

POLICY ON UNFAIR DISCRIMINATION AND HARASSMENT

In case of any discrepancies or differences about interpretation between the English text of this policy and its Afrikaans translation, the English version must prevail as the legally binding formulation.

Purpose	To state the principles and provisions for addressing unfair discrimination against and harassment, sexual harassment and victimisation of staff and students at Stellenbosch University, which includes the adoption of positive measures to prevent and protect staff and students against unfair discrimination, harassment, sexual harassment and victimisation, as well as the establishment of procedures for dealing with complaints of unfair discrimination, harassment, sexual harassment and victimisation within the institution
Type of document	Policy
Accessibility	General internal and external
Date of implementation	Protocol implementation by 1 January 2016 Policy implementation by 1 October 2016
Revision date/frequency	Every five years, or sooner if circumstances so dictate, or as deemed necessary by the owners of the policy
Previous revisions	None (new policy)
Owner of this policy	Vice-Rector: Learning and Teaching, and Vice-Rector: Social Impact, Transformation and Personnel (joint ownership)
Institutional functionary (curator) responsible for this policy	Senior Director: Student Affairs and Chief Director: Human Resources (joint curatorship)
Date of approval	26 September 2016
Approved by	Stellenbosch University Council

Sleutelterme / Key terms

Afrikaans	English
Onbillike diskriminasie	Unfair discrimination
Seksuele teistering	Sexual harassment
Viktimisering	Victimisation
Gelykheid	Equality
Transformasie	Transformation
Gender	Gender

1. INTRODUCTION

- 1.1 Stellenbosch University's (SU) strategic positioning for the 21st century is anchored in creating and sustaining an environment of inclusivity, transformation, innovation and diversity, and maintaining excellence with a focus on the future. The institution's responsibility to our country and continent is key. One of the challenges in this regard is to remove inequalities and discrimination from our higher education system and to strengthen human rights and democracy on our campuses. These aspirations have been captured in the University's vision, mission and value statement for 2030¹.
- 1.2 The University fully commits itself to promoting all fundamental rights and freedoms of every person on campus as required by the Constitution and related legislation such as the Promotion of Equality and the Prevention of Unfair Discrimination Act 4 of 2000 and the Employment Equity Act 55 of 1998. This policy must be read together with the Protection from Harassment Act 17 of 2011 and the Code of Good Practice on Handling of Sexual Harassment Cases in the Workplace, 2005, as amended.
- 1.3 Equality is promoted within a culture of inclusivity. SU is committed to becoming a more diverse, accessible, inclusive, participatory and representative institution and to remaining self-critical about potential structural discrimination, micro-aggressions and oppression².

¹ Institutional Intent and Strategy, Stellenbosch University, 2013–2018

² Institutional Intent and Strategy, Stellenbosch University, 2013–2018

2. PURPOSE OF THE POLICY

- 2.1 The purpose of this policy is to state the principles and provisions for addressing unfair discrimination against staff and students at SU, as well as to ensure that appropriate mechanisms are in place to support those subjected to unfair discrimination, and that positive steps are taken to prevent instances of unfair discrimination and protect staff and students against such discrimination.
- 2.2 This policy aims to promote equal opportunities for success through appropriate structures and practices.
- 2.3 This policy offers an overarching framework for promoting equality and for preventing and addressing unfair discrimination.

3. SCOPE OF THE POLICY

- 3.1 The scope of the policy is to guide all policy and procedural documents and principles that relate to unfair discrimination, victimisation, harassment and sexual harassment at SU.
- 3.2 The policy applies to all staff, students and any other person or entity engaging in any activity on any property under the University's jurisdiction or any University-related activity.
- 3.3 This policy further applies wherever unfair discrimination or harassment might impact negatively on the University or its staff, students or any other person or entity, and when and wherever any behaviour relating to unfair discrimination and harassment or the publication and reporting thereof might have a negative impact on or possess a reasonable potential to harm a fellow student or staff member of the University or any other person or entity, or on the University's reputation.

4. AIMS OF THE POLICY

The aims of this policy are:

- 4.1 to define 'unfair discrimination', 'harassment', 'sexual harassment' and 'victimisation' with a view to prevent or address all forms of unfair discrimination, harassment, sexual harassment and victimisation within the institution;

- 4.2 to provide consistent, fair, reasonable and transparent procedures and structures for dealing with allegations of unfair discrimination, harassment, sexual harassment and victimisation;
- 4.3 to promote adherence to the stipulations of the Constitution of South Africa and related legislation;
- 4.4 to clarify internal and external roles and responsibilities with regard to reporting, support, investigations, education and communication; and
- 4.5 to recognise past inequalities and the impact thereof, and to implement corrective and remedial actions.

5. DEFINITIONS

For the purpose of this policy, the following definitions apply:

- 5.1 **Advisors:** a team of advisors must be contacted following each official complaint and presented with the information, and they must recommend the best possible pathway to resolution;
- 5.2 **ADHO:** the anti-discrimination and harassment officer based at the Equality Unit (EU) at the Centre for Student Counselling and Development (CSCD);
- 5.3 **Advisory panel:** the panel of preliminary enquiry who conduct investigations after the advisors have filed official complaints and referred them to an advisory panel; there are two advisory panels for discrimination, harassment and victimisation complaints – one dealing with staff and the other with students; there are two advisory panels, too, for sexual harassment complaints – one dealing with staff and the other with students;
- 5.4 **Complainant:** the person alleging that conduct constituting unfair discrimination, harassment, sexual harassment or victimisation has occurred; the complainant may or may not be the person directly affected;
- 5.5 **Harassment:** unwanted conduct which demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences, and which may be persistent, once-off or serious and may relate to –
 - 5.5.1 sex, gender or sexual orientation, or

- 5.5.2 a person's belonging or presumed belonging to a group identified by one or more of the prohibited grounds or characteristics associated with such group;
- 5.6 **Mediation:** a voluntary, confidential once-off facilitation of communication between two parties (directly or indirectly) by a trained mediator, the aim being an amicable resolution to any conflict or dispute, based on the principle of shared humanity;
- 5.7 **Microaggressions:** any brief, everyday verbal, nonverbal or environmental slights, snubs or insults, whether intentional or unintentional, that communicate hostile, derogatory or negative messages to marginalised and disempowered groups in society;
- 5.8 **Respondent:** the person against whom a complaint has been filed;
- 5.9 **Sexual harassment:** behaviour typically experienced as offensive, which may include sexual approaches and which often are made within the context of a relationship of unequal power or authority; sexual harassment is a form of discrimination on the grounds of gender, sexual orientation or sexuality; it is unwanted and may be experienced as an expression of power, authority or control of a sexual nature; it creates a hostile environment that prevents those concerned to learn or work to capacity.

