



RHODES UNIVERSITY

# Policy on Eradicating Unfair Discrimination and Harassment

## **1. POLICY PARTICULARS**

### DATE OF APPROVAL BY RELEVANT COMMITTEE STRUCTURE:

Equity Committee: 6<sup>th</sup> of February 2009

Equity and Institutional Culture Committee: 30<sup>th</sup> of July 2010

Senate Disciplinary Committee: 08<sup>th</sup> of November 2010

Consultation and agreement with the unions as regards this policy and its relatedness to the staff disciplinary code: February 2011

Equity and Institutional Culture Committee: 24 February 2011

Senate: 1 April 2011

Council: 8 September 2011

COMMENCEMENT DATE: 1 January 2012 (assuming approved)

REVISION HISTORY: This policy replaces the Harassment Policy. The most recent review of the Policy on the Eradicating of Unfair Discrimination and Harassment required a review of the relationship between this policy and the student disciplinary code and staff disciplinary code and an updating of these codes. For this reason, this policy served before the Student Disciplinary Committee for approval and there was consultation with the staff unions.

REVIEW DATE: Every three years, 31 December 2014

POLICY LEVEL: All students and staff

### RESPONSIBILITY:

- IMPLEMENTATION & MONITORING: Heads of Departments/Divisions, Deans, Hall & House Wardens, Deputy Vice-Chancellors, Vice-Chancellors, SRC, Psychology Clinic, Counselling Centre, Dean of Students Division, Human Resources Division, Registrar's Division
- REVIEW AND REVISION: Student Services Council, GENACT, Student Disciplinary Committee, unions and thereafter the Equity and Institutional Committee but any of the above structures may recommend changes

### ORGANISATIONAL REPORTING (management responsibility) STRUCTURE:

As regards matters related to staff: Director: HR → Registrar: Finance and Operations/Vice-Chancellor → Equity and Institutional Committee → Senate → Council

As regards matters related to students: Dean of Students → Deputy Vice-Chancellor: Academic and Student Affairs → Equity and Institutional Committee → Senate → Council

As regards matters related to curriculum: Dean of Teaching and Learning after consultation with the Deans → Deputy Vice-Chancellor: Academic and Student Affairs → Equity and Institutional Committee → Senate → Council

## 2.1 POLICY DECLARATION:

In the Mission and Vision Statement of Rhodes University, a commitment is made to developing shared values that embrace human rights and the underpinning fundamental dignity of all people. Unfair discrimination and harassment as a result of an individual's membership or perceived membership of a group significantly undermines this commitment. Behaviour stemming from racism, sexism, homophobia and harassment and vilification will be dealt with harshly. This policy outlines the institution's commitment to eradicating discrimination, harassment and prejudicial behaviour in order to provide an environment in which staff and students are able to work effectively and fully participate in University life. The policy also outlines the commitment to suitable educational strategies to address prejudicial beliefs.

The University's commitment to eradicating unfair discrimination and harassment on the basis of group membership is rooted in the *Constitution of the Republic of South Africa, 1996 Chapter 2, Bill of Rights, Section 9, Equality* which prohibits unfair discrimination. Specifically:

“(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3).”

Chapter II, Prohibition of Unfair Discrimination, Section 6 (1) of the Employment Equity Act, no 55 of 1998 (as amended) states that:

“No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth.”

In addition, the Promotion of Equality and Prevention of Unfair Discrimination Act, no 4 of 2000 states that the purpose of the Act is “to give effect to ... the Constitution of the Republic of South Africa, 1996, so as to prevent and prohibit unfair discrimination and harassment; to promote equality and eliminate unfair discrimination; to prevent and prohibit hate speech; and to provide for matters connected therewith”. This Act “endeavours to facilitate the transition to a democratic society, united in its diversity, marked by human relations that are caring and compassionate, and guided by the principles of equality, fairness, equity, social progress, justice, human dignity and freedom.”

In view of the abovementioned constitutional and institutional commitments, this policy is adopted as follows:

1. To replace the previous Harassment Policy;
2. To operationalise the commitment in the institution's Equity Policy to eliminating unfair discrimination and harassment.

