

**Policy on Sexual Misconduct:
Sexual Offences and Sexual Harassment**

This policy once consulted upon and approved, will repeal and replace the current Sexual Offences policy and the Sexual Harassment policy.

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The University of Cape Town

Sexual Misconduct: Sexual Offences and Sexual Harassment Policy

In accordance with the DHET Policy Framework to address Gender Based Violence in the Post-School Education and Training System, the United Nations Women Guidelines on and in acknowledgement of the provisions of the Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace (General Notice 1357), the Employment Equity Act 55 of 1998, the Labour Relations Act 66 of 1995, and other relevant labour legislation, as amended.



CONTENTS

1	PREAMBLE.....	4
2	SCOPE AND OBJECTIVES	4
3	OBJECTIVES	6
4	DEFINITIONS	6
6	COMMUNICATION	16
7	DISCIPLINARY PROCEDURES	16
8	PROTECTIVE MEASURES FOR STUDENT OR STAFF COMPLAINANTS.....	18
9	INVESTIGATIVE PROCEDURES.....	19
10	INFORMAL AND FORMAL PROCEDURES.....	20
11	FORMAL PROCEDURES	21
12	SANCTION	23
13	APPEAL.....	23
14	MONITORING AND EVALUATION	23

1 PREAMBLE

The University is committed to creating and maintaining an institutional environment in which the dignity of its employees, students, job applicants, clients, visitors, service providers, suppliers and others having dealings with the institution are respected; and where all may pursue their studies, careers, duties and activities free from any form of harassment, including Sexual Harassment and/or Sexual Offences (as defined in Section 3 of this policy). The purpose of this policy is to encourage and promote the development of an institutional climate and culture that is free of all forms of sexual offences and sexual harassment, and where everyone respects one another's integrity and dignity, privacy, and right to equity in the institutional environment. The University recognises that claims of a complainant may also be based on the violation of constitutional rights to equality, dignity, privacy and bodily integrity. Such claims may also be pursued through existing avenues provided by the common law and legislation. All complaints of sexual offences and/or sexual harassment shall be taken seriously and treated with respect and in confidence, and all parties involved will be afforded the benefits of due process and fairness. An appropriate response to unacceptable behaviour and related actions will remain a leadership priority.

2 SCOPE AND OBJECTIVES

2.1 This policy applies to all employees and students of the University of Cape Town and is the sole policy and procedure applicable to acts of sexual misconduct at UCT. Other policies which references sexual misconduct will be updated to direct the reader to this policy. Policies that may refer to Sexual Misconduct are as follows:

- a) Disciplinary Policy for Academic Staff
- b) Disciplinary Policy for PASS Staff
- c) The General Rules and Policies Handbook 3 for students.
- d) Discrimination Policy

2.2 This policy is designed to ensure that the University has preventative and remedial procedures in place in response to allegations of Sexual Misconduct. The purpose of this policy is to contribute to a culture of inclusivity and respect at the University in a manner that is fair to students and staff.

2.3 The University is required to adhere to obligations which includes a reasonable level of Duty of Care to all its employees and students in respect of reasonably foreseeable circumstances. A primary responsibility of the University is to ensure the safety of staff, students and visitors to the campus. When assessing the matter especially with regards to the safety of people, the University may require an accused to be relocated, request that they work from home, adjust their duties or reporting lines which may in the case of the accused being an employee, impact the University operations, while the matter is dealt with.

2.4 Institutional Scope

2.4.1 The policy will apply to all members of the University Community, including but not limited to:

- a) the University's employees
 - b) the University's students
 - c) individuals not employed by the University that undertake official duties for the University
- 2.4.2 Any Third Party Service Providers providing services on the campus of the University will familiarise themselves with this Sexual Misconduct Policy and the University's no tolerance approach to Sexual Misconduct. The University shall further ensure that all contracts between the University/staff members and third parties for the supply by the third party of services on campus will include adherence to this policy by contractors.
- 2.4.3. The scope of this policy extends to all University Community premises and includes but is not limited to the University:
- a) campuses
 - b) managed employee accommodation
 - c) managed student accommodation
 - d) sporting and recreational clubs and facilities to the extent that they fall within the University Community
 - e) UCT-managed digital environments
 - f) activities and situations related to University business that are not conducted on University premises, including but not limited to:
 - g) field trips
 - h) conferences
 - i) student camps
 - j) inter-University events
 - k) parties and other social functions
- 2.5. **Sexual Misconduct external to the University**
- 2.5.1 If a member of the University community whilst engaged in official University related duties, experiences a Sexual Misconduct on premises outside of the University Community, the University will liaise with the responsible authority to ensure proper procedures will be followed and will continue to provide support services to the complainant.
- 2.5.2 If a member of the University community is subjected to Sexual Misconduct on a digital environment managed by the University they will fall within the scope of this policy.
- 2.5.3. If a traceable Sexual Misconduct is conducted on a digital environment not managed by the University, the University will exercise a discretion whether it will progress with an investigation where a respondent is an employee or student. Factors to consider would be the ability to access evidence and whether the conduct impacts on individual's safety within the University community.
- 2.5.4. If Sexual Misconduct is conducted in an environment not managed by the University, the University will exercise its discretion as to whether it will progress with an investigation where a respondent is an employee or student. Factors to consider would be the ability to access evidence and whether the conduct impacts on individual's safety within the University community.

