



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

I. Introduction

Background:

Sexual harassment is an issue that every sector of society has to deal with, with no exception of the social service sector. Once an incident of sexual harassment occurred, not only will it cause harm to the victim's mental and physical health, but will also cause damage to the reputation of the agency. The Equal Opportunities Commission (EOC) believes that it would be too late to redress the wrongs afterwards; instead, proactive adoption of preventive measures is the desirable approach.

Besides, the amended Sex Discrimination Ordinance (SDO) came into effect in December 2014. The scope of the SDO is extended to protect providers of goods, facilities or services from sexual harassment by customers, which was applicable to the social service sector as well. Apart from the personal liability to be borne by individuals for unlawful acts of sexual harassment, the social service agencies, being employers and service providers, have an obligation to prevent incidents of sexual harassment (such as sexual harassment between employees or between a service user and an employee) from occurring within the agency. Otherwise, the agencies may be held legally liable. Therefore, social service agencies should adopt reasonably practicable measures to prevent sexual harassment, including the formulation of an effective policy on the prevention of sexual harassment.

Sexual harassment makes a significant impact on both individuals and the agencies. The EOC believes that the formulation of a sexual harassment policy reflects the service agencies pay close attention to the issue and provides useful guides for handling related complaints. The formulation of relevant policy will also enhance the awareness on sexual harassment among all members of the agencies and help nurturing the right and proper values of respecting others.



Developing a sexual harassment policy for social service agency

Some parts of a sexual harassment policy, for instance, the legal definition of sexual harassment, are standardized. However, quite a number of particulars should be tailor-made, subject to the needs and resources of individual agencies, so that practicable measures can be drawn up. For instance, it may not be feasible for a small-size agency to set up a panel to handle the complaints.

In addition, through the processes of policy formulation and complaint handling, the agencies can develop a deeper understanding of the nature of sexual harassment and hence implement the anti-sexual harassment measures in a more proactive manner 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 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 a sexual harassment policy. The EOC has compiled the important elements into a "Framework for Sexual Harassment Policy in Social Service Agencies" for reference.

II. Framework for Sexual Harassment Policy in Social Service Agencies

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



Framework for Sexual Harassment Policy **in Social Service Agencies**

1. Principle: zero tolerance to sexual harassment

The policy should clearly state that everyone has the right 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 actions by the agency, and may also entail civil liability and even criminal consequences. Once an act of sexual harassment occurred, any person of the agency has a right to lodge a complaint. The determination of the agency to eliminate and prevent sexual harassment and its non-tolerance towards sexual harassment should be clearly conveyed.

2. Objectives and Responsibilities of the Agency

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

The objectives of the sexual harassment policy and the liability of the agency include but are 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), members (including service users) and other persons who provide service to the agency (including volunteers, contract workers, contract service providers and agents) are able to work, participate in activities or provide/have access to services in a safe and sexual harassment-free environment;
- communicating, through effective means, the sexual harassment policy and the channels to lodge complaints, to all relevant persons of the agency;



<ul style="list-style-type: none">• providing appropriate training for members of the management, employees, frontline workers and volunteers who have been serving the agency on a regular basis, 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 the 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 for lodging a complaint in good faith.	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
3. Obligation and Responsibility of all members of the Agency	
<ul style="list-style-type: none">• The policy should clearly state that all relevant persons of the agency (including the agency management, employees, members and volunteers) have the obligation and responsibility to prevent and eliminate sexual harassment, including respecting the will and feelings of others, refusing to tolerate any sexual harassment behavior, 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 person-in-charge of handling sexual harassment complaints if he/she witnessed any acts of sexual harassment, including those committed by an employee against a service user or any other relevant person of the agency, or if he/she was sexually harassed. Both the complainant and the witness(es) are protected under the SDO (please refer to item 7 of the Framework).	<input type="checkbox"/> <input type="checkbox"/>



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, unnecessary 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 Sex Discrimination Ordinance (SDO) provides the definition of sexual harassment. In addition, sections 2(7), 2(8), 9, 23, 24, 39 and 40 are provisions related 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 favors, 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.

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.



<ul style="list-style-type: none">● 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.● 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 harassed an agency worker. Under such circumstances, the act also amounts to unlawful sexual harassment, which should be addressed and properly handled by the agency; otherwise, the agency may be held liable for its negligence.	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
5. Examples of Sexual Harassment	
<p>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. For relevant examples, please refer to Preventing and Dealing with Sexual Harassment on the EOC website: http://www.eoc.org.hk/eoc/graphicsfolder/showcontent.aspx?content=preventing%20and%20dealing%20with%20sexual%20harassment.</p>	<input type="checkbox"/>
6. Rights of victim and various actions to be taken	
<ul style="list-style-type: none">● Every person has a right to lodge a complaint of sexual harassment.● When a person is sexually harassed, he/she may take the following actions:<ul style="list-style-type: none">■ 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 dates, time, location, witnesses and nature (what the harasser has said or done) and his/her own response.	<input type="checkbox"/> <input type="checkbox"/>



