



Reference Materials: Formulating Policy on Anti-Sexual Harassment in Social Service Agencies

I. Introduction

Background:

Sexual harassment is an issue that every sector in society has to deal with, with no exception of the social service sector. Under the Sex Discrimination Ordinance (SDO), social service agencies, as an employer, a principal and a service provider, have the obligation to provide a sexual-harassment free environment for the management, the employees and the members to work and to participate in activities. In addition, according to the amendments of the SDO enacted in 2020, workplace participants in a common workplace, including those who may not be in an employment relationship, or service provider and user relationship, such as interns and volunteers, are also protected from sexual harassment under the law.

Since sexual harassment makes a significant impact on both individuals and social service agencies, the Equal Opportunities Commission (EOC) believes that it would be too late to take remedial action after an incident has happened; instead, proactive adoption of preventive measures is a more desirable approach.

Developing an anti-sexual harassment policy for social service agencies

Some parts of an anti-sexual harassment policy, for instance, the legal definition of sexual harassment, are standardised. However, quite a number of particulars should be tailor-made, subject to the needs and resources of individual agencies. For instance, it may not be feasible for a small-size agency to set up a panel to handle complaints. Through the formulation process, the agencies can develop a deeper understanding of the nature of sexual harassment and hence, implement the anti-sexual harassment measures more proactively in future. If the employees / members / other representatives are consulted or engaged in the discussion before the adoption of the policy, the legitimacy of the anti-sexual harassment policy will be enhanced. A successful implementation of the policy can be envisaged.



Although there is no "one-size-fits-all" policy, some elements are essential for an anti-sexual harassment policy. The EOC has compiled all the important elements into a "Framework for Anti-Sexual Harassment Policy in Social Service Agencies" for reference.



II. Framework for Anti-Sexual Harassment Policy in Social Service Agencies

Regardless of whether or not an anti-sexual harassment policy has been formulated in your social service agency, you may take the elements listed in this Framework as a checklist to check against the anti-sexual harassment policy which is to be / has been adopted, and to consider making any further improvements.

Framework for Anti-Sexual Harassment Policy in Social Service Agencies

1. Principle: zero tolerance of sexual harassment

The policy should clearly state that everyone has the rights to be respected and be equally treated. It should also point out that sexual harassment is discriminatory and unlawful. Sexual harassment may lead to disciplinary or other appropriate actions of the agency, and may also entail civil liability and even criminal consequences. Once an act of sexual harassment occurred, any person of the social service agency has a right to lodge a complaint. The determination of the agency to eliminate and prevent sexual harassment should be clearly conveyed. Sexual harassment is not tolerated in the agency.



2. Objectives and Responsibilities of the Agency

The objectives of the anti-sexual harassment policy should be listed so that all parties in the agency will have a clear understanding of the objectives. The objectives also set a direction for future development of specific measures.

The objectives of the anti-sexual harassment policy and the liability of agency include but not limited to:

- ensuring all relevant persons of the agency, including members of the management, employees (including persons seeking to be employed by the agency), other persons who provide service to the agency (including volunteers, interns, contract workers / contract service providers or agents), members (including prospective members) and other service users are able to work, participate in activities or provide / have access to services in a safe and environment free of sexual harassment;





- communicating, through effective means, the anti-sexual harassment policy and the channels to lodge complaints to all relevant persons of the agency;
- providing appropriate training for members of the management, employees, frontline workers, members and volunteers, in order to raise their awareness on sexual harassment and to nurture the right and proper value of respecting others;
- setting up effective channels for lodging complaints, which should be sensitive to the feelings and needs of complainants, in order to make the complaint handling mechanism more user-friendly;
- handling complaints on the principles of fairness, impartiality and confidentiality, and in a serious and discreet manner; and
- ensuring that nobody will be punished because of lodging a complaint in good faith.

3. Obligation and Responsibility of the Agency and All Members

- The policy should clearly state that all relevant persons of the agency (including the agency management, employees, members, interns and volunteers) have the obligation and responsibility to prevent and eliminate sexual harassment, including respecting the will and feelings of others, refusing to condone any sexual harassment behaviour, and supporting others to take reasonable steps to stop sexual harassment.
- The policy should clearly state that any relevant person of the agency can lodge a complaint with the panel / person-in-charge of handling sexual harassment complaints if he / she was sexually harassed or witnessed any other relevant person of the agency committed any sexual harassment act. Both the complainant and the witness(es) are protected under the Sex Discrimination Ordinance (SDO) (please refer to item 7 of the Framework).