Sexual attention becomes sexual harassment if the behaviour persists (although a single incident of harassment can constitute sexual harassment, too), if the complainant has made it clear that the behaviour is considered offensive and/or if the respondent should have known that the behaviour would be regarded as unacceptable³.

Perceptions diverge regarding the kind of behaviour that constitutes sexual harassment, ranging from unwelcome sexual attention, sexist or suggestive remarks and bribery or extortion (e.g. positive rewards for sexual favours) to aggressive behaviour (e.g. attempted or actual rape). Sexual harassment thus covers a broad spectrum of unwanted behaviour, including the following:

- 5.9.1 **verbal** harassment, such as unwelcome enquiries regarding a person's sex life, telephone calls with a sexual undertone, continuous rude or sexist jokes or remarks, jokes with sexual innuendo, unwelcome requests for dates and remarks about a person's figure;

³ Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace, 2005, as amended

- 5.9.2 **nonverbal** harassment, such as leering, gestures with a sexual meaning and persistent unwelcome flirtation;
 - 5.9.3 **visual** harassment, such as displaying pornographic photos, comics, objects, et cetera that create a hostile environment;
 - 5.9.4 **physical** harassment, such as unwelcome contact through patting, pinching, fondling, kissing, pawing, assault, molesting and rape; and
 - 5.9.5 **quid pro quo** harassment, such as sexual bribery (e.g. promising a promotion in return for sexual favours) and sexual extortion (e.g. refusal to promote people if they do not consent to granting sexual favours);
- 5.10 **Unfair discrimination:** any act or omission – including a policy, rule or practice – that undermines people’s human dignity or has the effect of preventing them from participating as equals in any aspect of University life on the grounds of their race, gender, sex, pregnancy, marital status, HIV/Aids status, socio-economic status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth or any other legally recognised prohibited ground of discrimination, or a combination of more than one of these grounds.

No person may discriminate unfairly – whether directly or indirectly – against an employee in any employment policy or practice on the grounds of race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV/Aids status, conscience, belief, political opinion, culture, language, birth or any other arbitrary ground, or a combination of more than one of these grounds⁴. Promoting affirmative action consistent with the Employment Equity Act 55 of 1998, as amended, does not constitute unfair discrimination; neither does preferring or excluding any person based on an inherent job requirement.

Unfair discrimination can happen either directly or indirectly:

- 5.10.1 **Direct unfair discrimination** is overt discrimination that occurs when a person is treated less favourably than others on any of the grounds included by the definition of ‘unfair discrimination’ at 5.10 above. Hate speech – i.e.

⁴ Employment Equity Act 55 of 1998 as amended

communication, including remarks and gestures, that violates the human dignity of other persons – is a form of direct unfair discrimination.

5.10.2 Indirect unfair discrimination occurs when a requirement, condition or practice is set which appears neutral, but in effect discriminates unfairly against people on any of the grounds included by the definition of ‘unfair discrimination’ at 5.10 above. An example of indirect unfair discrimination is when a requirement, condition or practice seems reasonable, but imposing it excludes persons with one or more of the attributes included by 5.10 above, whereas most persons without those attributes can comply with such requirement, condition or practice;

5.11 Victimisation: any detrimental consequences (or threat of such consequences) visited upon people because they have lodged, intend to lodge, or have helped someone else lodge a complaint of unfair discrimination, or because the people in question have provided information about a complaint (e.g. by whistle-blowing) or acted as a witness regarding a complaint of unfair discrimination.

6. POLICY PRINCIPLES

6.1 Equity and equality as a strategic priority

The underlying principles of equity and equality as set out in the Constitution and related legislation are recognised as an integral component of SU’s strategic priorities to strengthen human rights and democracy on our campuses. These aspirations are expressed in the University’s vision, mission and value statement for 2030⁵.

6.2 Responsibility

Every student and staff member at SU should feel that, since they are important stakeholders in the University, they are co-responsible for respecting and promoting the principles laid down in this policy.

6.3 Employment equity practices

Equal opportunities, affirmative action, the prohibition of unfair discrimination and the promotion of diversity are key driving principles of the recruitment and appointment process at SU.

⁵ Institutional Intent and Strategy, Stellenbosch University, 2013–2018

7. POLICY PROVISIONS

7.1 Provisions which prohibit unfair discrimination, harassment, sexual harassment and victimisation, and which promote the creation of a diverse and inclusive campus community

7.1.1 All persons to whom this policy applies must refrain from engaging in any form of direct or indirect unfair discrimination, harassment, sexual harassment or victimisation as defined in paragraph 5 above.

7.1.2 SU Management must take reasonable steps to create a diverse working environment which is free from all forms of unfair discrimination, harassment, sexual harassment and victimisation. Such steps include:

- a) adopting appropriate policies, plans and programmes to protect or advance groups that have been disadvantaged by unfair discrimination or members of such groups;
- b) reviewing all institutional policies and practices regularly to ensure that they comply with the principles and provisions set out in this policy;
- c) adopting appropriate educational strategies and communication campaigns to educate and sensitise staff and students continuously about the prohibition of unfair discrimination, harassment, sexual harassment and victimisation and the promotion of a diverse, inclusive campus environment; and
- d) adopting institutional practices that foster language sensitivity and that create institutional space and appreciation for different cultural and religious practices, social justice campaigns and public celebrations.

