

# UNIVERSITY OF PRETORIA

## POLICY ON UNFAIR DISCRIMINATION ON THE BASIS OF RACE

### 1. PHILOSOPHY

#### 1.1 The University of Pretoria:

is an academic and educational institution which is committed to providing a non-racist, 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 unfair discrimination on the basis of race is an unacceptable infringement of the core values of human dignity, privacy and mutual respect;

supports the principles laid down in the Promotion of Equality and Prevention of Unfair Discrimination Act No. 4 of 2000, as well as the Constitution.

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

### 2. DEFINITIONS

#### 2.1 Unfair Discrimination on the Basis of Race

Any conduct which impairs an individual's right to a non-racial, non-discriminatory working, living and study environment, including:

- 2.1.1 the dissemination of any propaganda or idea, which propounds the racial superiority or inferiority of any person, including incitement to, or participation in, any form of racial violence;
- 2.1.2 the engagement in any activity which is intended to promote, or has the effect of promoting, exclusivity, based on race;
- 2.1.3 the exclusion of persons of a particular race group under any rule or practice that appears to be legitimate but which is actually aimed at excluding a particular race group;
- 2.1.4 the provision of inferior services to any racial group, compared to those of another racial group;
- 2.1.5 the denial on the basis of race of access to opportunities, including access to services or contractual opportunities for rendering services for consideration.

## 2.2 **Victimisation**

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.

## 2.3 **Member of Staff**

A person appointed by Council in the employ of the University.

## 2.4 **Student**

A person registered as a student in terms of the regulations of the University.

### **3. POLICY**

- 3.1 All forms of unfair discrimination based on race and/or related victimisation as set out in paragraph 2 above within the jurisdiction of the University of Pretoria shall be unlawful and are therefore prohibited.
- 3.2 In addition to any possible criminal or civil sanction, a person committing such acts 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.
- 3.3 The University Council and its Executive are legally obliged to ensure that all complaints of racial harassment and/or related victimisation are investigated and dealt with in terms of this policy and its concomitant procedural measures.

### **4. STAFF RESPONSIBLE FOR IMPLEMENTING THE POLICY**

#### **4.1 The Protection Officer**

- 4.1.1 A member of staff shall be appointed or designated by the Council as Protection Officer and this appointment or designation shall be subject to the statutes and regulations applicable to the University and which may be changed from time to time.
- 4.1.2 The Protection Officer is charged with the implementation of the policy on unfair discrimination based on race and/or related victimisation.

The Protection Officer shall answer directly to the Vice-Chancellor and Principal or a person designated by him/her.

## 4.2 **Member of Student Council**

4.2.1 The Protection Officer, in conjunction with the Student Council Member for Safety and Security, and the Labour Relations Officer shall be responsible for the introduction of the policy and for training programmes pertaining to unfair discrimination based on race.

4.2.2 When a student is one of the parties in a complaint as understood in terms of this policy, the Student Council Member for Safety and Security, shall, *ex officio*, have the right to be present at all proceedings in terms of this policy.

## 4.3 **Labour Relations Officer**

4.3.1 The Protection Officer, in conjunction with the Student Council Member for Safety and Security, and the Labour Relations Officer, shall be responsible for the introduction of the policy and for training programmes pertaining to unfair discrimination based on race.

4.3.2 When a staff member is one of the parties in a complaint as understood in terms of this policy, the Labour Relations Officer shall, *ex officio*, have the right to be present at all proceedings in terms of this policy.

## 5. **COMPLAINTS AND PROCEDURES**

5.1 All complaints pertaining to unfair discrimination based on race and/or related victimisation may be lodged with the following persons:

5.1.1 The Protection Officer;

5.1.2 Officers as designated from time to time by the Protection Officer;

5.1.3 Student Council Member for Safety and Security where one of the parties to the complaint is a student;

- 5.1.4 The Labour Relations Officer where one of the parties to the complaint is a staff member.
- 5.2 All complaints as intended in 5.1 shall, with due allowance for the seriousness of the complaint, be referred to the Protection Officer within a reasonable time.
- 5.3 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.
- 5.4 The Protection Officer shall have the right to question persons in order to establish whether there is *prima facie* evidence of violation of this policy.
- 5.5 The complaint itself, the names of persons involved and the proceedings during the preliminary investigation shall be treated as strictly confidential. However, should the complainant intentionally breach the principle of confidentiality during the preliminary investigation, the complainant is no longer entitled to the protection provided thereunder. The furnishing of information in fulfilment of a legal obligation shall not be regarded as a breach of the principle of confidentiality.
- 5.6 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.
- 5.7 Should the complainant, after receipt of the written reasons referred to in 5.6 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.
- 5.8 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.
- 5.9 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:

## **6. MEDIATION**

- 6.1 The Protection Officer shall hold talks with the complainant and the accused, which talks shall be confidential and without prejudice.
- 6.2 Should the parties reach agreement concerning the facts as well as a solution to the matter, the matter shall be disposed of in this manner.
- 6.3 The contents of the agreement between the parties shall not be made public.
- 6.4 The Protection Officer shall be obliged to keep full records of agreements of this nature.
- 6.5 In the event of the accused being found guilty during a disciplinary investigation of a second or further contravention of this policy, the contents of agreements to which the accused had been a party may be divulged at the disciplinary investigation concerned after finding of guilt and before the sanction is decided upon.
- 6.6 The Protection Officer shall be obliged to ensure that any agreement between the parties is fair and reconcilable with the objectives of this policy.

## **7. DISCIPLINARY INVESTIGATION**

- 7.1 Should the complainant decline to follow the course of mediation, or should the process of mediation be unsuccessful, the complainant may request that the Protection Officer refer the complaint 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.
- 7.2 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 disciplinary matter in terms of the existing disciplinary codes and practices of the University.

- 7.3 The principle of confidentiality, as referred to in 5.5 shall not apply during any disciplinary investigation as intended in the Disciplinary Code for Staff or Students, as the case may be.
- 7.4 The preliminary investigation, as intended in 5.5 will serve *mutatis mutandis* as a preliminary investigation as intended in the Disciplinary Code for Staff or Students, as the case may be.
- 7.5 The Protection Officer may, with the permission of the complainant, aside from the process of mediation and disciplinary action, submit proposals to the Vice-Chancellor and Principal/Registrar in terms of which problems emanating from the complaints could be resolved.
- 7.6 Proposals, as intended in 7.5, 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.
- 7.7 The Protection Officer shall ensure that no unreasonably delays occur during the investigation, continuation or conclusion of any complaint.
- 7.8 The Protection Officer must report feedback regarding the progress and continuation of the investigation to the complainant within reasonable time.

## **8. MEMBER OF COUNCIL**

- 8.1 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.
- 8.2 Should a member of the Human Resources Committee of Council be implicated, he or she must recuse themselves from this process.

## **9. EQUALITY COURTS**

If the complainant still feels aggrieved after mediation and/or disciplinary action, the Protection Officer will inform him/her of the procedure to be followed in terms of Chapter 4 of Act 4 of 2000 to refer a matter to the Equality Court.

## **10. SOCIAL ASSISTANCE**

Should it be deemed necessary by the Protection Officer, any victim of racial, or related 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.

## **11. 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 unfair discrimination based on race has 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.

## **12. WHISTLE BLOWING POLICY**

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

### LODGING OF COMPLAINTS 2016

Name	Faculty/ Department/ Division	Building	Tel no	E-mail
<b>PROTECTION OFFICER</b>				
Mrs E Gardiner	Legal Services	Admin Building Room 5-4 Hatfield Campus	012 420 3073	<a href="mailto:elize.gardiner@up.ac.za">elize.gardiner@up.ac.za</a>
<b>STUDENT COUNCIL MEMBER FOR FACILITIES AND TRANSPORT</b>				
Mr B Nkala	Facilities, Safety & Security	Roosmaryn Room 2-17 Hatfield Campus	012 420 6575	<a href="mailto:src.facilities@tuks.co.za">src.facilities@tuks.co.za</a>
<b>LABOUR RELATIONS</b>				
Mr M Sekobelo	Employment Relations	Admin Building Room 4-47 Hatfield Campus	012 420 2157	<a href="mailto:makgabo.sekobelo@up.ac.za">makgabo.sekobelo@up.ac.za</a>