The policy should be read in conjunction with the Sexual Offences Policy which outlines issues related to sexual offences and mechanisms to deal with such complaints.

The policy should be used in connection with the following codes outlined below:

1. Staff Disciplinary code and procedures; and
2. Student Disciplinary code which notes the following:
  - (a) Rule 15.23: Any student who engages in conduct which is defamatory of any officer or any other member (which will include a student) or employee of the University which may reasonably be regarded as offensive shall be guilty of a disciplinary offence;
  - (b) Rule 15.27: Any student who utters, distributes, displays, shows, screens or projects any disparaging or derogatory remarks or innuendos based on a person's race, gender or sexual orientation, or any form of hate speech shall be guilty of a disciplinary offence;
  - (c) Rule 15.30: Any student who commits any form of racial, sexual, gender, religious or other form of harassment shall be guilty of a disciplinary offence.

These codes will be used when complainants wish to pursue a matter further or where the institution needs to take necessary action.

## 2.2 POLICY OBJECTIVES:

The purpose of this policy is to ensure that:

1. The University fosters social cohesion through ensuring that the University community understands the importance of promoting a culture that supports all staff and students, irrespective of their membership of a particular group. Within this context, it must be understood that behaviours leading to unfair discrimination and harassment will not be tolerated;
2. Educational strategies are employed to ensure that the University staff and students understand the nature of unfair discrimination and harassment and its impact on the individual, the collective, the institution and society;
3. Appropriate strategies are implemented to minimise the likelihood of unfair discrimination, harassment and prejudice where possible;
4. Appropriate strategies are implemented to support complainants or those who witness seeing incidents of unfair discrimination and harassment;
5. Appropriate recourse is available to complainants who report unfair discrimination and harassment to allow them to pursue justice; and
6. Appropriate mechanisms are available to allow the institution to proceed with disciplinary action against a staff member or student who engages in unfair discrimination or harassment. Appropriate mechanisms are available to allow the institution to assess and monitor the nature and extent of unfair discrimination and harassment.

## 2.3 DEFINITIONS

**Co-Ordinating Officers:** There are two Co-Ordinating officers: one for students and one for staff. These officers are responsible for the implementation of this policy (see 3.1.3(a) for further information on responsibilities).

**Discrimination:** means any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly -

- (a) imposes burdens, obligations or disadvantage on; or
- (b) withholds benefits, opportunities or advantages from, any person on one or more of the prohibited grounds;

**Fairness Forum:** The role of the Fairness Forum relative to the University prosecutor/representative is very important. The Forum is not responsible for the investigation into an allegation, this is the responsibility of the University prosecutor or representative who is the Chair of the Forum. The Forum is not responsible for making decisions as to whether to proceed with disciplinary action. This is the role of the University prosecutor/representative, after consultation with the rest of the Forum. As such the Forum plays an advisory role. Where the University prosecutor/representative chooses a course of action against the wishes of the rest of the Forum, reasons, in writing, will be provided.

**Unfair discrimination:** means discrimination that impairs the fundamental dignity of the complainant. The impact of the discrimination on the fundamental dignity of the complainant is assessed with reference:

- (a) whether the differentiating treatment is based on stereotype or prejudice associated with a prohibited ground (e.g. race), or
- (b) whether the differentiating treatment perpetuates unequal power relations that are associated with a prohibited ground (e.g. race) and
- (c) whether, in conjunction with either (1) or (2), the differentiating treatment hurts the subjective feelings of the complainant.

**Harassment:** means unwanted conduct which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and which is related to -

- (a) sex, gender or sexual orientation; or
- (b) a person's membership or presumed membership of a group identified by one or more of the prohibited grounds or a characteristic associated with such group;

**Hate speech:** means the publication, propagation, communication or advocating of words based on one or more of the prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to -

- (a) be hurtful;
- (b) be harmful or to incite harm;
- (c) promote or propagate hatred.

