

UNIVERSITY OF PRETORIA

CODE OF CONDUCT ON THE HANDLING OF SEXUAL HARASSMENT

1. PHILOSOPHY

1.1 The University of Pretoria:

is an academic and educational institution which is committed to providing a non-sexist, non-discriminatory, working, living and study environment for staff and students in which every person will be able to achieve his/her full potential;

acknowledges that the preservation of human dignity and the discouragement of offensive behaviour are an integral part of this environment;

acknowledges that sexual harassment is an unacceptable infringement of the core values of integrity, human dignity, privacy, equity and mutual respect and is a form of unfair discrimination.

1.2 The University Council, Executive, staff and students are co-responsible to combat sexual harassment on campus. To fulfil this responsibility, the University community agreed on the following code.

1.3 The objective of this code is to eliminate sexual harassment in the workplace and within the University community.

1.4 This code provides appropriate procedures to deal with sexual harassment and prevent its recurrence.

2. APPLICATION OF THE CODE

2.1 Although this code applies to the working environment and University community as a guide to employees and students, the perpetrators and victims of sexual harassment may include:

2.1.1 students

2.1.2 employers

2.1.3 managers

2.1.4 supervisors

- 2.1.5 employees
- 2.1.6 job applicants
- 2.1.7 clients
- 2.1.8 suppliers
- 2.1.9 contractors
- 2.1.10 members of Council
- 2.1.11 others having dealings with the University.

2.2 A non-employee who is a victim of sexual harassment may lodge a grievance with the manager/supervisor of the harasser, where the harassment has taken place in the workplace or in the course of the harasser's employment.

3. SEXUAL HARASSMENT AS A FORM OF UNFAIR DISCRIMINATION

Sexual harassment in the University environment is a form of unfair discrimination and is prohibited on the grounds of sex and/or gender and/or sexual orientation.

4. TEST FOR SEXUAL HARASSMENT

Sexual harassment is unwelcome conduct of a sexual nature that violates the rights of an employee or student and constitutes a barrier to equity in the workplace or within the University community, taking into account all of the following factors:

- 4.1 whether the harassment is on the prohibited grounds of sex and/or gender and/or sexual orientation;
- 4.2 whether the sexual conduct was unwelcome;
- 4.3 the nature and extent of the sexual conduct; and
- 4.4 the impact of the sexual conduct on the employee/student.

5. FACTORS TO ESTABLISH SEXUAL HARASSMENT

5.1 Harassment on a Prohibited Ground

- 5.1.1 The grounds of discrimination to establish sexual harassment are sex, gender and sexual orientation.

5.1.2 Same-sex harassment can amount to discrimination on the basis of sex, gender and sexual orientation.

5.2 Unwelcome Conduct

5.2.1 There are different ways in which an employee or student may indicate that sexual conduct is unwelcome, including non-verbal conduct such as walking away or not responding to the perpetrator.

5.2.2 Previous consensual participation in sexual conduct does not necessarily mean that the conduct continues to be welcome.

5.2.3 Where a complainant has difficulty indicating to the perpetrator that the conduct is unwelcome, such complainant may seek the assistance and intervention of another person such as a co-worker, fellow student, superior, counsellor, human resources official, family member, friend or the Protection Officer.

5.3 Nature and Extent of the Conduct

5.3.1 The unwelcome conduct must be of a sexual nature, and includes physical, verbal or non-verbal conduct.

5.3.1.1 Physical conduct of a sexual nature includes all unwelcome physical contact, ranging from touching to sexual assault and rape, as well as strip search by or in the presence of the opposite sex.

5.3.1.2 Verbal conduct includes unwelcome innuendos, suggestions, hints, sexual advances, comments with sexual overtones, sex-related jokes or insults, graphic comments about a person's body made in their presence or to them, 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.

5.3.1.3 Non-verbal conduct includes unwelcome gestures, indecent exposure and the dispatching or sending by electronic means or otherwise of sexually explicit pictures or objects.

5.3.2 Sexual harassment may include, but is not limited to, victimisation, quid pro quo harassment and sexual favouritism.

5.3.2.1 Victimization occurs where an employee or student is victimised or intimidated for failing to submit to sexual advances.

5.3.2.2 Quid pro quo harassment occurs where a person such as an employer, supervisor, member of management, co-employee or academic staff member influences or attempts to influence a student or an employee's circumstances (for example appointment, promotion, training, discipline, dismissal, salary increments or other benefits or academic progress, assignment, test or examination results) by coercing or attempting to coerce the individual to surrender to sexual advances. This could include sexual favouritism, which occurs where a person in authority in the workplace or University community rewards only those who respond to his/her sexual advances.