3 OBJECTIVES

- 3.1 The focus of the Policy on Sexual Misconduct is on the prevention and response to reports of sexual offences and sexual harassment in the University. The University recognises the intersectional natures of sexual misconduct and should therefore be read in conjunction with the UCT Inclusivity Policy for Sexual Orientation; the Racial Harassment and Racial Discrimination Policy, the Draft Bullying Policy and the Mediation Policy in addition to the constitutional protections against unfair discrimination and of specific legislation governing equality and labour practice.
- 3.2 This policy aims at ensuring that the University complies with the legislative principles in respect of Sexual Misconduct by assisting in the elimination of sexual harassment and sexual offences by providing appropriate procedures to deal with sexual misconduct and to prevent its recurrence.
- 3.3 This policy provides a framework to enable a fair process regarding the implementation, structures, mechanisms and processes for the University's proactive management of, and response to Sexual Misconduct at the University. In the event of other conflicting University policies or regulations to the management of Sexual Misconduct on campus, this policy will override all other, and receive preference to all issues pertaining to the management of Sexual Misconduct at the University.
- 3.4 This policy includes a comprehensive training and education programme aimed at raising awareness to eliminate sexual misconduct within the University community.

4 DEFINITIONS

- 4.1 '**Advisor**' means a staff member of the University that has been trained and appointed by the Office of Inclusivity & Change (OIC) for the role of providing confidential advice and assistance, including first-responder support and supporting complainants under this policy.
- 4.2 '**Bullying**' means unwanted conduct in the workplace, which is persistent or a single incident which is serious and insults, demeans, humiliates, lowers self-esteem or self - confidence or creates a hostile or intimidating environment or is calculated to induce by submission or by actual or threatened adverse consequences, which includes the abuse of coercive power by either an individual or a group of individuals in the internal or external workplace or by an external client
- 4.3 '**CCMA**' means the Commission for Conciliation, Mediation and Arbitration, established by section 112 of the Labour Relations Act.
- 4.4 '**Complainant**' means a person who has lodged a written or verbal complaint under this policy, with the OIC, either in person, or by means of the online reporting system, against a person or persons who have allegedly committed an

act of sexual harassment, or an act that may reasonably have been believed to fit the prescribed definition.

- 4.5 **‘Consent’** is voluntary with clear permission by word or action, to engage in mutually agreed upon sexual activity. Individuals may experience the same interaction in different ways and each party is responsible to ensure that the other has consented before engaging in the activity. For consent to be valid there must be a clear expression in words or actions that the other individual agreed to that specific sexual conduct. A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. A person can withdraw consent at any time during sexual activity. A minor below the age of consent according to state law cannot consent to sexual activity.
- 4.6 **‘Confidentiality’** means any information disclosed by either party to another party, either directly or indirectly, in writing or verbally, which is designated as ‘Confidential’. The information disclosed is securely stored with only an approved list of persons having access to this information. The University can only be responsible for keeping information private and confidential which is within its control.
- 4.6.1 The University acknowledges and supports the reference to confidentiality in Section 11 of the Draft Code for Good Practice (2020, as amended), and will ensure that all allegations of Sexual Offences and Sexual Harassment are dealt with in a manner that is serious, expeditious, sensitive and confidential. The University will make all efforts reasonably possible to maintain and respect confidentiality for information within its control during all stages of handling of complaints and related procedures.
- 4.6.2 It may, however, in certain circumstances, be difficult or not possible, to maintain complete confidentiality. These instances may include the following where:
- a) an advisor or duly delegated person working with either the complainant or respondent is compelled by an order of the court to disclose information, or where
 - b) communal interests outweigh individual ones. In such an instance only, the authority to release such confidential information, will occur only after the Director of the OIC or duly delegated person of the OIC or the Evidence Leader have made reasonable efforts to consult with the affected parties such as the complainant and/or respondent
 - c) the case resides outside of the jurisdiction of the University. External partners in civil society organisations and/or the criminal justice system who would be of assistance to the complainant; then in such instances, reasonable efforts will be made to consult with the affected parties such as the complainant and with the authorization of the Director or the duly delegated person of the OIC.
- 4.6.3 All parties will endeavour to ensure confidentiality and only the following persons may be present at a Disciplinary Hearing or Student Tribunal, where (a) complaint(s) relating to sexual offence and/or a sexual harassment is heard:

- a. duly authorised members of management;
 - b. the complainant;
 - c. the respondent;
 - d. a support person must be allocated to support the complainant;
 - e. representatives of complainant;
 - f. representatives of respondents whose written submission has been successfully approved by the proctor;
 - g. witnesses;
 - h. interpreters.
- 4.7 **'Disciplinary Procedure for Academic and PASS staff'** means the disciplinary procedure that applies to all University staff.
- 4.8 **'Employee'** means an employee of the University or a person who has agreed to be bound by the rules and policies of the University relating to staff.
- 4.9 **'Evidence Leader'** means the suitably/appropriately legally qualified person with suitable experience assigned to prepare and present the University's case in formal internal disciplinary proceedings, who may also be the person assigned to investigate the case.
- 4.10 **'Labour Court'** means the South African Labour Court.
- 4.11 **'Manager'** means any employee of the University with managerial and supervisory responsibilities. This includes academic staff responsible for supervisory duties.
- 4.12 **'Misconduct'** means conduct as defined in the Code of Conduct for employees, the Employee Disciplinary Procedure and the General Rules and Policies Handbook 3 for students.
- 4.13 **'OIC'** means the Office for Inclusivity & Change as the first office of report, management and monitoring of all cases pertaining to gender-based violence;
- 4.14 **'Psychological Risks'** refers to the prejudicial effects sexual misconduct has on the psychological integrity and well-being of the complainant. Psychological Risks also refers to the psychosocial hazards and risks related to the organisational and structural features of the organisation.
- 4.15 **'Reporting Person'** means a person reporting on behalf of the complainant where the complainant is reluctant or unable to lodge the complaint in person.
- 4.16 **'Respondent'** means a person against whom a written or verbal complaint has been lodged under this policy, with the OIC, either in person, or by means of the OIC online reporting system, and alleged to have committed an act of sexual harassment
- 4.17 **'Rules on conduct for students'** means the rules as stipulated in the General Rules and Policies Handbook 3 as amended by the Council from time to time.
- 4.18 **'Same-sex Harassment'** means harassment where the respondent and the complainant are of the same sex or sexual orientation;



- 4.19 **‘SAPS’** means South African Police Service.
- 4.20 **‘Sexual Offences’** means an unlawful and intentional act of sexual contact with another person without that person’s consent; or where the person was not able to consent to, through the use of physical force, intimidation or coercion, including but not limited to:
- a) aggravated sexual assault (sexual assault with a weapon);
 - b) attempted rape;
 - c) indecent assault;
 - d) penetration by objects and forced sexual activity that did not end in penetration;
 - e) rape (sexual penetration without consent);
 - f) gender-based violence of a sexual nature;
 - g) sexual violence;
 - h) Other sexual offences as listed in Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.
- 4.20.1 Sexual Offences may be perpetrated or experienced by people of any sexual orientation or gender identity.
- 4.20.2 Sexual Offences may be a single incident or a persistent pattern of unwelcome behaviour.
- 4.21 **‘Sexual Abuse’** Sexual incidents that occurs before the age of consent, which is 16 years of age is considered this Sexual Abuse and will be reported to the requisite authorities.
- 4.22 **‘Sexual Harassment’** means unwelcome conduct of a sexual nature that violates the rights of a person and constitutes a barrier to equity in the institution, taking into account, but not limited, to the following factors:
- a) whether the harassment is on the prohibited grounds of sex and/or gender and/or sexual orientation;
 - b) the impact of the sexual conduct on the complainant;
 - c) whether the sexual conduct was unwelcome;
 - d) the nature and extent of the sexual conduct.
- 4.22.1 **‘Unwelcome sexual conduct’** includes behaviour that is perceived by the complainant as demeaning, compromising, embarrassing, threatening and/or offensive:
- a) the assessment of what is unwelcome should be informed by context, including culture and language;
 - b) previous consensual participation in sexual conduct does not mean that the conduct continues to be welcome;
 - c) when a complainant has difficulty indicating to the alleged perpetrator that the conduct is unwelcome, the complainant may seek the assistance and intervention of another person in order to make it clear that the conduct is unwelcome;
 - d) some forms of sexual harassment are such that the alleged perpetrator should have known that the behaviour would be unwelcome;



- e) conduct which causes harm or inspires reasonable belief that harm may be caused by the complainant by unreasonably following, watching or accosting the complainant in person or electronically;
 - f) intimidation, where a person is threatened with sexual assault and it inspires a reasonable belief of imminent harm.
- 4.22.2 **Unwelcome sexual conduct** includes physical, verbal and non-verbal conduct: such conduct may be direct or indirect and may include technological devices, images and/or publications on social media. A single incident of unwelcome sexual conduct can constitute sexual harassment.
- 4.22.3 **Unwelcome physical conduct** ranges from touching to sexual assault and rape.
- 4.22.4 **Unwelcome verbal conduct** includes innuendos, suggestions or hints of a sexual nature, sexual advances, sexual threats, comments with sexual overtones, sex-related jokes or insults, graphic comments about a person's body/appearance/clothing, inappropriate enquiries about a person's sex life, whistling of a sexual nature and the sending by electronic means or otherwise of sexually explicit text.
- 4.22.5 **Unwelcome non-verbal conduct** includes gestures, indecent exposure and the display or sending by electronic or other means sexually explicit pictures or objects.
- 4.22.6 Sexual harassment may take the form of **special victimization**, **quid pro quo harassment** and the creation of a hostile environment:
- a) **Special victimization** occurs when a person is victimized or intimidated for failing to submit to sexual advances;
 - b) **Quid pro quo harassment** occurs when an alleged perpetrator:
 - i. influences or attempts to influence a person's employment circumstances by coercing or attempting to coerce that person to engage in sexual activities;
 - ii. influences or attempts to influence the admission of a student to the University or to University residences by coercing or attempting to coerce that person to engage in sexual activities; and also;
 - iii. influences or attempts to influence the access of a student to training, organizational or funding opportunities, or interferes in grading or evaluation, by coercing or attempting to coerce a student to engage in sexual activities.
 - c) creation of a hostile environment occurs where the purpose or effect is to interfere with another's performance at work or in study.
- 4.22.7 In addition to this, the following broad categories will be used in determining the nature of the conduct that constitutes Sexual Harassment:



- a) **Sexual coercion**, which entails sexual advances, and makes the conditions of employment (or education, for students) contingent upon sexual cooperation.
 - b) **Unwanted sexual attention** which also entails sexual advances, but it does not add professional rewards or threats to force compliance. This category includes expressions of romantic or sexual interest that are unwelcome, unreciprocated, and offensive to the target; examples include unwanted touching, hugging, stroking, and persistent requests for dates or sexual behaviour despite discouragement and can include assault.
 - c) **Gender harassment** refers to a broad range of verbal and non-verbal behaviours not aimed at sexual co-operation but that convey insulting, hostile, and degrading attitudes about a person's chosen gendered identity. Gender harassment is further defined as three types: sexism; hostility and crude harassment. Examples of the sexism and/or hostility experienced by women and marginalised populations who are gender diverse. Gender harassment takes the form of demeaning jokes or comments or behaviour that seeks to diminish a person's position based on their gender. The crude harassment form of gender harassment is defined as the use of sexually crude terms that denigrate people based on their gender (Fitzgerald, Gelfand and Drasgrow, 1995).
 - d) **Sexual bullying** refers to behaviour, physical or non-physical, where sexuality or gender is used as a weapon against another. Sexual bullying is any behaviour which degrades someone, singles someone out by the use of sexual language, gestures or violence, and victimising someone for their appearance.
- 4.23. **'Sexual Misconduct'** in the context of this policy is the broader term which refers to Sexual Harassment, Sexual Violence and Sexual Offences
- 4.24 **'Special Tribunal for Sexual Misconduct'** refers to the independent panel of suitably qualified persons who preside over the hearing of the disciplinary matter in the Formal Process.
- 4.25 **'Student'** means a registered student of the University or a person enrolled as a student or post doctoral student and with student privileges who has agreed to be bound by the rules and policies of the University relating to students. Where a student has been deregistered or granted leave of absence special provision may be granted by the registrar in consultation with the Director of the OIC to grant access to the services rendered by the OIC.
- 4.26 **'University'** means the University of Cape Town.

5. IMPLEMENTATION

The University acknowledges that the existence, development, and promotion of leadership on campus will be pivotal in all strategies pertaining to an effective response to Sexual Misconduct. As such, the following implementation framework will be pursued:

5.1 Roles

The following role-players shall be responsible and/or accountable for the implementation of this policy:

5.1.1 Leadership and Management

The Vice-Chancellor and the University Leadership team, as the most senior leadership, are accountable for, and shall actively promote the implementation of this policy. Furthermore, all line-managers are in leadership positions, and as such have a responsibility to promote the improved understanding, response, management and prevention of Sexual Offences and Sexual Harassment in the University.

5.1.1.1 The Vice-Chancellor and Leadership team are therefore specifically responsible for:

- a) regular communication with the campus community about the existence, management and prevention of Sexual Offences and Sexual Harassment as a major threat in the University;
- b) regular briefings with the University's executive leadership on the policy and various structures tasked with management and monitoring of Sexual Offences and Sexual Harassment.

5.1.1.2 The Leadership team, HR, HOD's and/or all managers of staff shall furthermore be responsible for:

- a) highlighting Sexual Offence and Sexual Harassment as an integral part of all leadership development program or initiatives that are aimed at promoting leadership skills;
- b) creating, maintaining and managing performance indicators as part of all people managers' performance contracts to include the management and handling of all Sexual Offence and Sexual Harassment reports and preventative measures;
- c) taking all reasonable steps to educate themselves on every aspect of the Sexual Offences and Sexual Harassment policy and the impact of Sexual Offence and Sexual Harassment in the University and creating and maintaining an environment that is conscious of the existence, threat and impact of Sexual Offences and Sexual Harassment;
- d) making all efforts reasonably possible to maintain existing measures that will effectively combat and reduce Sexual Offences and Sexual Harassment in the University;
- e) exercising leadership by knowing and understanding the terms of this policy, and by assuming responsibility for implementing the processes within this policy;



- f) attending training and educational sessions on this policy offered and/or coordinated by the OIC and other University stakeholders;
- g) communicating the policy to all employees and students in their respective areas of responsibility;
- h) ensuring that all new staff and students have been informed about the policy and given the opportunity to discuss its implications;
- i) connecting with the Organisational Development, Employee Relations departments and the OIC in order to manage the work environment;
- j) taking appropriate action when instances of sexual offence and/or sexual harassment occur, and act in accordance with the reporting and disciplinary processes laid down in this policy. In this regard managers are required to:
 - i. treat all complaints as confidential and all concerned with dignity and respect;
 - ii. refer all complaints to the OIC;
 - iii. when conduct in breach of this policy is observed but no complaint is lodged, report the matter to the OIC;
 - iv. when appropriate, take steps in consultation with the OIC to prevent sexual offences and/or sexual harassment from occurring.