**Prohibited grounds:** are -

- (a) race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth; or
- (b) any other ground where discrimination based on that other ground -
  - (i) causes or perpetuates systemic disadvantage;
  - (ii) undermines human dignity; or
  - (iii) adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on a ground in paragraph (a);

**Level 1 and level 2 offences:** In terms of the staff disciplinary code and procedures, these are offences that will usually NOT result in dismissal unless there have been repeated incidences of the same offence within a certain period of time. Usually level 1 and 2 offences result in verbal warnings, first and final written warnings.

**Level 3 offences:** In terms of the staff disciplinary code and procedure, this level of offence may result in dismissal.

**Prejudice:** In the context of this policy, "prejudice" refers to beliefs (isolated or systematic) and habits of belief formation which are biased against those groups (or perceived members of those groups) listed above. Examples of prejudice would include stereotyping and the tendency to form and hold, in the absence of sufficient evidence, false and negative beliefs about these groups. Prejudice may underlie or nurture unfair discrimination and harassment, but is not an offence in itself.

**Prosecutor and proctor:** In terms of the student disciplinary procedure, these are disciplinary officers of the University. The prosecutor represents the University and not the complainant. The prosecutor is responsible for investigating a case, considering whether or not a case should be heard and where the case is heard, representing the University's case in the disciplinary hearing. The proctor is responsible for hearing a case.

**Prosecutor/University representative and Chairperson:** In terms of the staff disciplinary procedure, the Prosecutor/University representative is responsible for investigating a case, considering whether or not a case should be heard and where the case is heard, representing the University's case in the disciplinary hearing. The Chairperson is responsible for hearing the case.

**Reporting Officers:** These individuals are the first line of reporting for staff and students who have experienced or witnessed incidents of unfair discrimination and harassment. For more detail of the responsibilities of these Officers, see section 3.1.3(b).

### **3. POLICY IMPLEMENTATION**

#### **3.1 THE ACTIONS AND PROCESSES BY WHICH THE OBJECTIVES OF THE POLICY WILL BE ACHIEVED:**

##### **3.1.1 Educational strategies:**

The University has a responsibility to ensure that appropriate educational strategies are implemented. Such strategies should also provide an environment where complainants of unfair discrimination and harassment are more likely to come forward.

Interventions should be innovative, proactive, constantly evolving and highly visible. Examples include educational workshops, the use of drama/theatre, posters, and inserts in orientation programmes for new staff and talk forums.

Educational strategies should seek to ensure that there is an awareness of:

- (i) What behaviours and attitudes constitute unfair discrimination and harassment and the impact of such behaviours and attitudes on others;
- (ii) The support available to those who experience unfair discrimination and harassment and where to access such support or further information of such support;
- (iii) The procedures that will be followed in addressing incidents of unfair discrimination and harassment; and
- (iv) The roles and responsibilities of those in authority in the institution to promote an environment free of unfair discrimination and harassment.

While synergies should be sought between the Dean of Students and the Human Resources Divisions in the running of educational programmes, the Dean of Students Division shall have responsibility for educational strategies targeted at students and the Human Resources Division for programmes targeted at staff.

Consideration must also be given to ensuring that these issues are infused into the formal student curriculum and learning programmes. The Dean of Teaching and Learning, after consultation with the Deans, is responsible for this. Synergies between the formal and extra-curriculum programme for students should be sought.

### **3.1.2 Principles that underpin the eradication of unfair discrimination and harassment:**

The following are regarded as critical to eradicating unfair discrimination and harassment and promoting a culture of acceptance of diversity and forging social cohesion:

(i) *Commitment and Support by the executive and Senior management*

It is vital that executive and senior management vociferously, consistently and publicly reject any forms of unfair discrimination, prejudice and harassment and seek to ensure efficient and timeous recourse where incidents of unfair discrimination, prejudice and harassment occur. Such commitment would be actively demonstrated through appropriate and consistent action being taken against staff and students who engage in unfair discrimination and harassment.