4. Definition of Sexual Harassment

Definition:

- The policy should explain the definition of sexual harassment in plain and simple language. For instance, sexual harassment means a person makes an unwelcome conduct of a sexual nature to another person. The unwelcome conduct includes unwelcome sexual attention, physical contact, talking about issues of a sexual nature, or making a sexual advance. It also amounts to sexual harassment if that other person finds the environment sexually hostile or intimidating.
- Section 2(5) of the SDO provides the definition of sexual harassment. In addition, sections 2(7), 2(8), 9, 23, 23A, 24, 39, 39A and 40 are also provisions in relation to sexual harassment. Under the SDO, the legal definition of sexual harassment is:
 - (a) If any person
 - (i) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to another person; or
 - (ii) engages in other unwelcome conduct of a sexual nature in relation to that person,
in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that that person would be offended, humiliated or intimidated; or
 - (b) The person, alone or together with other persons, engages in conduct of a sexual nature which creates a hostile or intimidating environment for another person.



- The SDO renders unlawful sexual harassment between persons in an employment relationship, and that between providers and users of goods, facilities or services. The amendments to SDO as enacted in 2020 expand the scope of protection to prohibit sexual harassment between workplace participants at the workplace where they both work or attend. Section 23A(2) stipulates that a workplace participant means: an employee; an employer; a contract worker; the principal of contract worker or a commission agent; a commission agent; a partner in a firm; an intern; or a volunteer.

Clarification of common myths:

- **Regardless of gender:** The policy should state that sexual harassment may occur to any person, regardless of gender; all provisions in the SDO and the agency policy related to sexual harassment are applicable to both men and women as well as sexual harassment between persons of the same sex.
- **Intention is irrelevant:** The policy should state that even if the act of sexual harassment is not intentional, it amounts to sexual harassment once the act meets the definition of sexual harassment. Hence, no matter whether the act is intentional or not, or even if the act is of a playful nature, it may amount to sexual harassment.
- **Single incident:** The policy should state that a single incident may also amount to sexual harassment.
- **Power relationship:** Although sexual harassment incidents are usually related to a power relationship, i.e., the powerful harasses the weak. It is also possible for a person weaker in power to harass a more powerful person, e.g., a service user harasses an agency worker; or harassment between agency workers and peers. Under such circumstances, the act also amounts to unlawful sexual harassment, which should be addressed and properly handled by the agency.



5. Examples of Sexual Harassment

It may not be easy for the general public to master the definition of sexual harassment. Therefore, it is useful to provide examples as illustration. For example, a frontline worker has physical contact, which is unwelcome and unnecessary, with a service user; or a service user makes unwelcome remarks of a sexual nature to a worker. Please refer to the website of the EOC for relevant examples.



6. Rights of victim and various actions to be taken

- Every person has a right to lodge a complaint against sexual harassment.
- When a person is sexually harassed, he / she may take the following actions:
 - Speak up at the time. Tell the harasser that his / her act is unwelcome and should be stopped immediately.
 - Keep a written record of the incidents, including the date, time, location, witnesses and nature (what the harasser has said or done) and his / her own response.
 - Tell someone he / she trusts and ask for emotional support and advice.
 - Lodge a formal or informal complaint with the agency. An informal complaint can be made verbally to let the parties concerned understand the issue from a different perspective in a communicative approach, and to settle the dispute. A formal complaint is normally made in written form and should be formally investigated in accordance to the general complaint handling procedures. The process and findings of the investigation (including disciplinary or other appropriate actions, if any) should be properly recorded, with recommendations. If the complainant dissatisfies with the outcome of the informal complaint, he / she can lodge a formal complaint.