5.1.2 The OIC

The OIC shall provide a comprehensive sexual offence and/or sexual harassment response for the University. This will include the provision of supportive and protective measures to the complainant, whether disciplinary proceedings are instituted or not. It will also include a support structure that will provide for respondent management, where rights, procedures and representation are explained, and respondent programmes are provided for.

5.1.2.1 The OIC shall be responsible for:

- a) complainant and respondent management
- b) training and providing general support and guidance to the Advisors
- c) monitoring cases
- d) training and awareness-raising:
 - i. The University commits to training and awareness-raising on gender-based violence.
 - ii. The OIC shall take primary responsibility for the design and content management, coordinating, and implementing where necessary, training and awareness-raising on sexual and gender-based violence and related matters, and specifically where it has relevance to any aspect referred to within this policy.
 - iii. Training for leadership on the Sexual Offences and Sexual Harassment policy will be an ongoing endeavour shall be provided on an ongoing basis as scheduled via the Staff Learning Centre
 - iv. The objective of the training shall be to provide initial exposure, knowledge, information about the policy and

the challenges relating to education around Sexual Offences and Sexual Harassment in order to impact the necessary mindset and behaviour change.

5.1.2.2 Supportive measures

There is a clear separation in the OIC structure provided for support in dealing with complainants and respondents. They are dealt with in two streams: **Complainant support** and **Respondent management**:

a) **Supportive measures for complainants:**

Survivor Support for complainants shall provide counselling, advice and assistance to complainants in sexual offences and/or sexual harassment matters. Supportive measures to complainants may include, but are not limited to:

- i. the right to remain anonymous;
- ii. the right to report;
- iii. the right to lodge a complaint;
- iv. the right to legal representation;
- v. crisis counselling, followed by referral for psychological services, emergency medical services, paralegal advice and other relevant services;
- vi. supportive measures to mitigate the impact of sexual harassment or the reporting thereof upon the complainant.

b) **Support measures for respondents:**

A respondent may approach or be approached by the OIC for advice and assistance. Such approach may happen at any stage following an allegation of conduct that has become the focus of this policy. In such instances the OIC shall provide the following to the respondent, if so required:

- i. an opportunity to meet with the duly delegated person from the OIC for respondent management;
- ii. respondent(s) will be advised to obtain representation legal or otherwise;
- iii. the right to any external legal representation is at the discretion of the proctor based written submissions by the respondent which must be compliant with the **Disciplinary Process** rules contained in Handbook 3: General Rules and Policies;
- iv. advice on referral psychological counselling services;
- v. advice on the nature of and differences between formal and informal procedure;
- vi. advice on the possibility that the University may choose to follow the disciplinary rules even if the complainant does not wish to do so, or in the event of an unsuccessful engagement with the informal procedure;
- vii. an explanation with regard to the protective measures available to the complainant;
- viii. information on the availability of respondent management;
- ix. programmes including but not limited to programmes of an educational nature;
- x. if appropriate suggesting a programme where the respondent can learn to change their behaviour;

- xi. the respondent can bring one support person to the hearing, unconnected to the case who cannot interact with the complainant or witnesses.

5.1.3 Staff and Students

All staff and students are accountable for their own conduct and responsible for adhering to, shaping and contributing towards a culture that is intolerant of behaviour that contravenes this policy.

5.1.4 Evidence Leader

Evidence Leader shall oversee, monitor and manage all aspects of the formal process pertaining to reports and/or incidences of Sexual Harassment. This includes the following:

- a. managing and monitoring the process of investigation into report(s) of Sexual Offences and Sexual Harassment and/or of violation of this Policy;
- b. preparing and presenting all sexual offences and/or sexual harassment cases for the University, at all disciplinary levels;
- c. pre-trial preparation of complaints;
- d. overseeing and initiating training on investigations and disciplinary processes of cases where necessary.

5.1.5 Advisors

The authorised and mandated Advisors appointed by the OIC shall be responsible for the following:

- a. to receive complaints of sexual offences and/or sexual harassment and/or sexual offences from the OIC;
- b. in consultation with the OIC, assist, support, consult and liaise with complainants, and those initiating complaints into sexual offences and/or sexual harassment;
- c. to provide information (in the form of reports and/or records) to the OIC on all referred cases via the online case management system, and attach any correspondence relating to this matter, if and when needed;
- d. to act in the best interests of a complainant in providing support and assistance;
- e. to liaise with the Evidence Leader in relation to responsibilities that may arise from disciplinary hearings;
- f. to support the educational work of the OIC where practical and reasonable;
- g. to provide tribunal support to the complainant when requested;
- h. to provide tribunal support to the respondent when requested.