5.3.3 A single incident of unwelcome sexual conduct may constitute sexual harassment.

5.4 Impact of the Conduct

The conduct should constitute an impairment of the employee's/student's dignity, taking into account:

5.4.1 the circumstances of the employee/student; and

5.4.2 the respective positions of the employee/student and the perpetrator in the workplace or within the University community.

6. GUIDING PRINCIPLES

All members of the University community should create and maintain a working environment in which the dignity of all affected individuals is respected. A climate in the University community should also be created and maintained in which complainants of sexual harassment will not feel that their grievances are ignored or

trivialized, or fear reprisals. Implementing the following guidelines can assist in achieving these ends:

- 6.1 The employer, management, employees and students are required to refrain from committing acts of sexual harassment.
- 6.2 All employers, management, employees and students have a role to play in contributing to creating and maintaining a working environment in which sexual harassment is unacceptable. They should ensure that their standards of conduct do not cause offence and they should discourage unacceptable behaviour on the part of others.
- 6.3 The employers and management should attempt to ensure that persons such as customers, suppliers, job applicants and others who have dealings with the University are not subjected to sexual harassment by the employer or its employees.
- 6.4 The employers and management should take appropriate action in accordance with this code where instances of sexual harassment occur in the working environment.

7. POLICY

- 7.1 All forms of sexual harassment and/or related intimidation and victimisation within the jurisdiction of the University shall be unlawful and are therefore prohibited:
 - 7.1.1 Conduct in which a person pressurises, coerces or uses threats to persuade another to act in a way contrary to his/her own volition (notwithstanding whether such attempt is successful or not).
 - 7.1.2 Unlawful prejudice (or threat thereof) against a person (member of staff or student) who exercises or enforces, or attempts to exercise and/or enforce his/her rights.
- 7.2 In addition to any possible criminal or civil sanction, a person committing such conduct may be subjected to a disciplinary investigation in accordance with the applicable Disciplinary Code for Staff or Students, as the case may be. On being found guilty such person may, in the case of a member of staff, be

discharged from employment or, in the case of a student, be expelled from the University.

- 7.3 The University Council and its Executive are legally obliged to ensure that all complaints of sexual harassment and/or related intimidation and victimisation are investigated and dealt with in terms of this policy and its concomitant procedural measures.
- 7.4 Sexual harassment is a form of unfair discrimination on the basis of sex and/or gender and/or sexual orientation which infringes the rights of the complainant and constitutes a barrier to equity in the workplace and within the University community.
- 7.5 Sexual harassment in the workplace and within the University community will not be permitted or condoned.
- 7.6 Complainants in sexual harassment matters have the right to follow the procedures in the policy and appropriate action must be taken by the University.
- 7.7 It will be misconduct to victimise or retaliate against an employee or student who in good faith lodges a grievance of sexual harassment.

8. COMPLAINTS AND PROCEDURES

- 8.1 All complaints pertaining to sexual harassment and/or related victimisation and intimidation may be lodged with the following persons:
 - a) The Protection Officer;
 - b) Student Council Member for Safety and Security where one of the parties to the complaint is a student;
 - c) The Labour Relations Officer where one of the parties to the complaint is a staff member;
 - d) Officers as designated from time to time by the Protection Officer;
 - e) Managers or supervisors;
 - f) Academic staff;
 - g) The Vice-Chancellor and Principal.
- 8.2 All complaints as intended in 8.1 shall, with due allowance for the seriousness of the complaint, be referred to the Protection Officer within a reasonable time.

- 8.3 The Protection Officer shall, as soon as a complaint has been lodged, conduct a preliminary investigation in order to make a *prima facie* assessment of the soundness of the complaint.
- 8.4 The complainant may request that an officer of his/her choice assist the Protection Officer.
- 8.5 The Protection Officer shall have the right to:
- 8.5.1 consult all relevant parties;
 - 8.5.2 take the necessary steps to address the complaint in accordance with this code and policy;
 - 8.5.3 take the necessary steps to eliminate the sexual harassment;
 - 8.5.4 advise the complainant of the informal and formal procedures available to deal with the sexual harassment, as set out in this code and explain these procedures;
 - 8.5.5 where reasonably practicable, offering the complainant advice, assistance and counselling as set out in this code, including during any disciplinary investigation that may be instituted;
 - 8.5.6 advise the complainant that she/he may choose which procedure should be followed by the University, except that in certain limited circumstances as set out in 8.10.2, the University may choose to follow a formal procedure even if the complainant does not wish to do so; and
 - 8.5.7 re-assure the complainant that she/he will not face job loss or any adverse consequences if she/he chooses to follow either the formal or informal procedure.
- 8.6 The complaint itself, the names of persons involved and the proceedings during the preliminary investigation shall be treated as strictly confidential and the complainant will be advised accordingly.