(ii) *Implementation by Heads of Departments and all managers*

Heads of Departments/Divisions/Institutes and all managers are responsible for educating and ensuring awareness of this policy amongst staff and students, attending relevant workshops to ensure an understanding of the issues and of the institution's commitment to eradicating unfair discrimination, prejudice and harassment. They are also responsible for ensuring that staff is aware of the support offered by the University and where to find further information on the procedures available when incidents occur.

In the case of students, the Dean of Students Office as well as Wardening staff are also responsible.

(iii) *Allocation of resources and personnel and appropriate structures*

Arrangements must be made to allocate resources particularly for the execution of the educational strategies and designate staff to implement this policy.

In order to encourage staff and students to come forward with complaints of unfair discrimination and harassment and to ensure that appropriate support is provided, appropriate structures should be in place (see point 3.1.3 below).

(iv) *Orientation of new staff and students*

The orientation for new staff and students must address the University's commitment to eradicating unfair discrimination and harassment and its stance on dealing with such behaviours.

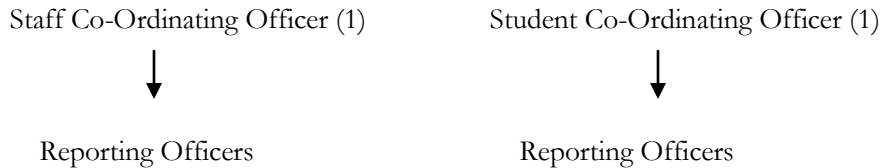
(v) *Accountability*

Within a context of adequate resources and personnel and with respect to the domains of authority and responsibility, the Dean of Students, Dean of Teaching and Learning, Deans, the Director: Human Resources and Director of Equity and Institutional Culture shall be held responsible for the implementation of this policy.

### 3.1.3 Structures

The following structures shall be set up to provide the necessary support to complainants and to advise the individuals of the strategies available to them in dealing with a complaint. Such structures do not serve to replace an individual's desire to resolve the matter independently or to replace an individual's choice from whom to seek assistance. The provision of the following structures seeks to ensure that individuals get the necessary support they need and are provided with accurate advice.

The overarching structure is as follows:



(a) *Co-Ordinating Officers*

There shall be two Co-Ordinating Officers, one each within the Dean of Students Division and the Human Resources Division.

The responsibilities of the Co-Ordinating Officers shall be:

- Ensuring the identification of Reporting Officers;
- Ensuring that the educational strategies are identified, implemented and evaluated;
- Providing input into the orientation of new staff and students;
- Ensuring the training of Reporting Officers;
- Supporting the Reporting Officers in their responsibilities and monitoring of the execution of responsibilities;
- Pursuing complaints in accordance with the choice made by the complainant when referred by the Reporting Officer;
- Collating individual records of incidents from the Reporting Officers into a quarterly report;
- Chairing (to be shared between the two officers) of the Reporting Officers Committee (ROC) on a six-monthly basis;
- Ensuring the availability of a pool of individuals to serve in the Fairness Forum;
- Convening the Fairness Forum to deal with complaints where the complainant has chosen to pursue disciplinary action;
- In the case of students, referring cases where the complainant has chosen to pursue disciplinary action, to the Registrar's Division who after consultation with the Student Co-ordinating Officer, shall be responsible for convening the Fairness Forum;
- Preparing statistics for the relevant structures (as outlined in 3.1.8 below);
- Co-Ordinating of the review of this policy (as outlined in point 3.2 below).

(b) *Responsibilities of the Reporting Officers*

The Reporting Officers shall be responsible for:

- Attending training arranged by the Dean of Students and Human Resources Division;
- Ensuring that they are reasonably available to complainants of harassment and/or unfair discrimination;
- Being the first port of call for complainants of harassment and/or unfair discrimination and providing appropriate support;
- Providing complainants with assurances that their complaints will be dealt with confidentially unless particular recourse is sought and confidentiality cannot be maintained. However, the prior consent of the complainant shall be obtained before proceeding;

