

## UOW COLLEGE HONG KONG

### **Sexual Harassment Policy and Procedures**

#### **1. Preamble**

- 1.1 Under the Sex Discrimination Ordinance (“SDO”), sexual harassment in the education and employment fields is unlawful. The UOW College Hong Kong (“The College”) has a legal and moral obligation to provide a working and learning environment that is free from sexual harassment.
- 1.2 Besides being unlawful, sexual harassment is an important ethical issue for the whole College because of the negative impact it has on the physical and psychological well-being of staff and students. It impairs efforts made to foster a respectful and productive working and learning environment. Sexual harassment often results in communication breakdown, conflict, absenteeism, withdrawal and resignation. Conversely, the prevention and elimination of sexual harassment in the College encourages high productivity in work, effective learning, regular attendance, high retention rate, respectful communication and trust, and the fulfillment of the College’s legal responsibilities and obligations.
- 1.3 All members of the College community, whether staff or students, are entitled to a working and learning environment which is professional and which promotes respect and regard for the rights and feelings of all. Sexual harassment violates the rights, dignity and integrity of the individual and undermines the environment necessary for the advancement of learning and will not be tolerated by the College. The College is committed to preventing and eliminating sexual harassment and will not condone any act of sexual harassment committed by its staff members or students.
- 1.4 Sexual harassment is a breach of staff and student discipline and shall be subject to disciplinary action. All sexual harassment complaints should be thoroughly and fairly handled and investigated without delay in accordance with the Procedures for Handling Sexual Harassment Complaints as detailed in Appendices I and II.
- 1.5 Whatever form it takes, the College will not permit any staff member or student to harass others with whom he/she has business and/or academic interactions including, but not limited to, other staff members, students and prospective students, or permit any outsider to harass its staff members or students. This is true, not only in the workplace or on campus, but during business/school trips, business-related social events organised or sponsored by the College and at any other venues.
- 1.6 The College will keep the Sexual Harassment Policy and Procedures under constant review.

#### **2. Definition of Sexual Harassment**

- 2.1 Following the Sex Discrimination Ordinance (“SDO”):

A person (howsoever described) sexually harasses another person if:

- the person,

- (i) makes an unwelcome<sup>1</sup> sexual advance, or an unwelcome request for sexual favours, to that person; or
- (ii) engages in other unwelcome conduct of a sexual nature<sup>2</sup> in relation to that person;

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person would be offended, humiliated or intimidated; or

- the person, alone or together with other persons, engages in conduct of a sexual nature which creates a hostile or intimidating environment for that person.

2.2 Under the SDO, sexual harassment covers sexual harassment of both men and women.

2.3 In the field of employment, it is unlawful for an employee to sexually harass a fellow employee who may include a contract worker, a commission agent or any person who is seeking to be employed by the College (s.23 of the SDO).

2.4 For educational establishments, it is unlawful for any staff member of the College to sexually harass a person who is a student or a prospective student of the College; for a student or prospective student of the College to sexually harass staff member of the College; and for any student of the College to sexually harass any fellow student or a person who is a prospective student of the College (s.39 of the SDO).

2.5 A person who knowingly aids another person to do an act of sexual harassment shall be treated as he/she is doing an act of the like description (s.47 of the SDO). It is unlawful for a person to instruct, to procure, or attempt to procure, another person to sexually harass a third person (s.44 of the SDO). It is also unlawful for a person to induce or attempt to induce another person to sexually harass a third person by providing or offering to provide that person with any benefit, or subjecting or threatening to subject that person to any detriment (s.45 of the SDO).

2.6 Examples of sexual harassment include:

- Unwelcome sexual advances – e.g. leering and lewd gestures, touching, grabbing or deliberately brushing against another person;
- 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 employment conditions or academic results;
- Unwelcome verbal, non-verbal or physical conduct of a sexual nature – e.g. sexually derogatory or stereotypical remarks, persistent questioning about a person's sex life;

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<sup>1</sup> In general terms, "unwelcome" behaviour is behaviour that is uninvited and unwanted by the recipient(s) of the behaviour.

<sup>2</sup> "Conduct of sexual nature" includes making a statement of a sexual nature to another person, or in the presence of that person, whether the statement is made orally or in writing [s.2(7) of the SDO].