7.1.3 Annual training opportunities for staff: As part of their induction at SU, all employees are required to undergo training as regards race, diversity, transformation and social justice within a year of them being appointed, as well as at other times while they are in SU's employ, to enhance their understanding and compliance with this policy. Awareness training about the Employment Equity Act and the Six Codes of Good Practice must be included as per the Employment Equity Plan (prescribed by the Employment Equity Act and the Six Codes of Good Practice).

7.1.4 All line managers are obliged to take all reasonable measures to accomplish the following:

- a) Promote staff empowerment by means of race, diversity, transformation and social justice training as described at 7.1.3 above.
- b) Monitor the working environment to ensure that it is free from all forms of unfair discrimination and to take appropriate remedial action in accordance with this policy should unfair discrimination or the threat thereof occur in their environment.
- c) Ensure that their own behaviour is appropriate and that they do not engage in conduct which may contravene the policy and procedures set out herein, which includes refraining from any form of victimisation of staff or students.
- d) Ensure that all persons to whom this policy applies and who resorts under their line management understand the policy and procedures set out herein. Heads of residences and coordinators of private student organisations (PSOs), in collaboration with the Centre for Student Communities (CSC), must ensure that all students understand the policy and procedures set out herein. Annual training for student leaders (including house committee members, mentors, committee members of associations and Student Representative Council members) should be facilitated to ensure that students are informed of the policy and its content.

7.1.5 All employees and students of SU must strive to:

- a) ensure that they do not engage in any unfair discrimination, harassment or victimisation in contravention of this policy;
- b) report any alleged incidences of unfair discrimination, harassment or victimisation (as outlined in the attached reporting protocol; see addenda A, B and C);
- c) refer persons who allege that they have been the victim of unfair discrimination or harassment to the responsible entities in terms of paragraph 7.2 below for support, counselling and filing the appropriate complaints; and
- d) maintain confidentiality of information and cooperate during the investigation of a complaint.

7.1.6 Criminal and civil charges: Nothing may prevent grievants from pressing separate criminal charges against alleged respondents under the Protection from Harassment Act 17 of 2011, and nothing may prevent grievants from pressing separate civil charges against alleged respondents.

7.2 Provisions that frame institutional responses to unfair discrimination, harassment, sexual harassment and victimisation

- 7.2.1 **Confidentiality** must be preserved as far as possible by limiting communication to persons to whom disclosure is consistent with their official position and responsibility, or with their specific responsibility to assist in the resolution of the grievance concerned.
- 7.2.2 The principles of **procedural fairness** apply at all stages of the complaint resolution process. Persons responsible for investigating and resolving complaints must guard consciously against bias and conflict of interest, and must act fairly and impartially. The rights of complainants as well as respondents must be protected. Each party must be given a fair opportunity to know the official complaint or case against them, and to be heard. Respondents must be informed of a complaint as soon as the advisors at the EU at the CSCD have made their recommendations upon reviewing the complaint made by the complainant.
- 7.2.3 Complaints must be **investigated promptly** and involve as few people as possible. Parties to a complaint are entitled to receive advice and support as appropriate, and to be kept informed of the progress regarding a complaint (outlined in the attached reporting protocol; see addenda A, B and C).
- 7.2.4 Where appropriate, the preferred **method of resolution** is discussion, mediation or a process of conciliation or education – or a combination of these methods – with a view to redressing any contraventions of this policy and assist the parties to agree on an outcome which is consistent with constitutional rights and values as well as related legislation. The appointed ADHO at the EU must explain to the complainant clearly and comprehensively what is the preferred method of solution available and why it is appropriate. The remedy which the complainant would prefer for pursuing a complaint – i.e. either the disciplinary approach (or other similar processes) or the mediatory approach (or discussion, or the process of conciliation or education) – is an important consideration in dealing with complaints.
- 7.2.5 **Mediation must be a voluntary process**, therefore both parties or groups must agree to it and give their consent in writing. Agreement to mediation neither

commits the complainant to pressing disciplinary or criminal charges, nor does it deprive the complainant of the right to do so. If mediation breaks down, the procedure for complaints or grievances may be instituted, which may or may not lead to a disciplinary procedure. However, no formal inquiry or disciplinary proceedings may commence or be pursued while mediation is taking place, subject to 7.2.6 and 7.2.7 below.

- 7.2.6 The University recognises that **certain kinds of offences are not suited to being mediated**, for example if the alleged infringement is serious. Care must also be taken to ensure that settlements, even when agreed to by both parties, are appropriate and fair.
- 7.2.7 The University recognises that **mediation may be inappropriate** if a party to a complaint holds a reasonable belief that such procedure is likely to provoke victimisation, further incidents of unfair discrimination or harassment, or unnecessary distress.
- 7.2.8 The **grievance or disciplinary process** must be followed where mediation has been proven unsatisfactory. The EU and the SU functionary responsible must collaborate and communicate continuously regarding the referral of cases, as necessary.
- 7.2.9 This policy is aligned with the newly revised **Disciplinary Code for Students and Staff Disciplinary Processes**.
- 7.2.10 Staff and students avail themselves of these procedures **may not be victimised** on account of invoking their rights in law or the procedures established under this policy and related policies. Any staff member or student who feels victimised on this account has the right to lay a complaint according to this policy and procedures.
- 7.2.11 Appropriate steps must be taken to ensure **psychological support** for all parties involved, during the procedure as well as afterwards.
- 7.2.12 All SU staff and students must be **informed of the policy** and procedures, and may consult the appointed anti-discrimination and harassment officers (ADHOs) at the EU.

7.2.13 Nothing in this policy may pre-empt the right of any individual to seek appropriate **legal redress outside the University**.

7.2.14 Frivolous or **vexatious complaints** will not be tolerated and may result in disciplinary action. The Head: EU must refer such cases to the Head: Student Discipline or the Chief Director: Human Resources Division (HR), or to both.