- Where the complainant has been physically traumatised, encouraging the individual to take the necessary precautions in order to preserve evidence;
- Ensuring that complainants are aware of the services available to support them and outlining the benefits of seeking certain support;
- Outlining the options available to the individual (see point 3.1.5 below) being careful to ensure that the individual understands all the implications of the choices such that an informed choice can be made;
- Where the complainant chooses an option other than the initial consultation, the reporting officer shall hand the case over to the relevant Co-Ordinating officer for further action;
- Keeping in contact with the individual throughout whichever process is pursued, ensuring that they are being supported and assisted;
- Keeping reports of incidents and ensuring that these are forwarded to the Dean of Students Division (in the case of students) and the HR Division (in the case of staff) in line with point 3.1.8 below in dealing with the collection of statistics;
- Participating in the Fairness Forum when the complainant lays a formal complaint or the University wishes to pursue disciplinary action;
- Meeting as a collective every six months to discuss incidents on campus, to review statistics and discuss educational programmes; and
- Recusing themselves from dealing with a complaint where the interests of the complainant are not best served through their involvement, including conflicts of interest.

The Reporting Officers (with the exception of those where these responsibilities are included in their jobs) shall receive an honorarium from the University for assuming these responsibilities where cases proceed beyond the first consultation i.e. where the complainant chooses to pursue one of the options available to them.

The Dean of Students Division and the HR Division shall be responsible for ensuring that a number of Reporting Officers are available to staff and students. Such individuals will be identified from amongst staff and students. Diversity in terms of race, gender, age, cultural and ethnic group, religion, disability, and sexual orientation will be important in identifying such individuals.

In addition, certain posts will encompass the responsibilities of a Reporting Officer. For staff, there shall be:

- Specified individuals within the HR Division;
- Any nursing sister at the Health Centre

For students, these posts shall be:

- Any nursing sister at the Health Care Centre
- Hall Wardens
- SRC President and the SRC Activism and Transformation Councillor.

The names of these Reporting Officers will be made available to staff and students.

#### *(c) Fairness Forum*

The Fairness Forum shall include at least two individuals with appropriate legal training. The Fairness Forum shall be constituted bearing in mind the need for diversity relative to the nature of the complaint. In the case of students, the members of the Forum shall be identified by the Registrar's Division after consultation with the Student Co-Ordinating Officer. In the case of staff, the members of the Forum shall be identified by the Director: Human Resources or his/her nominee.

For students, the Forum shall consist of the following members:

- Chair: One of the University Prosecutors
- 2 Reporting Officers, chosen from amongst the Reporting Officers, ensuring student representation
- Representative from the Dean of Students Division, usually the Co-Ordinating Officer
- Director: Equity and Institutional Culture
- In the event that there is an insufficient number of forum members with appropriate legal training, a further member shall be co-opted to fulfil this requirement.

For staff, the Forum shall consist of the following members:

- Chair: the Prosecutor/University representative
- 2 Reporting Officers, chosen from amongst the Reporting Officers ensuring staff representation
- Director: Equity and Institutional Culture
- Representative from the Human Resources Division, usually the Co-Ordinating Officer
- 1 representative from each union
- In the event that there is an insufficient number of forum members with appropriate legal training, a further member shall be co-opted to fulfil this requirement.

Where a complaint involves both staff and student, the Forum shall consist of the following members:

- Chair: Where the alleged perpetrator is a student, one of the University Student Prosecutors; where the alleged perpetrator is a staff member, the University representative
- Representative from the Dean of Students Division, usually the Co-Ordinating Officer
- Representative from the Human Resources Division, usually the Co-Ordinating Officer
- Director: Equity and Institutional Culture
- Nominee of the SRC
- 1 Reporting Officer
- 1 representative from each union
- In the event that there are an insufficient number of forum members with appropriate legal training, a further member shall be co-opted to fulfil this requirement.

The role of the Fairness Forum relative to the University prosecutor/representative is very important. The Forum is not responsible for the investigation into an allegation, this is the responsibility of the University prosecutor or representative. The Forum is not responsible for making decisions as to whether to proceed with disciplinary action. This is the role of the University prosecutor/representative, after consultation with the Forum. As such the Forum plays an advisory role. Where the University prosecutor/representative chooses a course of action against the view of the majority of the rest of the Forum, reasons, in writing, will be provided.