5.1.6 Evaluation Panel

5.1.6.1 Following a report or incidence of sexual harassment/sexual offences, the Evidence Leader will have the discretion, in consultation with the Director of the OIC and Human Resources/Employment Relations where one or both of the parties are members of staff, to appoint an Evaluation Panel consisting of nominated staff members, including a Human Resources/Employment Relations representative, or a student leader when appropriate .

- 5.1.6.2 The role of the Evaluation Panel will be to make a recommendation to assist with informed decision-making that will be in the best interests of the complainant as well as the University community.
- 5.1.6.3 The Evaluation Panel in appropriate instances may undertake a preliminary investigation, discussed below, in order to decide if a complaint should or should not be progressed formally.

5.1.7 Third Parties

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

6 COMMUNICATION

- 6.1** The University shall take all reasonable steps to communicate this policy to all employees and students on a regular basis and to raise awareness about the need to prevent sexual offences and sexual harassment.
- 6.2** The University shall make this policy available on its Web pages and provide regular and current information on its implementation via its Web pages.
- 6.3** The Vice-Chancellor or a duly delegated nominee shall ensure that 6.1 and 6.2 occur and provide the leadership and guidance necessary to all members of the Leadership Team so that ongoing communication of this policy remains a key responsibility for all University leadership positions. One consolidated annual report of sexual misconduct which will cover Sexual offences and Sexual harassment shall be made available to the Executive and Council and will be communicated to the campus community by the Communications and Marketing Department (CMD), at the discretion of the DVC Transformation and in consultation with the Director of the OIC, or a duly delegated person of the OIC.

7 DISCIPLINARY PROCEDURES

The following process guideline outlines the steps to be followed in the event of the occurrence of a Sexual harassment incident or a Sexual offence between students and/or staff. The disciplinary procedures include responses to complainants;

responses to respondents; protective measures; informal procedures and formal procedures.

7.1 Response to a Complaint

- 7.1.1 Complaints of sexual harassment or sexual offence must be brought to the attention of the OIC as soon as is reasonably possible.
- 7.1.2 If a complaint is brought to the attention of a manager, the manager shall notify the OIC immediately, as a reporting person.
- 7.1.3 Sexual harassment or a sexual offence may be brought to the attention of the OIC by the complainant or any other person aware of the sexual harassment or sexual. The complainant is however encouraged to inform the OIC in person.
- 7.1.4 A request for anonymity from the complainant shall be adhered to by the reporting person.
- 7.1.5 Any complaint of sexual harassment or a sexual offence will be recorded in writing by a duly delegated person appointed by the OIC.
- 7.1.6 The OIC will also assign an available Advisor to the case as and when required.
- 7.1.7 The steps to be taken by the duly delegated person of the OIC, on receipt of a complaint should include, but are not limited to, the following:
 - a. advise the complainant that there are formal and informal procedures which can be followed for sexual harassment and sexual offences;
 - b. advise the complainant that in instances of sexual offences the University only provides formal procedures as detailed in Section 8;
 - c. explain the formal and informal procedures to the complainant where a sexual harassment incident has occurred;
 - d. advise the complainant that in instances for sexual harassment there is a choice regarding which procedure should be followed by the University;
 - e. advise the complainant that the assisting Advisor may not be called as a witness during any formal procedure;
 - f. advise the complainant that they are not bound by the outcome of the informal procedure, and will retain the right to proceed by the formal process;
 - g. advise the complainant that the matter will be dealt with confidentially;
 - h. if applicable, advise the complainant that no negative inference on credibility will follow as a result of late reporting;
 - i. provide the complainant with information about counselling available as well as information on how to access independent counselling services;
 - j. advise the complainant of the right to refer any matter to the South African Police Service (SAPS) and obtain further legal advice and/or legal representation where the respondent falls outside the jurisdiction of the University;

- k. The external legal advice and representation would be applicable for processes that are only outside the jurisdiction of the University.
- 7.1.8 With the consent of the complainant, preparatory interviews conducted by the Special Tribunal for Sexual Misconduct, with the respondent may be held in the absence of the complainant and with any other person or persons that may provide information to assist with the informal and formal process.
- 7.1.9 If a complainant does not wish to pursue the matter, and the complaint is of a serious nature, the Evidence Leader, in consultation with the OIC may convene an Evaluation Panel.

8 PROTECTIVE MEASURES FOR STUDENT OR STAFF COMPLAINANTS

Protective measure may include, but are not limited to:

- a. the right to apply for a no-contact order where appropriate;
- b. change of University student residence when reasonably possible;
- c. temporary amendment to working conditions or environments for staff where needed and where appropriate;
- d. assistance with academic concessions for students where needed and appropriate;
- e. special leave for staff, or leave of absence for students, where required and appropriate;
- f. leave of absence applications for students;
- g. the issuing of a **No-Contact Order** or a **Suspension Notice** to the respondent;
- h. Suspension notice.

