

Appendix VIII ~ Policy and Procedures for Dealing with Complaints of Sexual Harassment

1 Scope

- 1.1 The sexual harassment policy applies to all those who work and study at the University of Malta. Any reference in the policy to the University of Malta shall be understood to include the Junior College.

- 1.2 Sexual harassment is a discriminatory assertion of power that has no place within the University of Malta. Sexual harassment is essentially defined as ‘unwelcome sexual conduct’ and is unlawful under *The Equality for Men and Women Act, 2003* (Chapter 456 of the Laws of Malta) and under *The Employment and Industrial Relations Act, 2002* (Chapter 452 of the Laws of Malta). It is unethical and unprofessional and a threat to the integrity of the individual and the institution. Such harassment may exist in one or a series of incidents, and all such matters will be dealt with because they erode the atmosphere of trust that is essential to any institution of higher education.

2 Definition of Sexual Harassment

- 2.1 The University of Malta shall adopt the definition of sexual harassment contained in article 9(1) of the Equality for Men and Women Act, Chapter 456 of the Laws of Malta:

- 2.2 Without prejudice to the provisions of article 29 of the Employment and Industrial Relations Act, it shall be unlawful for any person to sexually harass other persons, that is to say:
 - a. to subject other persons to an act of physical intimacy; or
 - b. to request sexual favours from other persons; or
 - c. to subject other persons to any act or conduct with sexual connotations, including spoken words, gestures or the production, display or circulation of any written words, pictures or other material, where the act, words or conduct is unwelcome to the persons to whom they are directed and could reasonably

be regarded as offensive, humiliating or intimidating to the persons to whom they are directed; or

- d. the persons so subjected or requested are treated less favourably by reason of such persons' rejection of or submission to such subjection or request, it could reasonably be anticipated that such persons would be so treated.

2.3 Thus sexual harassment may involve:

- unwelcome physical contact such as touching, hugging or kissing;
- leering;
- suggestive comments or jokes;
- unwanted invitations to go out on dates or requests for sexual interaction;
- intrusive questions about a person's private life or body;
- unnecessary familiarity;
- insults or taunts based on your sex or sexual orientation;
- sexually explicit emails or SMS messages;
- unwanted contacts / intrusion;
- messages / offensive postings on social networks, texts, e-mails etc.;
- sexual images displayed electronically, in print etc;
- sexually explicit pictures, screen savers or posters; and
- behaviour which would also be an offence under the criminal law, such as physical sexual assault, indecent exposure, and obscene or pornographic communications.

The above list is not an exhaustive list and should not be considered as such.

2.4 When a case of sexual harassment is proven, it could constitute both a civil and a criminal offence. Some types of sexual harassment may also be offences under the criminal law. These include physical molestation or sexual assault, indecent exposure and obscene communications (telephone calls, letters etc).

2.5 The University of Malta is an equal opportunity employer and as such it will not tolerate any form of sexual harassment at the workplace. The University authorities and all employees in general are duty bound to safeguard and uphold the principles presented in this document. Whilst employees working

at the University of Malta will be informed about this Policy formally and/or informally, new recruits will have the opportunity to be informed also through the induction programme.

3 Advisors on Sexual Harassment

- 3.1 The University of Malta shall appoint 4 Sexual Harassment Advisors (2 from the University and 2 from the Junior College, of whom at least one must be male). These shall provide information, advice and assistance to staff members and students who lodge a complaint of sexual harassment. The Advisors shall also play a key role in investigating and resolving complaints, detailed in the procedures below. Given the critical nature of the work, the Advisors of each of the above settings will, as much as possible, conduct sessions and take action together, and have adequate access to legal advice.
- 3.2 Henceforth the term “Advisors” will mean the 2 Advisors from the respective institutions working together. Where the Advisors do not consider it appropriate to work together for ethical or personal reasons, or at the request of the complainant, an Advisor from the other setting will step in to replace the withdrawing Advisor.
- 3.3 The Advisors will review the University of Malta procedures and recommend any changes that may be necessary to facilitate the ability of the University of Malta to deal effectively with instances of sexual harassment. The Advisors will keep written record of their activities subject to the provisions of the Data Protection Act, Chapter 440 of the Laws of Malta and prepare a detailed annual report on the number and disposition of complaints.

4 Procedures

- 4.1 Two routes may be provided for parties involved in a sexual harassment complaint; an informal and a formal route. Wherever possible, the parties

involved would be encouraged to resolve the complaint in an informal manner.

4.2 Complaints

4.2.1 Complaints are dealt with in a confidential manner. On approaching the Advisors, a student or employee who believes that he or she has a complaint of sexual harassment is encouraged to make a direct request to the harasser that the offensive behaviour or actions cease. The complainant would also be encouraged to seek counselling assistance if this is considered appropriate. If the direct request by the complainant to the alleged harasser is unsuccessful, or if such a request is considered inappropriate, or if the harassed feels uncomfortable to make such a request, the complainant may seek further advice and help from the Advisors to resolve the problem informally.

4.2.2 A Head of Department or other senior officer, who receives a complaint of sexual harassment should immediately inform the Advisors on Sexual Harassment.

4.2.3 The Advisors will assist all parties involved in allegations of sexual harassment, in determining the basis, if any, for a complaint of sexual harassment; in formulating the complaint and/or response; and by explaining the options available through University's Sexual Harassment Policy and by providing information on Maltese legislation concerning Sexual Harassment.