However, given the nature of the cases being dealt with, confidentiality is of utmost importance. A breach of such trust will be regarded in a very serious light and disciplinary action may be taken.

### **3.1.4 Strategies to support complainants of unfair discrimination and harassment**

It is critical that complainants of unfair discrimination and harassment have access to support from appropriate agencies after an incident. It is also important that accurate information is provided to the complainant. Strategies must allow for the resolution of these complaints as quickly as possible.

#### *3.1.4.1 Initial support*

Initial support may be provided by the person whom the complainant first approaches.

Where such an individual is not a Reporting Officer, the complainant should be encouraged to contact and deal with such a Reporting Officer as these individuals have been especially trained to support individuals at these times.

Should the complainant not wish this, the individual should, at a bare minimum, be advised that a Reporting Officer will be contacted (preserving the complainant's name) so as to ensure that the incident is recorded. Under this circumstance, the Reporting Officer cannot be expected to pursue the matter. Should the complainant wish to take the matter further, then a Reporting Officer would need to be contacted.

Initial support may also include the complainant contacting the Health Care Centre which has a 24 hour emergency service as the nursing sisters are also Reporting Officers. This is encouraged where the complainant has experienced physical injuries and evidence needs to be collected. Collecting such evidence does not imply that the complainant will seek to lay charges against the alleged transgressor but doing so at least keeps this option open.



Complainants may also approach the Counselling Centre for initial psychological support but referral to a Reporting Officer would take place thereafter.

#### 3.1.4.2 *Medium-term support*

Within the Dean of Students Division, there shall be agencies to provide psychological and emotional support as well as security to **student** complainants of unfair discrimination.

Psychological and emotional support to **staff** complainants of unfair discrimination and harassment is provided by an external service provider, by agreement with the Human Resources Division. At the time of writing this policy, a counselling service was being provided by FAMSA, free of charge to staff.

### 3.1.5 **Recourses available to complainants of discrimination and harassment**

In providing support to complainants, the options available to the complainant must be outlined. It is the complainant's choice as regards what recourse s/he wishes to follow.

The options available are:

- Consultation (seeking advice from the Reporting Officer)
- Indirect communication with the alleged transgressor
- Direct communication with the alleged transgressor
- Mediation
- Formal complaint which may or may not lead to disciplinary action
- In the case of students in residence who wish to follow a formal complaint procedure, this can also be done with the relevant House or Hall Warden (within the limits of authority delegated to them in terms of the student disciplinary code)
- In the case of staff, raising this issue with the Head of Department, line manager or other person deemed appropriate by the University.

These options are available to the individual to allow for appropriate action at an individual level. Irrespective of which option is chosen with the exception of a formal complaint, this does not preclude the University from investigating an incident and where appropriate taking action independently against the alleged transgressor. This is important in terms of the institution's obligation to the entire University community and where taking action is necessary to protect the interests of the entire collective.

#### (i) *Initial Consultation*

Consultation with a Reporting Officer provides an opportunity for the complainant to discuss an alleged incident of unfair discrimination and harassment. These consultations will be confidential and can be "off the record" if so requested. The complainant may simply wish to have the incident noted by the institution without seeking any further action.

A record is kept of this interaction by the Reporting Officer. This record will only deal with the alleged incident and does not refer to the name of the complainant or that of the alleged transgressor.

The benefit of this sort of interaction for the complainant is that it provides an opportunity to discuss the incident, seek emotional support, find out more about what assistance can be provided, and alert the institution to what type of unfair discrimination and harassment is taking place.

This sort of consultation with a Reporting Officer may result in the complainant deciding to pursue other avenues of recourse.

The role of the Reporting Officer is limited to the initial consultation, after which the case is handed over to the Co-Ordinating officer for follow-up. The Reporting Officer may continue to offer support and guidance to the complainant but will not drive the process.