- 8.7 Should the Protection Officer be of the opinion that no *prima facie* case exists in favour of the complainant, he/she shall dismiss the complaint and furnish reasons in writing in this regard.
- 8.8 Should the complainant, after receipt of the written reasons referred to in 8.7, still be of the opinion that the policy has been breached, an appeal may be lodged with the Vice-Chancellor and Principal/Registrar who may deal with the matter at his/her discretion.
- 8.9 Should the complainant maliciously lodge a complaint he/she may be subjected to a disciplinary investigation in accordance with the applicable Disciplinary Code for Staff or Students, as the case may be.
- 8.10 Should the Protection Officer be of the opinion that a *prima facie* breach of the policy has been established, he/she shall, with the consent of the complainant, follow one of the following procedures:

8.10.1 Informal Procedure

A complainant of sexual harassment may choose to follow either of the following informal procedures:

- a) the complainant, another appropriate person or the Protection Officer explains to the perpetrator that the conduct in question is not welcome, that it offends the complainant, makes him/her feel uncomfortable and that it interferes with his/her work or studies; or
- b) an appropriate person approaches the perpetrator, without revealing the identity of the complainant, and explains to the perpetrator that certain forms of conduct constitute sexual harassment, are offensive and unwelcome, make the employee/student feel uncomfortable and interfere with his/her work/studies.

8.10.2 Formal Procedure

A complainant may choose to follow a formal procedure, either with or without first following an informal procedure

- a) Should the complainant decline to follow informal procedure, or should the informal procedure be unsuccessful, the complainant may request that the Protection Officer refer the complaint to the Vice-Chancellor and Principal in the case of an employee, or the Registrar in the case of a student who shall further treat the complaint as a disciplinary matter in terms of the existing disciplinary codes and practices of the University.
 - b) Should the Protection Officer be of the opinion that a person is reluctant to lay a complaint or to proceed with it as a result of possible intimidation or victimisation, the Protection Officer may, on his/her own initiative, refer the matter to the Vice-Chancellor and Principal/Registrar, who shall further treat the complaint as a disciplinary matter in terms of the existing disciplinary codes and practices of the University.
 - c) The principle of confidentiality, as referred to in 8.6, shall not apply during any disciplinary investigation as intended in the Disciplinary Code for Staff or Students as the case may be.
 - d) The preliminary investigation, as intended in 8.6, will serve *mutatis mutandis* as a preliminary investigation as intended in the Disciplinary Code for Staff or Students as the case may be.
- 8.11 The Protection Officer may, with the permission of the complainant, aside from the informal procedure and disciplinary action, submit proposals to the Vice-Chancellor and Principal/Registrar in terms of which problems emanating from the complaints could be resolved.
- 8.12 Proposals, as intended in 8.11, may not lead to possible prejudice against an accused without him/her having been granted an opportunity to state his/her side of the case.
- 8.13 The Protection Officer shall ensure that no unreasonable delays occur during the investigation, continuation or conclusion of any complaint.
- 8.14 The Protection Officer must report feedback regarding the progress and continuation of the investigation to the complainant within reasonable time.

8.15 Should the matter not be satisfactorily resolved by the formal procedures above, a complainant (employee) of sexual harassment may refer the dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA). Similarly an alleged perpetrator of sexual harassment (employee) may refer a dispute arising from disciplinary action taken by the University to the CCMA.

8.16 It will be misconduct to victimise or retaliate against a complainant who in good faith lodges a grievance of sexual harassment.

8.17 **Disciplinary Sanctions**

In the event of disciplinary action, the following sanctions can be imposed. The sanctions must be proportionate to the seriousness of the sexual harassment in question:

8.17.1 warnings may be issued for minor instances of sexual harassment;

8.17.2 in the event of an employee, dismissal may ensue for continued minor instances of sexual harassment after warnings, as well as for serious instances of sexual harassment;

8.17.3 in appropriate circumstances upon being found guilty of sexual harassment, a perpetrator who is an employee may be transferred to another position in the University, or demoted or suspended without pay if the circumstances warrant dismissal but extenuating circumstances exist;

8.17.4 in the event of a student, suspension or expulsion from the University will be a suitable punishment for continued minor instances of sexual harassment after warnings, as well as for serious instances of sexual harassment.