- Conduct of a sexual nature that creates a hostile or intimidating environment – e.g. sexual or obscene jokes around the workplace/classrooms and campus/halls of residence; displaying sexist or other sexually offensive materials; offensive communications of a sexual nature (letters, phone calls, faxes, e-mails and text messages, etc.). Materials used for educational purposes are not examples of sexual harassment.
- 2.7 Unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature constitute sexual harassment in the College when any aspect of an individual's employment or educational experience is made conditional on submission to such conduct:
- Aspects of employment include but are not limited to hiring, retention, personnel review, pay review, transfer, promotion, termination, re-assignment, salary determination, fringe benefits, work load, opportunities, training and staff development, and working conditions.
  - Aspects of educational experience include but are not limited to admission to a course or class, grades, letters of recommendation, homework, publications, honours, research opportunities, scholarships, housing, grants, employment opportunities, use of facilities, probation, termination, and classroom conditions.
- 2.8 Sexual harassment in employment includes the following situations:
- sexually harassing a person who is employed or seeking to be employed either by the employer or by someone else within the same organisation;
  - sexually harassing a contract worker or a commission agent;
  - sexually harassing a person seeking an authorisation or qualification; and
  - sexually harassing a person seeking or undergoing training.
- 2.9 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 incident may be sufficient to constitute sexual harassment.
- 2.10 A person may be the victim of a hostile 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 sexual harassment.
- 2.11 In determining whether certain conduct constitutes sexual harassment, the entire record and the totality of the circumstances will be considered.

### **3. Sexual Harassment Complaints**

- 3.1 In an effort to avoid any misunderstandings and foster open communication in the workplace and on campus, staff members or students should, but are not required to, communicate their discomfort to those whom they feel are engaging in inappropriate conduct.
- 3.2 A sexual harassment complaint can be classified as either *formal* or *informal*,

depending on whether an investigation is conducted into the case. The two approaches are both valid, and the exact approach to be adopted depends on the wish of the complainant.

- 3.3 In general, it may be appropriate for minor and single incidents (but not more serious and repeated acts of sexual harassment) to be dealt with informally. The main objective of an informal complaint is to stop the alleged harassment at the earliest possible stage. When the complainant requests an investigation into his/her allegation, the complaint should be dealt with in a formal manner according to prescribed procedures.
- 3.4 Complaints of sexual harassment should be lodged with the President. When the Dean/Associate Dean of Faculty, the Programme leader, or any other person comes into knowledge of a sexual harassment complaint, he/she should direct the complaint to the President.
- 3.5 Depending on the identity (staff or student) of the alleged harasser, the President shall refer the case to:
  - the Vice President (Planning) (or nominee) when the alleged harasser is a staff member;
  - the Vice President (Academic) (or nominee) when the alleged harasser is a student.
- 3.6 The recipient of the complaint (the Vice President (Planning) or the Vice President (Academic) ) shall become the Subject Officer of the case.
- 3.7 The Subject Officer shall form an Investigation Panel (Panel) to investigate formal complaints. The Panel shall comprise the Subject Officer as the Chairperson and at least two members as appointed by the President. A fair distribution of members in both genders should be observed as far as practicable.
- 3.8 The complainant should lodge either a written or an oral complaint as soon as possible but in no case exceeding twelve months from the date the act of harassment occurs; the lapse of time may weaken a complainant's case and render the subsequent investigation difficult to carry out.
- 3.9 The Sexual Harassment Policy and Procedures are without prejudice to all statutory rights<sup>3</sup> of the complainants.
- 3.10 In the event that the complainant chooses to report the case to the statutory bodies, the College shall suspend investigation until there is a conclusion of the relevant proceedings.

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<sup>3</sup> (a) The complainant may also seek advice or lodge a complaint of sexual harassment with the Equal Opportunities Commission (EOC). A complaint of sexual harassment should be lodged within twelve months from the date the act of harassment was done, failing which the EOC may decide not to conduct, or to discontinue, an investigation into the act.

(b) Pursuant to the provisions of the Sex Discrimination Ordinance, the complainant may also institute civil proceedings in the District Court to claim against the alleged harasser within twenty-four months from when the act complained of was done.