(ii) *Indirect Communication*

A complainant may request that the Co-Ordinating Officer act on an alleged incident of unfair discrimination and/or harassment directly, by addressing the other party in person verbally or in writing. In this interaction, the Co-Ordinating Officer would describe the alleged unwelcome behaviour and its effect, stating that the complainant has indicated that the behaviour must stop.

A record is kept of this interaction by the Co-Ordinating Officer. This record will deal with the alleged incident and but will not refer to the name of the complainant nor that of the alleged transgressor.

The purpose of this particular interaction is not for the alleged transgressor to deny this allegation. Where the alleged transgressor disputes this allegation, the complainant could then seek to proceed with other action against the alleged transgressor.

(iii) *Direct Communication*

The complainant may request that s/he meets directly with the alleged transgressor in the presence of the Co-Ordinating Officer and/or a counselor. The purpose of the meeting shall be for the complainant to express their experience of violation to the alleged transgressor in order to encourage an understanding of the experience of the complainant and why this behaviour constitutes a violation of human dignity. The ideal outcome is to create awareness of the impact of the behavior resulting in behaviour change.

A record of the meeting should be kept by the Co-Ordinating Officer. The record will deal with the reported incident and will refer to the name of the complainant as well as the alleged transgressor.

The alleged transgressor is not compelled to participate in this process. However, depending on the outcome of this meeting, the complainant may elect to not take the matter any further. If the alleged transgressor elects not to participate, the complainant should be advised of the other options available.

(iv) *Mediation*

The complainant may request that third party intervention takes place. This will involve the use of an experienced mediator to mediate a meeting between the complainant and the alleged transgressor. The benefit of this interaction is that it allows for the two parties to explore perceptions and experiences related to a particular incident. The complainant will have an opportunity to express their experience of violation to the alleged transgressor in order to encourage an understanding of the perspective of the complainant. The alleged transgressor in turn, will have an opportunity to express his/her understanding of events and motivation to the complainant. A further benefit is that the mediation process uses a trained mediator.

Mediation requires that the alleged transgressor is willing to participate in such mediation, as mediation is a voluntary process. If the alleged transgressor does not agree to the mediation, the complainant may then elect to lay a formal complaint.

The University will ensure availability of suitable mediators for this intervention. If the alleged transgressor is willing to engage in mediation, then the choice of mediator is chosen by the Co-Ordinating Officer. If either party has an objection to the mediator identified, this can be put in writing to the Co-Ordinating Officer.

A record is kept of this interaction by the mediator. This record will deal with the alleged incident and the outcome of the mediation, referring to the name of the complainant, the alleged transgressor and the mediator. The Reporting Officer, at the request of the complainant, may observe the mediation process but may not participate. The consent of the alleged transgressor is required.

If mediation breaks down, the complainant shall not forfeit the right to proceed with formal action against the alleged transgressor. Once an agreement is reached both parties are bound by the memorandum of understanding. If the terms of the agreement are breached, or if further information that is relevant to the process comes to light then the complainant has the right to proceed with formal action.

(v) *Formal Complaint*

The complainant may lay a formal complaint and ask that the alleged incident is investigated and where relevant, that the disciplinary process against the alleged transgressor is invoked.

Where a formal complaint follows any of the above courses of action, no evidence from these processes may be introduced in the course of the formal proceeding.

Should the alleged transgressor believe that a false allegation has been made, a formal counter-complaint can also be made.

A formal complaint is investigated by the University prosecutor or University representative as the case may be, and then presented to the Fairness Forum subject to the procedures outlined in 3.1.6 or 3.1.7 below.

The complainant is assured of confidentiality and all participants in the Fairness Forum are required to observe this.

A record is kept of all formal complaints and the outcomes by the Co-Ordinating Officer. This record will deal with the alleged incident and the outcome of the disciplinary process, referring to the name of the complainant, the accused, and the members of the Fairness Forum. The Reporting Officer to whom the complaint was made, at the request of the complainant, may observe the process and provide support to the complainant but may not participate. The Proctor or University Chairperson retains the right to exclude the Reporting Officer on the grounds of inappropriate behaviour. Where the accused objects to the inclusion of the Reporting Officer, the Proctor or University Chairperson shall consider the basis for such an objection before making a ruling in this regard.