8. FUNCTIONS AND RESPONSIBILITIES

8.1 Functions and responsibilities

8.1.1 The policy has been approved by the University Council. The Rector is responsible for overseeing the execution of the policy, and has delegated the management of the policy to members of the Rector's Management Team (RMT), namely the Vice-Rector: Learning and Teaching (VR:L&T) and the Vice-Rector: Social Impact, Transformation and Personnel (VR:SI, T&P).

8.1.2 The vice-rectors mentioned at 8.1.1 are joint owners of this policy and are responsible for the policy being formulated, updated and implemented, as well as for a curator and complementary functionaries being appointed and functioning effectively.

8.1.3 The Senior Director: Student Affairs of the Division Student Affairs and the Chief Director: HR are jointly responsible for the curation of the policy and must ensure that it is formulated, approved, reviewed, communicated, made available and implemented. The curators also have the final say, subject to the Rector's approval, in matters regarding the policy.

8.1.4 The EU, as part of the CSCD, serves as the office dealing directly with complaints of unfair discrimination against and harassment of staff and students. The Head: EU has a managerial function and oversees all activities of the unit. The complaint procedures are set out in the protocol (addenda A, B and C). The procedures are aligned with the Disciplinary Code for Students.

8.1.5 The role of the Employment Equity (EE) Manager at SU is to establish a long-term, integrated approach to EE and diversity at SU by developing the University's equity and diversity programmes, assisting faculties and central support services divisions with developing appropriate strategies, and ensuring that the University complies with the Employment Equity Act and related

legislation. The Manager: EE is responsible for preparing and compiling the reports to be submitted to the Department of Labour.

8.1.6 The functions and responsibilities of the Employment Equity Advisory Committee (EEAC) are the following:

- a) Assist with the implementation of EE measures and the promotion of diversity within the University.
- b) Fulfil a consultative and monitoring function with regard to the implementation of EE processes at the University, and initiate recommendations for policy adjustments as required.
- c) Monitor the development, revision and extension of policies and strategies that affect EE and diversity with respect to all University staff.
- d) Strive to identify and eliminate all forms of discrimination within the University.
- e) Review progress regarding EE and diversity goals against the plans, targets and recommendations obtained from reviews of SU units.
- f) Advise the Vice-Chancellor, Senate and senior SU Management on the responsibilities, functions and initiatives of the EE Unit and the EEAC.
- g) Represent the various constituencies in broad matters identified as part of the EEAC's monitoring role.
- h) Report to constituencies on progress regarding matters discussed at EEAC meetings by referring to the official minutes of such meetings.
- i) Monitor and discuss the actual implementation of the EE Plan.
- j) Monitor and evaluate the EE Plan for the purpose of submitting quarterly reports to the RMT and Council.

8.2 Implementation

The curators are responsible for the implementation of the policy from the effective date or the review date. The stipulations of this policy become effective as soon as the SU Council has approved it.

8.3 Monitoring

The owners of the policy are accountable and the curators are responsible for the necessary controls being established to monitor adherence to the policy.

8.4 Reporting

The owners of the policy are accountable and the curators are responsible for reporting on the policy, which includes submitting an annual report to the RMT. Statistical feedback of incidents and a case management profile must be submitted once a semester to the VR:L&T and the VR:SI, T&P, as owners of the policy.

8.5 Release

The curators, advised by the Director: Legal Services, must disseminate information regarding completed cases.

8.6 Revision

The policy must be reviewed every five years – or sooner, if circumstances so dictate – or as deemed necessary.

8.7 Action in case of noncompliance

In case of noncompliance with the policy the curator must investigate the actions, context and possible reasons for noncompliance, and advise on remedial actions. In cases of serious noncompliance disciplinary procedures may be considered.

9. SUPPORTING DOCUMENTS

Addendum A: Complaint procedures and promotional measures against unfair discrimination and harassment

Addendum B: Complaint procedures and promotional measures against sexual harassment

Addendum C: Graphic presentation of the proposed process – complaint by a student or staff member

10. RELATED DOCUMENTS

Botha, HL, et al. 2014. *Report of the Task Team on the Inquiry into Unacceptable Welcoming Practices: Stellenbosch University.*

Soudien, C, et al. 2008. *Report of the Ministerial Committee on Transformation and Social Cohesion and the Elimination of Discrimination in Public Higher Education Institutions.*

South Africa (SA). 1996. *Constitution of the Republic of South Africa.* Pretoria: Government Printing Works.

South Africa (SA). *Higher Education Act, Act 101 of 1997*. Pretoria: Government Printing Works.

South Africa (SA). *Employment Equity Act (EEA), Act 55 of 1998*, as amended. Pretoria: Government Printing Works.

South Africa (SA). *Promotion of Equality and the Prevention of Unfair Discrimination Act, Act 4 of 2000*. Pretoria: Government Printing Works.

South Africa (SA). 2005. *Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace*, GN 1367 in GG 19049 (17 July 1998), as amended.

South Africa (SA). *Protection from Harassment Act, Act 17 of 2011*. Pretoria: Government Printing Works.

Stellenbosch University. *Admissions Policy*. Under review.

Stellenbosch University. *Disciplinary Code for Students*.

Stellenbosch University. *Employment Equity Plan*.

Stellenbosch University. *HIV/Aids Policy for Students and Staff*.

Stellenbosch University. *Institutional Intent and Strategy 2013–2018*.

Stellenbosch University. *Language Policy*.

Stellenbosch University. *Policy on Students and Staff with Special Needs (Disabilities)*. Under review.

Stellenbosch University. *Sexual Harassment Policy and Procedure for Staff*. Under review.

ADDENDUM A: COMPLAINT PROCEDURES AND PROMOTIONAL MEASURES AGAINST UNFAIR DISCRIMINATION AND HARASSMENT

The Equality Unit (EU) is based at the Centre for Student Counselling and Development (CSCD) and serves as centralised one-stop service for staff and students to report complaints regarding unfair discrimination, victimisation, harassment and sexual harassment.

