formal hearing or to mediation and conciliation.
- 2.11 Upon completion of the period allotted for responses by the complainant and respondent, or where the parties have agreed to proceed directly to a formal hearing or to mediation or conciliation, as the case may be, the SHA shall make a Report in writing to the Campus Registrar or University Registrar as the case may be, outlining the outcome of the proceeding and the decision taken by the complainant to either proceed to a hearing or mediation or conciliation. The Registrar shall thereafter invoke the relevant disciplinary procedure in accordance with the University's Rules and Regulations.

3. Disciplinary Procedures for Formal Hearings in Sexual Harassment Complaints

- 3.1 Where the matter proceeds to a formal hearing, the following procedures shall apply:-
- (a) In the case of a student complainant against an academic, or senior administrative, or professional member of staff: - a disciplinary proceeding for serious misconduct shall be conducted in accordance with Ordinance 8.
 - (b) In the case of a student complainant against another student, or any member of the academic community against a student: - a disciplinary proceeding for serious misconduct shall be conducted in accordance with *The Code of Principles and Responsibilities for Students*, through referral to the Principal.

- (c) In the case of a member of staff against an academic, or senior administrative, or professional member of staff: - a disciplinary proceeding for misconduct shall be conducted in accordance with Ordinance 8.
- (d) In the case of any member of the University community against a member of the Administrative, technical and support staff, not being a member of senior administrative staff, a disciplinary proceeding for serious misconduct which involves a hearing shall be conducted in accordance with the relevant Collective Bargaining Agreement between TThe University of the West Indies and the union representing workers.
- (e) In the case of any other person who is a Member of the University Community but who does not fall under 3.1 (a) to (d), the matter shall proceed through the office of the Registrar who shall initiate a formal hearing as appropriate.

3.2 A person who knowingly makes a false sexual harassment complaint may be subject to disciplinary proceedings in accordance with established University procedures for misconduct.

3.3 If mediation or conciliation has been achieved after a sexual harassment complaint has been received in accordance with this Policy, the documentation relating to the sexual harassment complaint may be destroyed on the agreement of the complainant. If not destroyed, the written sexual harassment complaint and such other accumulated written material will be retained in confidence in the Office of the Registrar and will not be released to any person except in accordance with exiting University policy on personal files or where required by law.

4. Appeals

4.1 Where a sexual harassment complaint has been referred to a formal hearing in accordance with section 2, the resulting decision may be appealed through the

University's established grievance and discipline procedures for the various categories of staff and students.

5. Mediation and Conciliation

- 5.1 A complainant who is the alleged victim of sexual harassment may opt for mediation or conciliation between herself/himself and the respondent, where the respondent agrees. This may, at the discretion of the complainant, remain off-record.
- 5.2 Where the option of mediation is pursued, the parties may:-
 - (a) choose a mediator from The University of the West Indies, including from the SHA, where available, or request the University to assign a mediator; or
 - (b) choose an independent, external mediator to determine the matter.
- 5.3 Where the complainant chooses an external mediator, the complainant must inform the SHA of this decision, giving the name and contact details of the mediator and the outcome of the mediation in writing.
- 5.4 The University may, upon the request of either the complainant or the respondent, release any documentation on the case to the mediator for the sole purpose or mediation.
- 5.5 During the process of mediation, the mediator must meet with the complainant and respondent either separately or conjointly, at all times respecting the wishes of the complainant.
- 5.6 Whereas the mediator's role is to facilitate a resolution of the issue, the mediator should not seek to discourage the complainant from proceeding to a formal sexual harassment complaint if s/he feels this is warranted.
- 5.7 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.

- 5.8 A complainant who opts for mediation and conciliation may at any time revoke the process and proceed to a disciplinary procedure through the formal hearing process in accordance with these Rules under Article 3.

6. Mentoring and Counselling

- 6.1 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 and must be approved by the Clinical Director on the relevant Campus. For complaints emanating from the Regional Headquarters, the mediator should be approved by the University Registrar.
- 6.2 Mentoring and/or counselling may also be recommended for the respondent.

7. Victimisation

- 7.1 Any member of the University community who victimises, or takes retaliatory action against any person for bringing a sexual harassment complaint to an SHA or giving evidence before a sexual harassment proceeding, is subject to disciplinary proceedings for misconduct in accordance with the established Rules of the University.

8. Related Court Proceedings

- 8.1 An action on the grounds of sexual harassment before the courts shall not preclude any person from bringing a claim of sexual harassment before The University of the West-Indies.