(c) The complainant may report the case to the Police if he/she considers appropriate.

## 4. Principles for Handling Sexual Harassment Complaints

### 4.1 General Principles

- (i) All complaints must be handled promptly, seriously, objectively and without any bias and with a common sense approach.
- (ii) All complaints should be assumed to be made in good faith.
- (iii) Care must be taken to ensure that the process of bringing a complaint does not unnecessarily expose the complainant to further distress and humiliation.
- (iv) Both the complainant and the alleged harasser may be accompanied by another member (i.e. staff or student) of the College, if they so wish, at all meetings.
- (v) As far as practicable, designated persons handling the complaints or the investigations should have the relevant training and experience in related issues. They should not be from the same Division/unit as the complainant/alleged harasser and should not have any direct working or educational relationship with the complainant/alleged harasser.
- (vi) All complaints of sexual harassment will be received and handled in a confidential manner and any information relating to a complaint of sexual harassment will only be disclosed on a strict need-to-know basis. However, investigation of such complaints will in most cases require disclosure to the accused and to other witnesses in order to gather pertinent facts. It gives assurance to the individuals involved in the complaint that management appreciates the sensitive nature of sexual harassment and details of the complaint will not be disclosed to unrelated individuals.
- (vii) The complainant and the witnesses should be protected against victimisation<sup>4</sup> for making or being involved in the complaint. No retaliatory measure by anyone will be allowed against a staff member or a student who reports harassment or cooperates in a harassment investigation.
- (viii) As a general rule, a complainant should normally not be removed from his/her usual duties/studies or treated in an unusual manner whilst awaiting the outcome of the complaint as this may constitute less favourable treatment to the complainant which is not justified and may constitute a ground for complaint of victimisation. There may however be cases where it is difficult to keep the parties together until the outcome is known, for instance, when investigation is suspended pending consideration by the statutory bodies. Under such

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<sup>4</sup>Under the SDO, 'victimisation' is an unlawful act. According to the Code of Practice on Employment under the Sex Discrimination Ordinance, 'victimisation' arises where a person (the discriminator) treats another person (the person victimised) less favourably than persons in comparable circumstances because the person victimised or a third person has done or intends to do, or is suspected to have done or to intend to do, the following:

- bringing proceedings against the discriminator or any other person under the SDO;
- giving evidence or information in connection with proceedings brought by any person against the discriminator or any other person under the SDO;
- otherwise doing anything under or by reference to the SDO in relation to the discriminator or any other person; or
- alleging that the discriminator or any other person has committed an act which is unlawful under the SDO.

circumstances, Deans/Associate Deans of Faculties should take appropriate measures to deal with the situation but the wishes of the complainant and the alleged harasser have to be taken into account.

#### 4.2 Guidelines for Investigation of Formal Complaints

- (i) A person who is the subject of a formal complaint must be informed of the allegations against him/her.
- (ii) A person who is the subject of a formal complaint must be given the opportunity to respond to the allegations and raise any matters in his/her own defence.
- (iii) The allegations should be properly investigated, all parties being heard and relevant submission considered.
- (iv) Irrelevant matters should not be taken into account.
- (v) A person who makes an allegation cannot be involved in determining it.
- (vi) Designated persons charged with handling a formal complaint must not pre-judge the matter.
- (vii) In conducting the investigation, full accounts from all parties of the matter must be obtained before the investigating party says, implies or does anything that could be perceived as judging the matter.
- (viii) 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.
- (ix) All parties to the matter must be kept informed throughout the process.
- (x) All parties must have access to information about the range of resolution outcomes available, e.g. whether the case is to be dismissed or what form of disciplinary action is recommended.
- (xi) Outcomes should be consistent and fit the breach of policy that has occurred.

### 5. **Procedures for Handling Informal and Formal Sexual Harassment Complaints**

- 5.1 The procedures for handling informal and formal sexual harassment complaints are detailed in **Appendices I (a), (b) and II (a), (b)** respectively.

### 6. **Publicity and Preventive Measures**

- 6.1 The College's Sexual Harassment Policy and Procedures should be announced to members of the College community and be incorporated in relevant staff and student publications and/or webpages appropriately.
- 6.2 Publicity and education programmes in the form of briefing sessions or workshops should be organized for staff and students to enhance their awareness of the issue. Available resources should also be made known to all staff and students to enable

them to seek appropriate guidance and counselling when in need.