The EU consists of staff members who specialise in support, training, research, communication and educational services in matters pertaining to HIV/Aids, sexuality and gender. Two additional posts have been created – for two anti-discrimination and harassment officers (ADHOs). A summary of the complaint process is set out below:

A

A staff member or student has experienced an incident of discrimination, harassment, sexual harassment or victimisation as defined in the SU Policy on Unfair Discrimination or Harassment, or an incident is reported to the Equality Unit (EU) from any SU environment.

B

Lodge an official complaint in person with an anti-discrimination and harassment officer (ADHO) at the EU.

- ADHO: preliminary case assessment and standardised intake form
- ADHO: ongoing process updates to complainants and respondents
- referral to support services where appropriate
- monitoring of data regarding complaints
- complaints logged via e-mail (unfair@sun.ac.za) to be regarded as reported unofficially

C

Case referred to advisors' team, who must make recommendations to the Head: EU (preferably within three working days). Recommendations could include:

- mediation or alternative dispute resolution by the EU (preferred, where appropriate)
- referral to HR or Student Discipline for formal investigation
- activation of staff or student advisory panel
- referral back into appropriate line function

The responsibilities of the EU, the ADHOs, the advisors and the advisory panels are discussed below.

1. Responsibilities: the EU

The EU has the following responsibilities:

- 1.1 Ensure that the policy is communicated effectively throughout the University.
- 1.2 Ensure awareness about this policy by means of continuing education and training.
- 1.3 Ensure that the induction programme for staff and students includes education on fundamental constitutional rights and the relevant SU policies, particularly the prohibition of all forms of unfair discrimination, harassment and victimisation.
- 1.4 Ensure that the staff in each faculty and support-services division are made aware of what the policy entails.
- 1.5 Ensure that student leaders (including mentors, house committee members and Student Representative Council members) receive annual training with regard to what the policy entails.
- 1.6 Ensure that the marketing material and contact details of the EU are easily accessible.
- 1.7 Formalise service level agreements with HR and the Transformation Office in order to synergise training, educational initiatives and awareness campaigns.
- 1.8 Conduct, in collaboration with the Transformation Office, regular surveys on the nature of the institutional climate at SU with reference to this policy.
- 1.9 Arrange a meeting with all role players (HR, the Transformation Office, etc.) four times a year to enhance collaboration and discussion, and to share best practices.
- 1.10 Monitor the implementation of the policy and provide regular feedback to the Director: CSCD as well as the Manager: Staff Wellness at HR and the Head: Transformation Office.
- 1.11 Receive and assess complaints filed by students and staff, and ensure, facilitate and manage the effective functioning of the complaints process.
- 1.12 Submit reports once a semester to the Senior Director: Student Affairs as well as the VR:L&T and the VR:SI, T&P on the implementation of this policy as regards case management, statistics and cooperation with role players.
- 1.13 Submit an annual report to the RMT to provide an overview of case management, statistics and cooperation with role players.

2. Anti-discrimination and harassment officers

The EU has two ADHOs. Their primary role is to provide comprehensive monitoring and evaluation, and to perform case management administration that prioritises the needs of the affected parties. ADHOs do not fulfil the role of counsellors or psychologists, but may inform complainants about the availability of such services.

ADHOs have the following responsibilities:

- 2.1 Participate in the pre-intervention phase, the intervention phase and the post-intervention phase, and be thoroughly informed about the various interventions available at SU (mediation, grievance procedures, disciplinary procedures, etc.).
- 2.2 Receive and assess complaints of unfair discrimination, harassment and victimisation.
- 2.3 Manage the discrimination and harassment protocol after an assessment has been done, ensuring that support, consultation and liaison are prioritised.
- 2.4 Can explain the University's policies pertaining to unfair discrimination, harassment and victimisation and the procedures available for resolving complaints and grievances.
- 2.5 Provide information about complainants' right to pursue external processes (e.g. via the Commission for Conciliation, Mediation and Arbitration – the CCMA – and the Equality Court). Cases can be referred to the CCMA only if the internal procedures have been exhausted.
- 2.6 Provide relevant information regarding the referred case to respondents, advisors, advisory panels and the environments concerned.
- 2.7 Refer complainants to a voluntary mediation process, should this be the intervention which the advisors have recommended. It is important for the EU to have trained mediators who can facilitate individual, group and community mediation.
- 2.8 Offer respondents the support of another ADHO during informal and formal processes.
- 2.9 Support complainants and respondents during investigations conducted by Legal Services or HR, and during disciplinary or grievance procedures, if complainants or respondents request them to do so.
- 2.10 Assist with training as well as the EU's educational work.
- 2.11 Follow up with complainants after an intervention as part of the post-intervention process and determine whether any new needs have been identified regarding their situation.

3. Advisors

A team of four advisors must determine the best pathway to resolution for each official complaint received via the walk-in service, which is coordinated by an ADHO. The advisors must make their recommendations to the Head: EU within three working days after the official complaint was lodged with the ADHO. The advisors may also refer complaints directly to Legal Services, depending on the nature of the complaint and according to the discretion of the Head: EU.

Resolution may include the following forms:

- 3.1 mediation (preferred)
- 3.2 staff advisory panel
- 3.3 student advisory panel
- 3.4 staff disciplinary investigation
- 3.5 student disciplinary investigation
- 3.6 HR process
- 3.7 referral back into the appropriate line function for intervention.

4. Advisory panel

The advisors may refer to either the staff or student advisory panel, who must be appointed by the Director: CSCD, the Chief Director: HR or the Director: Legal Services. It is strongly recommended that the composition of the advisory panel be representative of gender and race to communicate sensitivity towards the accommodation of all identities. Final approval of the composition of the advisory panel rests with the curators of the policy. The panel serves as the body providing expert advice about the procedures to be followed. The chair of an advisory panel must appoint the panel members within five working days after the advisors have recommended activation.

4.1 Members of the advisory panel

- 4.1.1 There are two advisory panels – one dealing with staff and the other with students.