8.1 No-Contact orders issued to students (to be read together with the Disciplinary Process/DJP rules contained in Handbook 3: General Rules and Policies)

- a. A No-Contact order is an order to protect a complainant from all forms of gender-based violence, whether or not a formal disciplinary process is instituted or contemplated.
- b. A No-Contact order is not a punitive measure but rather a protective measure for the complainant.
- c. A respondent (Staff or student) has the right to oppose the granting of a no-contact order and may do so within a 72 working hour period.
- d. The terms of a No-Contact order may vary depending on the circumstances of the case and may be amended by the relevant authority either after appeal by the complainant or respondent in consultation with the Evidence Leader and the OIC.
- e. Violation of a No-Contact order constitutes serious misconduct and may be subject to the relevant disciplinary process applicable to staff and students. The breach or violation of the No Contact order

may lead to an application by the Evidence Leader to have the respondent suspended for a period of time from the University.

- f. A No-Contact order for students, is issued by the Senior Proctor or nominee, in terms of the provisions of the rules on Disciplinary Jurisdiction and Procedures (DJP).
- g. A No-Contact order for students is valid for a period as determined under the DJP rules and may be renewed upon application by the complainant to the relevant authority.

8.2 A No-Contact order issued staff

- a. A No-Contact order for staff is issued by the Executive Director: Human Resources/Employment Relations or the Chief Operations Officer or nominee in terms of the University Disciplinary code for staff, after considering the recommendation of the OIC as part of a suspension notice.
- b. A No-Contact order for staff which forms part of the sanction is valid for a period of not more than one hundred (100) days or six (6) months and may be renewed upon application by the complainant to the relevant authority.

8.3 Suspension

- a. A Suspension Notice is a protective measure issued without prejudice to the respondent to protect a complainant from gender based violence whether or not a formal disciplinary process is instituted or contemplated. It further allows the University to investigate and resolve the complaint.
- b. A Suspension Notice is not a punitive measure but rather a protective measure for the complainant or the respondent.
- c. A suspension notice may also contain an instruction to the respondent to refrain from contacting the complainant in person or online.

9 INVESTIGATIVE PROCEDURES

An investigative process may have several phases where appropriate and include:

9.1 Preliminary investigation

The preliminary investigation is conducted by the Evidence Leader

- a. An Evaluation Panel as indicated in section 4.1.6. may in some instances be constituted in order to conduct an initial inquiry in order to determine if an allegation does not meet the required standard of proof. If this is found to be so, no further action will be taken.
- b. Whilst ensuring that principles of procedural fairness are observed care should be taken not to pre-judge either party or to dismiss a matter as trivial.

- c. Where an initial inquiry determines that an allegation is of sufficient substance the complainant will be referred for a formal investigation as per the Student or Employee Disciplinary Code.

9.2 Investigation

The complaint is formally investigated by the Evidence Leader. In the instance where a complainant does not want to pursue a formal process the matter will progress no further. The complainant will be informed about the sensitivity of evidence which may not be available if they chose to pursue the matter at a later date.

- a. All parties to an investigation will be afforded procedural fairness and have the right to have a support individual with them.
- b. The Campus Protection Office will investigate after consultation with the Evidence Leader, or cause to be investigated, an allegation of Sexual Misconduct by a student or employee. An external investigator may be appointed if appropriate.
- c. The Director of the OIC and the Director of Human Resources/Employment Relations will consider and determine the suspension of an employee respondent during an investigation. This will be in keeping with the Disciplinary Code.
- d. The Director of the OIC in consultation with the Evidence Leader will consider if a student respondent should be suspended during an investigation. This will be in keeping with the Disciplinary Code.

10 INFORMAL AND FORMAL PROCEDURES

Affected parties have the right to choose an informal procedure administered by the OIC, in instances of sexual harassment. Informal procedures are not applicable in instances of sexual offences. Formal procedures are available for complainants who report sexual assault and sexual violence. Where one of the parties is a member of staff, a representative from Employment Relations should be involved in the process.

10.1 Informal Procedures

An informal procedure is a process, managed by the OIC, which aims at restoring relations between the complainant and respondent, subject to the consent of all parties.

10.1.1 An informal procedure may or may not finalise the matter and may still be followed by a formal procedure. The complainant and respondent have the right to pursue formal proceedings, regardless of the choice to engage with informal proceedings.

10.1.2 The respondent has the right to refuse participation in informal proceedings and may exercise this right during any stage of the informal process. No negative inference shall be drawn from refusal to consider, participate or withdraw from the informal process.

10.1.3 In an informal procedure only the following information is recorded:

- a) biographical information and incident description of the complainant and respondent
- b) the outcome of the informal procedure.

10.1.4 In the context of a mediation, information is only released with the consent of the participating parties.

10.1.5 Informal proceedings may only commence with the approval OIC Director/delegate in the OIC and requires the written consent of both the complainant and the respondent.

10.1.6 Alternative restorative justice education programmes provided by the OIC, will be a form of Informal Proceedings in instances of sexual harassment. Participation in an informal process requires the written consent of both the complainant and the respondent.