- Before deciding to file a complaint at the EOC or not, one may call the EOC's Anti-Sexual Harassment Hotline at 2106 2222 to seek information about or assistance on sexual harassment, including definition of sexual harassment, relevant legal provisions, complaint procedures and other community resources.
- Lodge a complaint with the EOC and request investigation or conciliation. In case conciliation fails, the complainant may seek legal assistance from the EOC. EOC Online Complaint Form can be found at the EOC website:
<http://www.eoc.org.hk/eoc/graphicsfolder/complaint.aspx>
- Consult a lawyer, report to the police (if criminal element is involved) or file a civil law suit in the District Court.
- It should be clearly stated that the complaint handling procedure of the agency does not affect the complainant's right to lodge complaints with the EOC, report to the police or file a lawsuit in the District Court.



7. Principles of handling sexual harassment complaints

- **Fairness:** Enquiries and complaints should be handled in a just and impartial manner to ensure that the complainant and the alleged harasser are fairly treated and both parties have chances to present their case.
- **Confidentiality:** Assurance should be given to persons concerned that all information and records related to a sexual harassment complaint will be kept confidential and only be disclosed to relevant persons on a need-to-know basis. Under the principle of natural justice, the alleged harasser should be informed about the details of the allegation.
- **Avoiding delay:** Complaints should be handled promptly because both the complainant and the alleged harasser are under pressure from the sexual harassment complaint case.





- **Transparent procedures:** Agencies should incorporate the handling procedures related to sexual harassment complaints in their complaint policy / anti-sexual harassment policy and make them known to the management, staff, volunteers, members, service users and other related persons in the agency. If a complaint involves minors or people with cognitive difficulties arising from disability (e.g., people with intellectual disability or people with dementia), the relevant rules and disciplinary actions should also be made known to the person and his / her parents.
- **Protection for complainants and witnesses:** Complainants and witnesses should be protected against victimisation, i.e., being treated less favourably, including being retaliated (which in itself is an unlawful act of discrimination under section 9 of the SDO) because of the complaint case.
- **Avoid conflict of interest:** If the person who handles the enquiry / complaint case is closely related to the complainant or the alleged harasser (for instance, being relatives), or the alleged harasser is the person-in-charge of handling sexual harassment complaints, the case should be handled by another person.
- **Anonymous complaint:** Whether the complaints are anonymous or not, the agency may need to make inquiries or to conduct investigation. If the anonymous complaint involves a minor or a person with disability, the decision to follow up with the complaint or not should be made more carefully.
- **Avoid further distressing the complainant:** Showing empathy to the feelings of complainants, for instance, documenting information in a complete manner to avoid asking the complainant to keep telling the unpleasant experience again and again, respecting the complainant's preference in appointing investigators of the same sex to conduct the interview, etc. in order to ensure that the complainant would not be unnecessarily further distressed or humiliated. Complaint cases should be handled discreetly so that the other related parties would not be unnecessarily distressed.



8. Mechanism for handling sexual harassment complaints

- Names and contacts of persons who handle complaints should be listed.
- Both informal and formal complaint handling mechanisms for sexual harassment complaints should be established.
- Before deciding on using formal or informal ways to resolve the conflict, the complainant should be informed of the difference in purposes, procedures and possible results for informal and formal handling mechanisms.
- The complainant may ask the designated person to handle the complaint using the formal handling mechanism when he / she finds the informal process has failed to effectively resolve the issue.
- Sexual harassment acts may also amount to criminal offences such as indecent assault, distribution or display of indecent and obscene articles. Agencies may consider referring those cases to the police.
- Agencies may consider using a flow chart to clearly indicate each step of the complaint handling procedure.
- If necessary, support can be offered to the complainant. Such support may include but not limited to rearrangement of duties or leave and counselling provided by the agency or third parties.
- Taking into account the age, the education level, the disability status of the complainant, the communication barriers (for example, because of the language or dialect used by the relevant person), and the distress suffered by the complainant after the sexual harassment incident, the agency should allow the complainant to lodge a formal or informal complaint in various ways. For example, the person-in-charge of complaint handling may consider assisting in writing the complaint based on the complainant's oral account.