- 4.1.2 An advisory panel consists of a chair and at least three competent members with expertise in or a sound understanding of social justice, discrimination or sexual harassment (or more than one of these elements).
- 4.1.3 The ADHO who conducted the initial assessment after a complaint has been received (whether from students or staff members) must submit the relevant information to the advisors. If recommended by the majority of the advisors, the chair of the advisory panel is tasked to activate the panel.
- 4.1.4 It is the chair's task to compile an advisory panel from the list of available panel members for each complaint received.
- 4.1.5 It is advised that four members be present for each investigation.

4.2 Functions of the advisory panel

- 4.2.1 Conduct the preliminary investigation within 10 working days after the advisory panel was activated upon the recommendation of the advisors.
- 4.2.2 Make recommendations to the University, complainants and respondents regarding the way to proceed with the matter in question.
- 4.2.3 Communicate that, where indicated, mediation is viewed as a strong component of the intervention process and a preferred alternative option for dispute resolution. Explain to complainants what is the preferred method of resolution available and why it is recommended. The remedy which the complainant would prefer for pursuing a complaint – i.e. either the disciplinary approach (or similar processes) or the mediatory approach (or discussion, or the process of conciliation or education) – is an important consideration in dealing with complaints.
- 4.2.4 Provide the EU within 20 working days with written feedback regarding the outcome of the investigation.
- 4.2.5 Make recommendations within 20 working days regarding entities that can assist the EU in taking the necessary steps to eliminate unfair discrimination, harassment, sexual harassment and victimisation.

- 4.2.6 Submit a written, confidential report that includes recommendations and feedback on the process followed to the Head: EU within 20 working days after the advisory panel was activated upon recommendation by the advisors. The Head: EU may extend the delivery date of the report upon receipt of a properly motivated request. Segments of the report regarding recommendations and feedback may be disclosed at the discretion of the Head: EU. All decisions that the Head: EU has to make regarding recommendations may be made in consultation with the Senior Director: Student Affairs or the Chief Director: HR or the Director: Legal Services, or more than one of these officers, as deemed appropriate. The recommended course of action could be, for example, the following:
- a) mediation (preferred)
 - b) staff disciplinary investigation
 - c) student disciplinary investigation
 - d) HR process
 - e) referral back into the relevant line function for intervention.

5. Procedures

- 5.1 The main aim to be kept in mind throughout the procedure is to serve complainants' interests as far as reasonably possible. Nonetheless, the rights of complainants as well as respondents must be protected.
- 5.2 A report or complaint of unfair discrimination, harassment, sexual harassment or victimisation originating from any environment within the University must be brought to the EU's attention as soon as reasonably possible. The e-mail address unfair@sun.ac.za can be used to lodge a report with the EU unofficially.
- 5.3 Anonymous complaints cannot be explored by the EU or investigated by an advisory panel, but a faculty or division may be informed of such complaints.
- 5.4 If a complaint is brought to the attention of a supervisor or line manager, that person must refer the complaint or assist the complainant to report it to the EU. Official complaints must be lodged in person at the EU.
- 5.5 Complainants must consult an ADHO and must receive clarification and advice on the following aspects:

- 5.5.1 defining and assessing what happened, as the initial step in the ADHO's assistance;
 - 5.5.2 the various formal procedures, mediation and grievance procedures available, and that complainants may indicate their preferred form of addressing their complaint;
 - 5.5.3 the various support services available to complainants, and that their complaint will be referred if necessary;
 - 5.5.4 that, in certain circumstances (e.g. when it is in the interest of the institution, the wider SU community or sections of the University community, or because of the serious nature of the alleged incident), the University may be obliged to follow the disciplinary procedure prescribed by its Disciplinary Code, even if the complainant does not wish to pursue that route;
 - 5.5.5 that the ADHO assisting the complainant may not be called as a witness during any disciplinary procedures;
 - 5.5.6 that complainants retain the right to withdraw at any stage of the process, but that the ADHO would like written feedback on their reasons for withdrawal in an effort to ensure better understanding of the process and to address any deficiencies where necessary;
 - 5.5.7 that the matter will be handled ethically and confidentially as far as possible, with the aim of honouring the dignity of those involved; followed by a comprehensive definition and thorough explanation to complainants and respondents regarding the boundaries of confidentiality;
 - 5.5.8 that psychological, medical, legal and trauma counselling are available, and how to access these services; and
 - 5.5.9 that complainants have the right to obtain their own legal assistance from outside the University during the disciplinary process, should they wish to do so.
- 5.6 The ADHO must complete a standardised, pre-approved intake form while assessing the complaint, and submit the report to the Head: EU, the Director: CSCD and the advisors for recommendation.
- 5.7 Once the advisors have made their recommendations, the ADHO must inform respondents that an official complaint was lodged against them; an ADHO must be allocated to the respondent as well.

- 5.8 The advisors must consider all relevant information and recommend the appropriate course of action to the University. Recommendations and interventions could include mediation, activating an advisory panel, advising complainants to lodge a grievance as per the SU Grievance Procedure for Staff, proceeding with a student disciplinary complaint, referral to HR or referral back into the appropriate line function for intervention and follow-up.
- 5.9 Once the procedures have been concluded the ADHO must contact complainants to offer post-intervention support.
- 5.10 Should complainants be dissatisfied with the procedures, the ADHO must give written feedback to the advisors or the advisory panel, or to both.
- 5.11 Should complainants remain dissatisfied after all the processes have been followed, the ADHO must refer them to the ombud (ombudsman@sun.ac.za).

ADDENDUM B: COMPLAINT PROCEDURES AND PROMOTIONAL MEASURES AGAINST SEXUAL HARASSMENT

The Equality Unit (EU) is one of the units based at the Centre for Student Counselling and Development (CSCD) and serves as centralised one-stop service for staff and students to report complaints regarding unfair discrimination, victimisation, harassment and sexual harassment.

The EU consists of staff members who specialise in support, training, research, communication and educational services in matters pertaining to HIV/Aids, sexuality and gender. Two additional posts have been created – for two anti-discrimination and harassment officers (ADHOs). A summary of the complaint process is set out below:

A

A staff member or student has experienced an incident of discrimination, harassment, sexual harassment or victimisation as defined in the SU Policy on Unfair Discrimination or Harassment, or an incident is reported to the Equality Unit (EU) from any SU environment.