- 6.3 Publicity materials should be distributed to divisions and units for display or circulation. Such materials could be used for training programmes as well as for distribution to new appointees and students during induction or orientation programmes.
- 6.4 Promotional and educational activities should be conducted as an on-going exercise to introduce and reinforce the policy.
- 6.5 Deans/Associate Deans of Faculties and the Senior Management have an important contribution to make in ensuring that the culture of the workplace or learning environment actively discourages sexual harassment.
- 6.6 It is vital that all Deans/Associate Deans of Faculties and the senior management should be familiarized with the College's Sexual Harassment Policy and Procedures and take practical steps in their respective areas to prevent harassment before it starts.
- 6.7 Deans/Associate Deans of Faculties and the senior management have a personal and legal obligation to comply with the Sex Discrimination Ordinance and to 'take all reasonable steps' to prevent sexual harassment from occurring in the area for which they are responsible. Failure to do so may result in the College being vicariously liable for allowing sexual harassment to take place.

*June 2020*

**UOW COLLEGE HONG KONG**

**Procedures for Handling  
Informal Sexual Harassment Complaints**

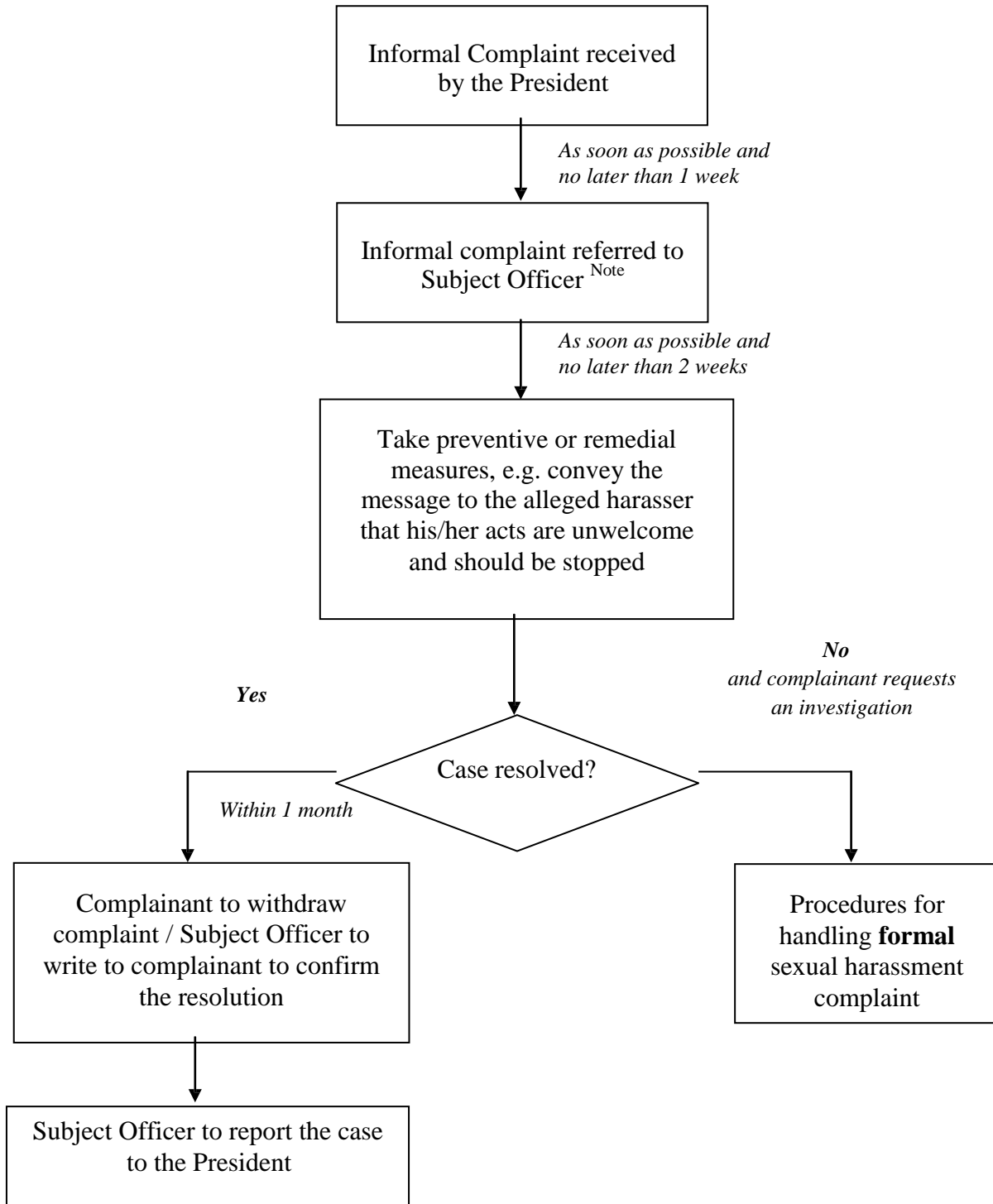
1. A complaint will be handled informally when a complainant prefers that informal actions be taken to stop the harassment at the earliest possible stage instead of requesting an investigation into his/her case. In general, informal action may be suitable for minor and single incidents of sexual harassment but not for more serious and repeated acts of sexual harassment.
2. One of the following designated complaint recipients shall become the *Subject Officer* of the case:
  - (a) the Vice President (Planning) (or nominee) when the alleged harasser is a staff member; or
  - (b) the Vice President (Academic) (or nominee) when the alleged harasser is a student