• **Informal handling mechanism:**

- Generally speaking, informal complaint handling mechanism is suitable for handling relatively minor or single incidents of sexual harassment. This complaint handling mechanism focuses on resolving the conflict and stopping the act of alleged sexual harassment. It does not involve an investigation. Sometimes, the alleged harasser admits to his / her conduct but may not realise the concerned acts amount to sexual harassment, then an investigation is not needed to prove the alleged act has been done. Sometimes, the complainant's primary concern is to stop the acts of sexual harassment as soon as possible rather than conducting an investigation to prove something inappropriate happened and penalise the alleged harasser, the complaint may then be handled informally, subject to the consent of the complainant.
- An informal mechanism may include the complainant seeking the advice of the designated persons for handling sexual harassment complaints and then dealing with the situation himself or herself. The complainant may also ask the designated persons for handling sexual harassment complaints to speak to the other party for them. The person-in-charge of complaint handling may talk to the other party about the matter, ask the other party to stop doing the act, and reaffirm the agency's policy on zero-tolerance of sexual harassment.
- Informal complaint handling mechanism is potentially quicker to process and to solve the problem. It provides an opportunity to inform the alleged harassers of the agency's policy and of how their behaviour is affecting others. However, complaints handled under this mechanism are less easy to monitor and agency's knowledge about the process and outcome may be easily lost unless documented. The power dynamics between the parties may also affect the effectiveness of this informal mechanism. In addition, the alleged harasser may also feel that they have been treated unfairly as they have no chance to put the record straight.

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• **Formal handling mechanism:**

- A formal handling mechanism is followed for more serious or repetitive sexual harassment complaints, or when sexual harassment continues or the dispute between the two parties cannot be resolved using an informal mechanism.
- A formal mechanism involves investigation. The complainant will be formally interviewed. The alleged harasser will be informed about the complaint and be given the opportunity to respond to the allegation. Witnesses, if any, may also be interviewed. It also involves making a finding on the balance of probabilities, i.e., is it more likely than not that sexual harassment has occurred.
- If the complainant or alleged harasser is underage, having intellectual or other disability, or experiencing communication difficulties (for example, because of the language or dialect used by the relevant person), he / she is entitled to be accompanied by a parent / guardian / family member / carer to attend the relevant interview so as to safeguard his / her rights.
- If a panel is formed to handle the sexual harassment complaint, it should be composed of an equal, or almost equal, number of members of both sexes.
- The interviews and the statements of both the complainant and the alleged harasser should be documented under formal handling process.
- If necessary, arrangements should be made to avoid the complainant and the alleged harasser from getting into unnecessary contact, in particular, private contact, during the period of investigation.
- A written report should be prepared to give a written account of the investigation outcome, disciplinary or other appropriate actions (if any) and the considerations behind to both the complainant and the alleged harasser.
- If one party does not accept the investigation outcome, appeals to senior level of agency management should be allowed.

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- If a case proceeds to conciliation, the person to be in charge of the conciliation process should be agreed by both the complainant and the alleged harasser. The mutually agreed settlement agreement, for instance, the need for making apologies and paying compensation, should be documented.

9. Time bar for lodging a complaint

- There is a time bar for lodging a complaint with the EOC or to take legal action. If the person who is sexually harassed intends to lodge a complaint with the EOC, he / she should take action within 12 months after the incident occurred. Otherwise, the EOC will not handle the case unless there are justifiable reasons for the delay. Any decision to take legal proceedings to the District Court should be made within 24 months after the incident occurred.
- Having considered that any delay could cause difficulty to the investigation and the collection of evidence, the agency can set a time bar for lodging complaints. However, the time bar should be reasonable and should take into account that the victim may postpone lodging a complaint due to the post-incident anxiety and distress suffered by him / her. With a view to avoiding victims being discouraged by the time bar, agencies may specify that delayed complaints with justifiable reasons would be handled at the agency's own discretion.

10. Disciplinary or Other Appropriate Actions

- The policy should state the specific disciplinary or other actions to which sexual harassment acts could lead and what the maximum penalty is, for instance, verbal or written warning, attending counselling sessions / anti-sexual harassment training, dismissal, expulsion from membership, suspension of services to the person, etc. Actions that may be taken by the agency should also be stated. For example, if the case involves criminal offences, the agency will report it to the police. On top of the aforementioned disciplinary action, the two parties may include other terms in their mutually agreed settlement agreement after conciliation (if they choose to settle the matter through conciliation), for instance, making apologies and paying compensation.