B

Lodge an official complaint in person with an anti-discrimination and harassment officer (ADHO) at the EU.

- ADHO: preliminary case assessment and standardised intake form
- ADHO: provides ongoing process updates to complainants and respondents
- referral to support services where appropriate
- monitoring of data regarding complaints
- complaints logged via e-mail (unfair@sun.ac.za) to be regarded as reported unofficially

C

Case referred to advisors' team, who must make recommendations to the Head: EU (preferably within three working days). Recommendations could include:

- mediation or alternative dispute resolution by the EU (preferred, where appropriate)
- referral to HR or Student Discipline for formal investigation
- activation of staff or student advisory panel
- referral back into appropriate line function

The responsibilities of the EU, the ADHOs, the advisors and the advisory panels are discussed below.

1. Responsibilities: the EU

The EU has the following responsibilities:

- 1.1 Ensure that the policy is communicated effectively throughout the University.
- 1.2 Ensure awareness about this policy by continuing education and training.
- 1.3 Ensure that the induction programme for staff and students includes education on fundamental constitutional rights and the relevant SU policies, particularly the prohibition of all forms of unfair discrimination, harassment or victimisation.
- 1.4 Ensure that the staff in each faculty and support-services division are made aware of what the policy entails.
- 1.5 Ensure that student leaders (including mentors, house committee members and Student Representative Council members) are annually trained with regard to what the policy entails.
- 1.6 Ensure that the marketing material and contact details of the EU are easily accessible.
- 1.7 Formalise service level agreements with HR and the Transformation Office in order to synergise training, educational initiatives and awareness campaigns.
- 1.8 Conduct, in collaboration with the Transformation Office, regular surveys on the nature of the institutional climate at SU with reference to this policy.
- 1.9 Arrange a meeting with all role players (HR, the Transformation Office, etc.) four times a year to enhance collaboration and discussion, and to share best practices.
- 1.10 Monitor the implementation of the policy and provide regular feedback to the Director: CSCD as well as the Manager: Staff Wellness at HR and the Head: Transformation Office.
- 1.11 Receive and assess complaints from students and staff, and ensure, facilitate and manage the effective functioning of the complaints process.
- 1.12 Submit reports once a semester to the Senior Director: Student Affairs as well as the VR:L&T and the VR:SI, T&P on the implementation of this policy as regards case management, statistics and cooperation with role players.
- 1.13 Submit an annual report to the RMT to provide an overview of case management, statistics and cooperation with role players.

2. Responsibilities: ADHOs

The EU has two ADHOs. Their primary role is to provide comprehensive monitoring and assessment, and to perform case management administration that prioritises the needs of the affected parties. ADHOs do not fulfil the role of a counsellor or psychologist, but may inform complainants about the availability of such services.

ADHOs have the following responsibilities:

- 2.1 Participate in the pre-intervention phase, the intervention phase, and the post-intervention phase, and be thoroughly informed about the various interventions available at SU (mediation, grievance procedures, disciplinary procedures, etc.).
- 2.2 Receive and assess complaints of sexual harassment. All complaints of this nature lodged at the 24 Hours Crisis Service, Campus Security, the CSCD, the district surgeon, hospitals or emergency services, doctors or SU faculties must be reported to the ADHO concerned.
- 2.3 Manage the sexual harassment protocol after an assessment has been done, ensuring that support, consultation and liaison are prioritised.
- 2.4 Report incidents to the South African Police Services (SAPS) for investigation in the case of rape, which is a criminal offense. A statement must be made at the SAPS station and a dossier opened. The district surgeon must concomitantly perform a physical examination by completing a rape kit. The physical evidence must be sent away for DNA testing. Alongside this process, the advisory panel must also investigate the complaint to the extent that this is possible.
- 2.5 Can explain the University's policies pertaining to sexual harassment and the procedures available for resolving complaints and grievances.
- 2.6 Provide information about complainants' right to pursue external processes (e.g. via the Commission for Conciliation, Mediation and Arbitration – the CCMA – and the Equality Court). Cases can be referred to the CCMA only if the internal procedures have been exhausted.
- 2.7 Provide relevant information regarding the referred case to respondents, advisors, advisory panels and the environments concerned.

- 2.8 Refer complainants to a voluntary mediation process, should this be the intervention which the advisors have recommended. It is important for the EU to have trained mediators who can facilitate individual, group and community mediation.
- 2.9 Offer respondents the support of another ADHO during informal and formal processes.
- 2.10 Support complainants and respondents during investigations conducted by Legal Services or HR, and during disciplinary or grievance procedures, if complainants or respondents request them to do so.
- 2.11 Assist with training as well as the EU's educational work.
- 2.12 Follow up with complainants after an intervention as part of the post-intervention process and determine whether any new needs have been identified regarding their situation.

3. Advisors

A team of four advisors must determine the best possible pathway to resolution for each official complaint received via the walk-in service, which is coordinated by an ADHO. The advisors must make their recommendations to the Head: EU within three working days after the official complaint was lodged with the ADHO. The advisors may also refer complaints directly to Legal Services, depending on the nature of the complaint and according to the discretion of the Head: EU.

Resolution may include the following forms:

- 3.1 mediation (preferred)
- 3.2 staff advisory panel
- 3.3 student advisory panel
- 3.4 staff disciplinary investigation
- 3.5 student disciplinary investigation
- 3.6 HR process
- 3.7 referral back into the appropriate line function for intervention.

4. Advisory panel

The advisors may refer to either the staff or student advisory panel, who must be appointed by the Director: CSCD, the Chief Director: HR or Director: Legal Services. It is strongly recommended that the composition of the advisory panel be representative of gender, language and race to communicate sensitivity towards the accommodation of all identities. Advisory panel members can be recruited in two ways: compiling a group of staff and students who fulfil the requirements set by the two task teams, and recruiting panel members by sending out a call to all SU staff and students. Final approval of the advisory panel rests with the curators of the policy. The panel serves as the body providing expert advice about the procedures to be followed. The chair of an advisory panel must appoint the panel members within five working days after the advisors have recommended activation.