In appropriate circumstances or at the request of the complainant, the gender of the delegated Subject Officer should be taken into consideration. All complaints of sexual harassment will be received and handled in a confidential manner and any information relating to a complaint of sexual harassment will only be disclosed on a strict need-to-know basis.

3. On receiving an informal complaint of sexual harassment, the *Subject Officer* should take preventive or remedial measures to address the situation as soon as possible and no later than two weeks after receiving a complaint, e.g. to communicate with the alleged harasser on behalf of the complainant, pointing out that his/her behaviour is deemed unwelcome and should be stopped. Such informal action can be particularly useful when the party concerned does not realize that certain behaviour is offensive to the recipient.
4. The complainant shall write to the *Subject Officer* to withdraw the complaint within one month if the complaint can be resolved informally. Should the complainant fail to make a written withdrawal of the complaint within one month, the *Subject Officer* shall write to the complainant to confirm the resolution. A flow chart showing the process is at the **Appendix I (b)**.
5. On conclusion of the case, the *Subject Officer* shall report to the *President* in writing, giving a brief account of the complaint and measures taken to resolve the complaint. The College Office shall maintain records of complaints or cases handled for statistical purposes.
6. If the complainant requests an investigation into his/her allegation, the complaint should be dealt with in a formal manner according to the procedures laid down in **Appendix II (a)**.



**Flow Chart on Handling Informal Sexual Harassment Complaints**



Note

The Subject Officer will be

- the Vice President (Planning) (or nominee) when the alleged harasser is a staff member; or
- the Vice President (Academic) (or nominee) when the alleged harasser is a student; or

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**Procedures for Handling  
Formal Sexual Harassment Complaints**

1. On receiving a sexual harassment complaint, the President shall refer the case within one week to one of the following designated complaint recipients, who shall become the *Subject Officer* of the case:
  - (a) the Vice President (Planning) (or nominee) when the alleged harasser is a staff member; or
  - (b) the Vice President (Academic) (or nominee) when the alleged harasser is a student

In appropriate circumstances or at the request of the complainant, the gender of the delegated Subject Officer should be taken into consideration.

2. 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.
3. 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 should be suspended once referral has been made to the Police and the *Subject Officer* should inform the President immediately.
4. The *Subject Officer* should maintain case files and records of the complaints received to facilitate the monitoring of progress in processing the complaints. All such files and records should be accorded confidential status and passed to the President on completion of the procedures for retention.
5. The *Subject Officer* shall form an *Investigation Panel (Panel)* to carry out investigations. The Panel shall comprise the Subject Officer or his or her nominee as the Chairperson and at least two members as appointed by the President. 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 a Panel shall be from the same division/unit as the complainant/alleged harasser or have any direct working or educational relationship with the complainant/alleged harasser.
6. 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. 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 as correct by the complainant.