11. Measures to prevent sexual harassment

- **Promulgation of policy:** Agencies should promulgate the policy to all relevant persons of the agency on a regular basis. The anti-sexual harassment policy should be distributed and explained to all new and existing members of the management, employees, members, volunteers, contract service providers, etc.
- **Accessible information:** The policy should be uploaded to the agency intranet and / or internet websites (for contract service providers and external parties who may not have access to the intranet) so that all persons can have access to the policy at any time. Notices should also be prominently posted to inform all relevant persons of the policy, the way to get a copy of it, and the channels to lodge a complaint. All service providers and external parties should know that the agency has zero-tolerance of any sexual harassment acts and should be provided with the relevant information.
- **Regular review:** Setting a specific review period for the policy and measures is preferred to generally saying "regular" reviews would be conducted. On top of the regular reviews, review the policy and measures after the investigation of a complaint is completed to see if any revisions are needed to effectively prevent sexual harassment. After investigation, also look at the workplace to understand if there are any unwritten ways in which the office operates that may breed a culture of sexually hostile environment, and make changes to avoid potential problems occur.
- **Regular training:** Set specific targets (such as number of people and / or regular period of time) for circulating the policy, providing training and education programmes on gender equality, respecting others and enhancing awareness on the prevention of sexual harassment for management, employees, members and volunteers, and also arranging relevant persons to receive training on how to handle sexual harassment complaints.



- **Elimination of offensive articles or information:** The agency should make sure all articles that may possibly lead to sexual harassment are cleared and should prevent any improper use of technology and social media in the agency, in order to prevent sexual harassment.
- **Designated persons to implement the measures:** Employees of particular positions in the agency are designated to implement specific measures for the prevention of sexual harassment. A clear lineation of responsibility can ensure proper implementation of the policy.
- **The Sexual Conviction Record Check mechanism:** The social service agencies should require all prospective employees, regardless of the gender, who will engage in work relating to minors and / or mentally incapacitated persons to apply for the Sexual Conviction Record Check (SCRC) to make sure they do not have any criminal conviction records in the specified list of sexual offences. The agency should also require existing employees (including social workers, counsellors, welfare workers, etc.) who need to renew their contract to apply for the SCRC. In case a worker is a self-employed person, if he / she provides services relating to minors and / or mentally incapacitated persons for the agency, the agency may require the worker to undergo SCRC. If a job applicant comes from an area outside Hong Kong, the agency may request him / her to provide a certificate of no criminal conviction or other equivalent lawful documentary proof issued by his / her place of residence prior to employment, so as to ascertain that the applicant does not have overseas sexual conviction record.
- **Development of Code of Ethics:** Agencies should develop Code of Ethics on sexual harassment for all employees and workers. If there has already been a Code of Ethics in place, the agency should make sure that factors regarding prevention of sexual harassment are included.



12. Related resources

- Information related to sexual harassment may be listed, for instance, links to EOC's website (<http://www.eoc.org.hk/>) for the anti-sexual harassment resources and the training programmes (<http://www.eoc.org.hk/eoc/graphicsfolder/training.aspx>), and links to video, articles, news reports, researches and studies on sexual harassment, and related websites of non-governmental organisations and universities, etc.

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III. Implementation of anti-sexual harassment policy

Developing a policy on anti-sexual harassment is the first step to prevent sexual harassment. Agencies should adopt corresponding measures to implement the policy. The following questions may remind the management to be aware of the progress of policy implementation in their agency:

1. Has the anti-sexual harassment policy been reviewed or amended ever since its development and promulgation?
2. When was the last review of the agency's anti-sexual harassment policy conducted?
3. Do the new and existing members of the management, employees, volunteers, members, etc. know about the policy on anti-sexual harassment?
4. Is the policy posted on the website of the agency?
5. When was the last training conducted for all relevant persons of the agency on gender equality and prevention of sexual harassment?
6. When was the last training conducted for related persons on handling sexual harassment complaints?
7. As a policy maker, when did you receive your last training related to prevention of sexual harassment?
8. Has there been any complaint relating to sexual harassment? If so, was the complaint handling procedure followed?

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