10.1.7 The informal procedures may include:

- a) A discussion between a duly delegated person from the OIC and the respondent without revealing the identity of the complainant (depending on the choice of the complainant). Where the objective is the following:
 - i to provide the respondent an opportunity to apologise if the complainant requests this. The terms conditions and acceptance of such an apology will be facilitated by the duly appointed representative from the OIC
 - ii a request to the respondent to desist from the behaviour that the complainant finds offensive. This may be articulated in a written agreement, signed by the duly delegated OIC representative and the respondent, and will remain confidential
 - iii an invitation to the respondent to engage in the process of alternative restorative justice programmes which may include various forms of education, training and/or a mediation is an informal process as referred to in the Mediation Policy of the University. Engagement with mediation upon receipt of written consent with such a process from the respondent and complainant. Noting that alternative forms of education are only offered in instances of sexual harassment and are not available to respondents where sexual offences or sexual assault has occurred.
- b) An informal procedure must be concluded, where reasonably possible, within fourteen (14) days of the incident being reported to the OIC.
- c) Strict confidentiality regarding the process and those who participate, as well as reporting will be maintained.

11 FORMAL PROCEDURES

Where a complainant (staff or student) decides to proceed with a case formally, the matter will be referred by the OIC to the Evidence Leader of the Special Tribunal for Sexual Misconduct as the applicable disciplinary structure of the University. If a staff member is involved a representative from the Human Resources/Employment Relations Department will be included in the matter. The University may also institute

formal proceedings irrespective of the complainant's wishes not to proceed, or to remain anonymous. For staff who are respondents in a case, should refer to the UCT Disciplinary Policy as well as the Sexual Misconduct: Sexual Offences and Sexual Harassment Policy.

Formal procedures are available for sexual harassment and sexual offences which includes assault and sexual violence complaints as defined.

- 11.1** If the complainant (staff or student) wishes to proceed with a formal procedure, the Evidence Leader will be accordingly informed, and provided with a written statement providing full particulars of the alleged sexual offences or sexual harassment as defined. In these instances:
- a) the OIC will report the matter to the Evidence Leader in terms of Rule DJP1.1 and the matter will be dealt with in terms of the DJP rules;
 - b) where either of the parties is a member of staff, Employee Relations will be informed, and a representative will be appointed;
 - c) the OIC will provide such assistance to the Evidence Leader to present the case to the Tribunal;
 - d) the powers of the Tribunal are hereby extended to permit University Student Disciplinary Tribunal acting in terms of Rule DJP 5 to include in any sanction a no-contact order of such duration as it may decide;
 - e) the Senior Proctor, in consultation with the OIC will ensure that proctors are trained to handle sexual harassment matters and will not assign a case to a proctor who has not been appropriately trained. These Proctors may be internal to UCT or externally appointed Proctors.
- 11.2** The Evidence Leader will prepare and present the case for the University within the applicable University disciplinary structure. The process for staff will be handled by the Employee Relations Office and for students, the Student Tribunal:
- 11.3** The Evidence Leader and the Evaluation Panel shall consider all relevant information, including but not limited to the following:
- a. the risk to other persons in the University;
 - b. the severity of the sexual harassment/sexual offences;
 - c. the history of the respondent having regard to previous cases and complaints of sexual harassment.
- 11.4** If the recommendation of the Evaluation Panel is in favour of pursuing a formal procedure irrespective of the wishes of the complainant, the matter must be referred to the Vice-Chancellor or the Vice-Chancellor's delegate for a final decision.
- 11.5** The Evidence Leader may provide a written recommendation to the Vice-Chancellor which shall include (but not be limited to) the following:
- a. a description of the alleged sexual harassment or sexual offence;
 - b. the complainant's reasons for his/her unwillingness to pursue the matter further or to be called as a witness;
 - c. the recommendation of the Evaluation Panel;
 - d. compelling reasons in support of a formal procedure;
 - e. incapacity of the complainant.

12 SANCTION

Sanctions may include, but are not limited to:

Student:

- a. appropriate campus community service;
- b. rehabilitative/education/restorative programmes;
- c. a period of suspension from the residence and or University;
- d. expulsion from the residence and or the University;
- e. any other appropriate sanction as considered by the tribunal.

Staff:

- a. community service;
- b. rehabilitative programmes;
- c. warning;
- d. dismissal;
- e. any other appropriate sanction as considered by the tribunal.

Respective sanctions will include a consideration of the relevant legislation and institutional policies and procedures as applicable to the status of the respondent whether as student or staff.

13 APPEAL

- 13.1 A student complainant who is unhappy with a decision can appeal the decision as per the process set out in the accompanying procedure.
- 13.2 A student respondent who is unhappy with the decision regarding an allegation of Sexual Misconduct should refer to the appeal process as set out in the accompanying procedure.
- 13.3 Members of staff who are displeased with the outcome can appeal the matter to the CCMA.

14 MONITORING AND EVALUATION

The University recognises the importance of monitoring this **Sexual Misconduct: Sexual Offences and Sexual Harassment** policy and will ensure that it anonymously collects statistics and data as to how it is used and whether it is effective. Monitoring and Evaluation of this policy will be conducted by the Policy Owner. Supervisors, managers and those responsible for dealing with sexual harassment cases will report on compliance with this policy, including the number of incidents, how they were dealt with, and any recommendations made. This will be done on a quarterly basis. As a result of this report, the University will evaluate the effectiveness of this policy and make any changes needed.