(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 as correct by the alleged harasser.

(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 person<sup>5</sup>, who is a member (i.e. staff or student) of the College, throughout the proceedings.
- 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 **Subject Officer**.
- The Secretary of the Investigation Panel shall maintain a record of proceedings as the Chairperson considers appropriate.

(d) *Interviewing witnesses*

All interviews should be recorded in writing and signed and confirmed as correct by each witness.

(e) *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. The **Investigation Panel** will analyse the information and ascertain the facts of the case.
- The level of evidence required will be based on the severity of the complaint and any decision taken should be based on the balance of probabilities.
- In determining whether certain conduct constitutes sexual harassment, the

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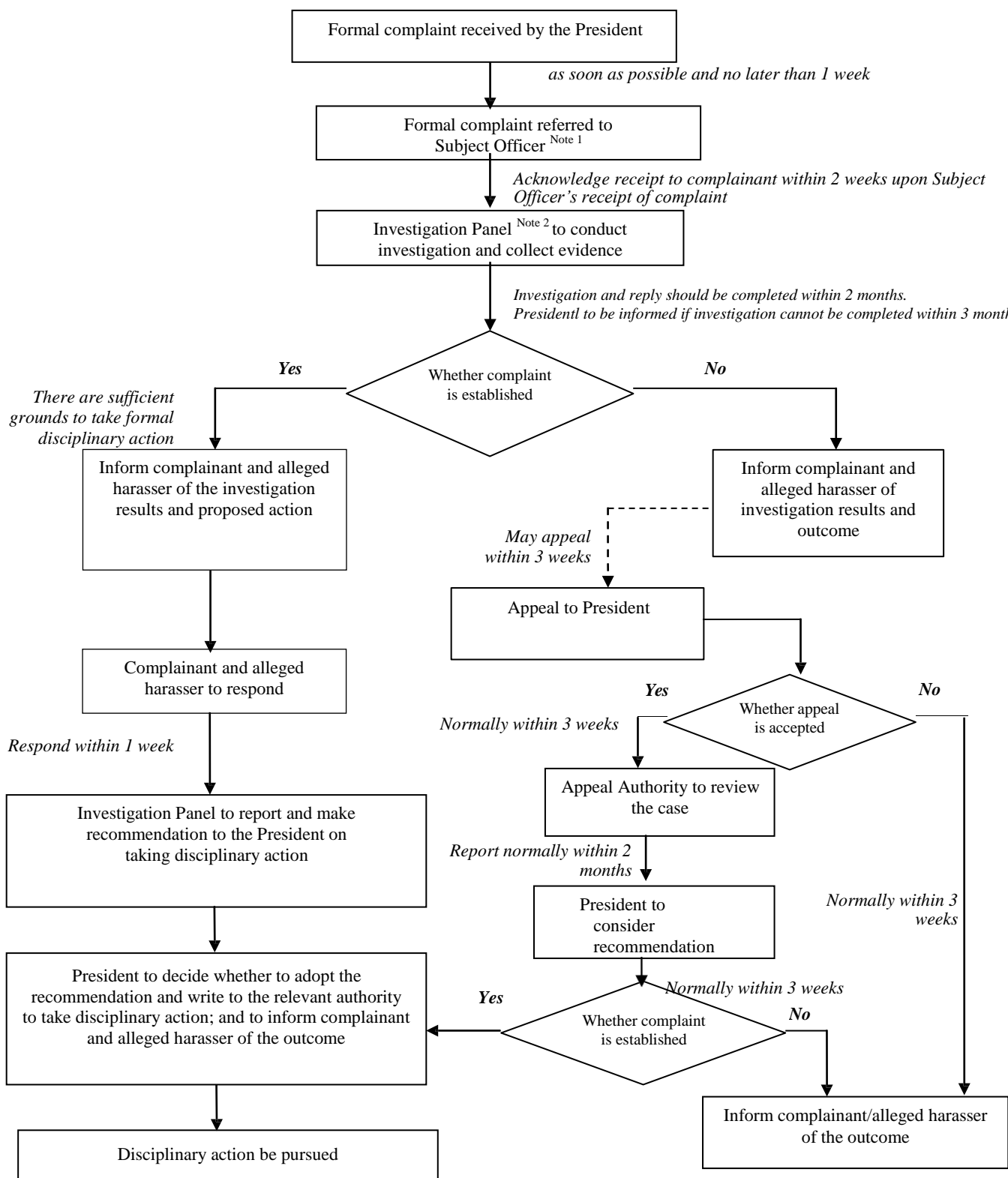
<sup>5</sup> The accompanying person is to provide advice and moral support to the staff/student member concerned. He/she shall have no right to address the Investigation Panel. Notes-taking for personal use may be allowed in appropriate circumstances as determined by the Investigation Panel.