4.2.4 Following the consultation process, the complainant has the following options:

- a) to follow the informal procedures
- b) to make a formal complaint
- c) to take no further action.

4.3 Informal Procedures

4.3.1 If a complainant wishes to proceed to use the informal procedures, the following steps shall be taken:

- a) The Advisors shall meet with the complainant and listen carefully and supportively to his/her account.
- b) The complainant must provide the Advisors with a written complaint giving details of the alleged sexual harassment, as defined on page 1, including dates, times, places, names of individuals involved in the incident(s), names of any witnesses and any other relevant information.
- c) The complaint must be filed within six (6) months of the incident(s).
- d) Within five (5) working days from the receipt of the written complaint, the Advisors shall provide the respondent with a copy of the written complaint.
- e) Within thirty (30) working days of the action described in (c), the Advisors shall investigate the complaint and interview the complainant and the respondent. The complainant and the respondent may be accompanied during the interview by counsel, at their expense. The options for resolution shall be of a voluntary or informal nature and shall not include the power of formal administrative action such as discipline. If resolution is achieved as a result of this informal process, a written copy of the resolution shall be signed by the complainant and the respondent. A copy of the written complaint and of the signed resolution shall be maintained by the Advisor in a confidential file for a period of six years from the date of the signing of the resolution, and shall be destroyed thereafter.

4.4 Formal Procedures

4.4.1 The complainant or the respondent may proceed to the formal procedures if:

- a) the respondent or the complainant does not agree to participate in the informal process, within ten (10) working days of the rejection of the informal procedures, or
- b) the informal process does not resolve the dispute within ten (10) working days of the completion of the informal process;

c) the complainant wishes to proceed directly through the formal route.

4.4.2 If the formal route is chosen, the following must occur:

- a) The Advisors shall forward a copy of the written complaint to the Rector as well as continue to accompany and support the complainant through this process.
- b) Within five (5) working days of the receipt of the written complaint, as described in (a) above, the complainant and the respondent shall be informed by the Rector regarding the arbitrators designated to resolve their dispute. Three (3) arbitrators would be chosen from a list of arbitrators appointed by the Rector after consultation with the Committee on Gender Issues.
- c) Unless exceptional circumstances dictate to the contrary, the arbitration shall be held within six weeks of the date of appointment of the arbitrator.
- d) The arbitrators shall determine whether the complaint is justified in a just and fair way. They shall write a report to Rector. Rector shall, within ten (10) working days of the receipt of the report, send a copy of the report to the complainant and the respondent.
- e) There shall be a right of appeal against the decision of the arbitrators, within thirty (30) days from receipt of the date of the arbitrators' report. Notice of intention to appeal will be in writing and shall identify the procedural or substantive reasons for its basis. The Rector will refer the issue to three (3) other arbitrators from the approved list. The results of the appeal shall be final.
- f) It is recognised that the arbitration procedure is meant to provide an expeditious method of resolving complaints of sexual harassment. It is intended therefore, to operate strictly within the time limits prescribed for taking the various steps in this procedure. However it is recognised that it will not always be possible to do so; therefore the parties may agree in writing to extend any time limits specified. Furthermore, the arbitrators shall have the power to adjust time limits, provided that the arbitrators are satisfied that there are reasonable grounds for granting an extension.
- g) The arbitrators shall write a report informing the Rector of the outcome of the appeal within twenty (20) working days from the decision of the appeal.

- h) Any formal disciplinary action decided upon by the designated University authorities shall be recorded and dispensed and/or acted upon.
- i) The costs of arbitration shall be the responsibility of the University as the case may be.

4.5 Complaints involving Minors

4.5.1 When a complainant who is a Minor approaches the Sexual Harassment Advisors, in addition to the usual procedures the Advisors will also discuss with the complainant and his/her parents or legal guardians, and must report the case to the Child Protection Service offered by Agenzija Appoġġ and to the Commissioner of Police.

4.5.2 Provided that this policy shall ensure the application of the relevant provisions of the Protection of Minors (Registration) Act (Chapter 518 of the Laws of Malta), in as much as any third party who becomes aware of a mode of conduct or the commission of an act which is tantamount to sexual harassment on a minor constituting a scheduled offence under the said Act, shall report such fact to the Pro Rector for Students and Institutional Affairs, who, in turn, shall report such fact to the Commissioner of Police within forty-eight hours which shall commence to run from the notification of such report.

5 Alternative Recourse

5.1 The presence of this policy does not preclude the complainant from pursuing other options including self-referral to the National Commission for the Promotion of Equality, and/or Industrial Tribunal or from seeking legal redress through criminal proceedings or a civil action for damages.

6 Disciplinary hearings/measures in sexual harassment cases

6.1 It is important to note that proven sexual harassment by staff constitutes gross misconduct which could lead to dismissal. Where a lesser penalty is appropriate (such as a written warning), this will be administered in tandem with the necessary action to ensure that the victim is able to work or study without undue embarrassment or anxiety. If an alleged case of sexual harassment by staff is actually proven, the following sanctions may be imposed according to the severity of the case:

- Reprimand
- Suspension without pay
- Downgrading
- Dismissal

The list of sanctions is not exhaustive and should not be considered as such.

6.2 Any member of staff or student unjustly accusing colleagues or lodging malicious complaints will himself/herself be liable to the sanctions outlined above.

All data collected will be processed and stored in accordance with the provisions of the Data Protection Act, Chapter 440 of the Laws of Malta.