8.18 If a complaint is lodged against a member of Council the matter must be referred to the Human Resources Committee of Council to investigate and to finalise the matter on behalf of Council. The Committee shall determine its own procedures taking into account the rules of natural justice.

8.19 Should a member of the Human Resources Committee of Council be implicated, he or she must recuse themselves from this process.

9. SOCIAL ASSISTANCE

Should it be deemed necessary by the Protection Officer, any victim of sexual harassment, or related intimidation or victimisation may be referred to the Student Support Services Division of the University in the case of students, or to EAP at UP (the employee assistance program) in the case of staff members, for counselling, attention and support.

10. CONFIDENTIALITY

10.1 Subject to the provisions of paragraph 8.10.2(c), all University staff and students must ensure that grievances about sexual harassment are investigated and handled in a manner that ensures that the identities of the persons involved are kept confidential.

10.2 In cases of sexual harassment, management, employees, students and the parties concerned must endeavour to ensure confidentiality in the disciplinary investigation. Only appropriate members of management as well as the aggrieved person, representatives, alleged perpetrator, witnesses and interpreter, if required, should be present in the disciplinary investigation.

10.3 The University will be required to disclose to the complainant, the perpetrator and/or their representatives, such information as may be reasonably necessary to enable the parties to prepare for any proceedings in terms of this code.

11. ADDITIONAL SICK LEAVE

11.1 Where an employee's existing sick leave entitlement has been exhausted, the University should give due consideration to granting of additional paid sick leave in cases of serious sexual harassment, where the employee, on medical advice, requires trauma counselling.

11.2 In appropriate circumstances, the University may give consideration to assisting with the cost of the medical advice and trauma counselling, where such amounts are not covered by any applicable medical aid scheme.

12. REPORTING

The Protection Officer shall annually report fully on the activities of the Protection Officer as well as on the extent to which the policy on sexual harassment and related intimidation and victimisation has or has not been carried out. The report shall be addressed to the Vice-Chancellor and Principal and should be tabled before Council as well as the Student Representative Council of the University.

13. WHISTLE BLOWING POLICY

The whistle blowing procedure as contained in the Whistle Blowing Policy may be used by third parties to report incidents of sexual harassment.

SUPPORT PANEL 2016

Name	Faculty/ Department/ Division	Building	Tel no	E-mail
Dr G M Nolte	Student Support	Student Centre (Across from Pie City) Hatfield Campus	012 420 4002	madeleine.nolte@up.ac.za
Mr WJ Oosthuizen	Facilities Management	Technical Services Room 3-16 Hatfield Campus	012 420 3573	wessel.oosthuizen@up.ac.za
Ms B Liebenberg	Residence Affairs and Accommodation	Duxbury House 90 Room 1-13 Hatfield Campus	012 420 2119 082 908 3588	bes.liebenberg@up.ac.za
Ms R Leyds	Marketing Sciences Health	HW Snyman North Room 4-6 Prinshof Campus	012 319 2393	ronel.leyds@up.ac.za
Ms T Riba	Enrollment and Student Admin Onderstepoort	Lesedi Complex Room 1--14 Onderstepoort	012 529 8438	teballo.riba@up.ac.za
Ms I Meyer	Student Support Mamelodi Campus	Education Building Room 11-205 Mamelodi Campus	012 842 3417 072 606 5623	ida.meyer@up.ac.za
Ms T Rabie	Distance Education	Admin Building Room 3-1 Groenkloof Campus	012 420 2552	tracey.rabie@up.ac.za
Ms E Thue	Human Resources	Admin Building Room 4-83 Hatfield Campus	012 420 3354	enid.thue@up.ac.za
PROTECTION OFFICER				
Ms E Gardiner	Legal Services	Admin Building Room 5-4 Hatfield Campus	012 420 3073	elize.gardiner@up.ac.za
STUDENT COUNCIL MEMBER FOR FACILITIES AND TRANSPORT				
Mr B Nkala	Facilities, Safety & Security	Roosmaryn Room 2-17 Hatfield Campus	012 420 6575	src.facilities@tuks.co.za
LABOUR RELATIONS				
Mr M Sekobelo	Employment Relations	Admin Building Room 4-47 Hatfield Campus	012 420 2157	makgabo.sekobela@up.ac.za