entire record and the totality of the circumstances shall be considered.

7. The investigation of a complaint by the ***Investigation Panel*** shall normally be completed and a reply issued to the complainant within two months after receipt of the complaint. If an investigation cannot be completed within two months, the ***Investigation Panel*** will send an interim reply to the complainant and the alleged harasser, informing them of the progress of the investigation. Any investigation which cannot be completed within three months should be drawn to the attention of the President.
8. 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 President. Internal investigation may resume upon conclusion of the external proceedings.
9. It is the responsibility of the ***Investigation Panel*** to obtain and scrutinize all relevant information concerning the case to see whether an act of sexual harassment might have been committed. Where appropriate, the ***Investigation Panel*** should include in the report to the President a recommendation on whether consideration should be given to instituting disciplinary action against the staff/student member concerned.
10. 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 the complainant does not desire the investigation be conducted or continued. The complainant and the alleged harasser should be advised of the reasons for that decision.
11. The ***Investigation Panel*** shall, upon the conclusion of the investigations and thereafter as soon as practicable, determine and conclude whether the complaint is established.
12. Both the complainant and the alleged harasser should be informed whether the complaint has been established and the proposed action to be taken. If the complaint is not established, the reasons and the outcome of the investigation should be given to both the complainant and the alleged harasser.
13. If the complaint is established, both the complainant and the alleged harasser should be given a period of one week to respond before the ***Investigation Panel*** reports the findings to the President. In the event that the complaint has been established, the ***Investigation Panel*** shall recommend to the President that disciplinary action be pursued.
14. Upon receipt of the report and recommendation of the ***Investigation Panel***, the President shall decide, normally within three weeks, whether to adopt the recommendation to take disciplinary action against the harasser. If the President should decide to recommend disciplinary action against the harasser, he/she shall write to the relevant authorities, providing the full report and recommendations, to take disciplinary action as appropriate.
15. Both the complainant and the alleged harasser should be informed whether disciplinary action will be taken.

16. If the complaint is not established and the complainant wants to appeal against such decision, the appeal should be submitted to the President in writing within three weeks after receiving the notification with full and complete details of the ground for the appeal. The President shall determine normally within three weeks whether to accept the appeal based on 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.
17. Should the President decide to accept the appeal, he/she shall appoint an ***Appeal Authority*** (comprising one or more person(s)) to review the appeal. The ***Appeal Authority*** shall review the case and make recommendation to the President as soon as practicable and normally within two months from the date the ***Appeal Authority*** is appointed.
18. The President shall convey the decision to the appellant normally within three weeks after receiving the recommendation. If the complaint is not established, the decision of the President is final. In the event that the complaint is established and the President decides to adopt the recommendation to take disciplinary action against the harasser, he/she shall write to the relevant authorities, providing the full report and recommendations, to take disciplinary action as appropriate.
19. If at the conclusion of an investigation or disciplinary proceedings, there is clear evidence to show that a complaint has been made in bad faith, disciplinary action may be taken against the staff/student member who made the malicious complaint.
20. 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.
21. A flow chart showing the process is presented at the **Appendix II (b)**.

**Flow Chart on Handling Formal Sexual Harassment Complaints**



**Note**

1. The Subject Officer will be the Vice President (Planning) (or nominee) when the alleged harasser is a staff member; or the Vice President (Academic) (or nominee) when the alleged harasser is a student.
2. The Investigation Panel shall comprise the Subject Officer as Chairperson and at least 2 more as appointed by the President. The Subject Officer shall nominate a person to be the Secretary of the Investigation Panel.