(vi) In cases where the reporting officer is also a disciplinary officer (Hall Wardens), the complainant should be given the option of either following the standard student disciplinary code procedure as applied in the Hall or utilizing the processes provided for in this policy. Should the complainant elect to lay a formal complaint (i.e. follow student disciplinary code procedures) then an independent disciplinary authority (e.g. another Hall Warden) would need to hear the case, appropriate to the level of the offence;

(vii) In cases where the complainant is a staff member and s/he directs a complaint to their line manager, the line manager, with the complainant's permission, would refer the complaint to a Reporting Officer. Should the complainant decline such permission, the line manager is to advise the HR Division of the alleged incident for investigation. The complainant has the right to withhold evidence and unless other compelling evidence exists of the transgression, it is unlikely that the matter be pursued further.

**3.1.6 Investigative procedure for dealing with allegations of unfair discrimination and harassment made against a staff member**

- (i) When a formal complaint is received or an incident is reported, the Staff Co-Ordinating Officer shall be responsible for convening the Fairness Forum;
- (ii) Prior to the Fairness Forum convening, the University representative shall meet with the complainant as soon as possible and thereafter, any other relevant witnesses in order to gather the evidence related to the incident.
- (iii) The University representative shall present the evidence to the Fairness Forum, who will consider the matter; and
- (iv) The University representative, after consultation with the Fairness Forum shall determine if there is *prima facie* evidence to proceed with a disciplinary hearing and where there is sufficient evidence, the disciplinary process as per the Staff Disciplinary Procedure will be invoked.

**3.1.7 Disciplinary procedure for allegations of unfair discrimination and harassment made against a student**

- (i) When a formal complaint is received or an incident is reported, the Co-Ordinating Officer shall be responsible for convening the Fairness Forum;
- (ii) Prior to the Fairness Forum convening, the University prosecutor shall meet with the complainant and any other relevant witnesses and gather the evidence related to the incident.
- (iii) The University prosecutor, after consultation with the Fairness Forum shall determine if there is *prima facie* evidence to proceed with a disciplinary hearing and where there is sufficient evidence, the disciplinary process as per the Student Disciplinary Code will be invoked; and
- (iv) The Proctor shall be responsible for determining the outcome of the disciplinary hearing.

### **3.1.8 Mechanisms to allow the institution to monitor the nature and extent of unfair discrimination and harassment:**

The following mechanisms will be used to monitor the nature and extent of unfair discrimination, and harassment:

- (i) Each Reporting Officer will keep a record of each individual incident reported as outlined in 3.1.5 above;
- (ii) Using these individual records, the incidence and nature of incidents of unfair discrimination and harassment dealt with by Reporting Officers will be collated by the Co-Ordinating Officers in the Dean of Students Division (for student records) and the HR Division (for staff records);
- (iii) These collated statistics will be presented at a six-monthly meeting of the Reporting Officers;
- (iv) These collated statistics will be reported on an annual basis to the Employment Equity and Institutional Culture Committee (for incidents experienced by staff) by the Director: HR or his/her representative and the Equity and Institutional Culture Committee (for incidents experienced by students and staff) by the Dean of Students or his/her representative;
- (v) Regular student surveys, overseen by the Dean of Students Division, to assess the nature and extent of unfair discrimination, and harassment will be used; and
- (vi) Regular staff surveys, overseen by the Human Resources Division, to assess the nature and extent of unfair discrimination and harassment will be used.

### **3.2 REVIEW PROCEDURE:**

On an annual basis, the Human Resources Division and Dean of Students Division will, through the Co-Ordinating Officers, evaluate the success of the strategies, structures and processes outlined in this policy. This information shall be collated and used as a basis for reviewing this policy. In addition, every three years, the following structures will be asked to raise any concerns with current strategies, structures and processes:

- (i) Unions
- (ii) GENACT
- (iii) Women's Academic Solidarity Association
- (iv) Employment Equity Committee
- (v) SRC
- (vi) Senate Disciplinary Committee

**Last updated: August 2011**