4.1 Members of the advisory panel

4.1.1 There are two advisory panels – one dealing with staff and the other with students.

4.1.2 An advisory panel consists of a chair and at least three competent members with expertise in or a sound understanding of social justice, discrimination or sexual harassment (or more than one of these elements).

4.1.3 The ADHO who conducted the initial assessment after a complaint has been received (whether from students or staff members) must submit the relevant information to the advisors. If recommended by the majority of the advisors, the chair of the advisory panel is tasked to activate the panel.

4.1.4 It is the chair's task to compile an advisory panel from the list of available panel members for each complaint received. In the case of sexual harassment, a panel of provisional enquiry must be appointed within 10 working days to initiate the investigation.

4.1.5 It is advised that four members be present for each investigation.

4.2 Functions of the advisory panel

4.2.1 Conduct the preliminary investigation within 10 working days after the advisory panel was activated upon the recommendation of the advisors.

- 4.2.2 Make recommendations to the University, complainants and respondents regarding the way to proceed with the matter in question.
- 4.2.3 Communicate that, when indicated, mediation is viewed as a strong component of the intervention process and a preferred alternative option for dispute resolution. Explain to complainants what is the preferred method of resolution available and why it is recommended. The remedy which the complainant would prefer for pursuing a complaint – i.e. the disciplinary approach (or similar processes) or the mediatory approach (or discussion, or the process of conciliation or education) – is an important consideration in dealing with complaints.
- 4.2.4 Provide the ADHO within 20 working days written feedback regarding the outcome of the investigation.
- 4.2.5 Make recommendations within 20 working days regarding entities that can assist the EU in taking the necessary steps to eliminate unfair discrimination, harassment, sexual harassment and victimisation.
- 4.2.6 Submit a written, confidential report that includes recommendations and feedback on the process followed to the Head: EU within 20 working days after the advisory panel was activated upon recommendation by the advisors. The Head: EU may extend the delivery date of the report upon receipt of a properly motivated request. Segments of the report regarding recommendations and feedback may be disclosed at the discretion of the Head: EU. All decisions that the Head: EU has to make regarding recommendations may be made in consultation with the Senior Director: Student Affairs or the Chief Director: HR or the Director: Legal Services, or more than one of these officers, as deemed appropriate. The recommended course of action could be, for example, the following:
- a) mediation (preferred)
 - b) staff disciplinary investigation
 - c) student disciplinary investigation
 - d) HR process
 - e) referral back into the relevant line function for intervention.

5. Procedures

- 5.1. The main aim to be kept in mind throughout the procedure is to serve complainants' interests as far as reasonably possible.
- 5.2. A complaint of unfair discrimination, harassment or victimisation must be brought to the EU's attention as soon as reasonably possible. The e-mail address unfair@sun.ac.za can be used to lodge a complaint with the EU unofficially.
- 5.3. Anonymous complaints cannot be explored by the EU or investigated by an advisory panel, but a faculty or division may be informed of such complaints.
- 5.4. If a complaint is brought to the attention of a supervisor or line manager, that person must refer the complaint or assist the individual to report it to the EU. Official complaints must be lodged in person at the EU.
- 5.5. Complainants must consult an ADHO, who must clarify the following aspects to them and advise them in that regard:
 - 5.5.1. defining and assessing what happened, as the initial step in the ADHO's assistance;
 - 5.5.2. the various formal procedures, mediation and grievance procedures available, and that complainants may indicate their preferred form of addressing their complaint;
 - 5.5.3. the various support services available to complainants, and that their complaint will be referred if necessary;
 - 5.5.4. that, in certain circumstances (e.g. when it is in the interest of the institution, the wider SU community or sections of the University community, or because of the serious nature of the alleged incident), the University may be obliged to follow the disciplinary procedure prescribed by its Disciplinary Code, even if the complainant does not wish to handle the matter in that way;
 - 5.5.5. that the ADHO assisting the complainant may not be called as a witness during any disciplinary procedures;
 - 5.5.6. that complainants retain the right to withdraw at any stage of the process, but that the ADHO would like written feedback on their reasons for withdrawal in an effort to ensure better understanding of the process and to address any deficiencies where necessary;

- 5.5.7. that the matter will be handled ethically and confidentially as far as possible, with the aim of honouring the dignity of those involved; followed by a comprehensive definition and thorough explanation to complainants and respondents regarding the boundaries of confidentiality;
 - 5.5.8. that psychological, medical, legal and trauma counselling are available, and how to access these services;
 - 5.5.9. that complainants have the right to obtain their own legal assistance from outside the University during the disciplinary process, should they wish to do so.
- 5.6. The ADHO must complete a standardised, pre-approved intake form while assessing the complainant, and submit the report to the Head: EU, the Director: CSCD and the advisors for recommendation.
 - 5.7. Once the advisors have made their recommendations, the ADHO must inform respondents that an official complaint was lodged against them; an ADHO must be allocated to the respondent as well.
 - 5.8. The advisors must consider all relevant information and recommend the appropriate course of action to the University. Recommendations and interventions could include mediation, activating an advisory panel, advising complainants to lodge a grievance as per the SU Grievance Procedure for Staff, proceeding with a student disciplinary complaint, referral to HR or referral back into the appropriate line function for intervention and follow-up.
 - 5.9. Once the procedures have been concluded the ADHO must contact complainants to offer post-intervention support.
 - 5.10. Should complainants be dissatisfied with the procedures, the ADHO must give written feedback to the advisors or the advisory panel, or to both.
 - 5.11. Should complainants remain dissatisfied after all the processes have been followed, the ADHO must refer them to the ombud (ombudsman@sun.ac.za).

ADDENDUM C: GRAPHIC PRESENTATION OF THE PROPOSED PROCESS IN CASE OF A COMPLAINT LODGED BY A STUDENT OR STAFF MEMBER

SU Unfair Discrimination and Harassment Complaint Processes and Pathways