<ul style="list-style-type: none">■ Tell someone he/she trusts and ask for emotional support and advice.■ Lodge a formal or informal complaint with the person-in-charge of handling sexual harassment complaints within 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 with the general complaint handling procedures. The process and findings of the investigation (including disciplinary actions, if any) should be recorded in writing, with recommendations. If the complainant is dissatisfied with the outcome of the informal complaint, he/she can lodge a formal complaint.■ Lodge a complaint with the EOC and request investigation or conciliation. In case conciliation fails, the complainant may seek legal assistance from the EOC. Telephone number of the EOC: 2511-8211. For enquiries or complaints, please refer to 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 against the harasser in District Court. <input type="checkbox"/>● It should be clearly stated that the complaint handling procedure of the agency does not affect the complainant's lodging complaints with the EOC, reporting to the police or filing a lawsuit in the District Court. <input type="checkbox"/>	
7. Principles of handling sexual harassment complaints	
<ul style="list-style-type: none">● 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. <input type="checkbox"/>	



- **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 the sexual harassment incident is a stressor to both the complainant and the alleged harasser.
- **Transparent procedures:** agencies should incorporate the handling procedures related to sexual harassment complaints in their complaint policy/sexual harassment policy and make them known to the management, staff, volunteers, members, service users and other related persons. If a complaint involves minors, the relevant rules and disciplinary actions should also be made known to the person's parents/guardians.
- **Protection for complainants and witnesses:** complainants and witnesses should be protected against victimization, i.e. being treated less favourably, including being retaliated against (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, 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 it is suspected that the victim of sexual harassment is a minor, the case should be handled more discreetly.



<ul style="list-style-type: none">● Handling cases discreetly: showing empathy with the feelings of complainants, for instance, avoiding asking the complainant to repeat his/her painful story again and again, respecting the complainant's preference in asking to have investigators of the same sex 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 other related parties would not be unnecessarily distressed.	<input type="checkbox"/>
8. Mechanism for handling sexual harassment complaints	
<ul style="list-style-type: none">● Names, ranks and contact details of persons who handle complaints should be listed out.● Both informal and formal complaint handling mechanisms for sexual harassment complaints should be established.● Before deciding about using formal or informal ways to resolve the conflict, the complainant should be informed of the difference in purpose, procedures and potential 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. The agency may consider referring those cases to the police.● Informal handling mechanism:<ul style="list-style-type: none">■ Informal handling mechanism focuses on resolving the conflict and stopping the act of alleged sexual harassment. It does not involve an investigation. 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.	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>



- Generally speaking, the informal complaint handling mechanism is suitable for handling relatively minor or single incidents rather than serious and repeated acts of sexual harassment. Sometimes the alleged harasser admits to his/her conduct but may not realise his/her 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 penalizing the alleged harasser, the complaint may then be handled informally, subject to the consent of the complainant. The person-in-charge may talk to the other party for the complainant about the matter, ask the other party to stop doing the act, and reaffirm the organisation's policy on zero-tolerance to 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 organisation's policy and of how their behavior is affecting others. However, complaints handled under this mechanism are less easy to monitor and organisation'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.
- Formal handling mechanism:
 - A formal handling mechanism is followed for more serious or repetitive sexual harassment complaints, or when sexual harassment continues or the conflict 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 a minor, he/she is entitled to be accompanied by his/her parent/guardian/family member 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 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 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.
- 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.
- Agencies may consider using a flow chart to clearly indicate each step of the procedure.
- If necessary, support and counseling can be offered to the complainant.



<ul style="list-style-type: none">• Taking into account the age and education level of 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.	<input type="checkbox"/>
9. Time bar for lodging a complaint	
<ul style="list-style-type: none">• 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 in 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 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 discretion.	<input type="checkbox"/> <input type="checkbox"/>
10. Disciplinary Action	
<p>The policy should state the specific disciplinary actions to which sexual harassment acts could lead and what the maximum penalty is, for instance, verbal or written warning, attending counseling sessions/anti-sexual harassment training, being dismissed, revocation of membership etc. Actions that may be taken by the agency should also be stated. For instance, 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.</p>	<input type="checkbox"/>



11. Measures to prevent sexual harassment

- **Publication of policy:** agencies should publicise the policy to all relevant persons of the agency on a regular basis. The sexual harassment policy should be distributed and explained to all new employees, newly joined volunteers and members.
- **Accessible information:** the policy should be uploaded to the agency intranet and website (contract service providers and external parties may not have access to the intranet) so that all persons can have access to the policy at any time when necessary. 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 contract service providers and the groups or individuals they hire should be informed that there is zero tolerance for any sexual harassment acts, and be provided with the relevant information.
- **Regular review:** specifically setting a review period for the policy and measures is preferred to generally saying that "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. Also after investigation, look at the workplace to understand if there are any unwritten ways in which the office operates which may breed a culture of sexually hostile workplace, and makes changes to avoid potential problems occur.
- **Regular training:** set specific targets (such as number of people and/or regular period of time) for training and education programmes on gender equality, respecting others and enhancing awareness on the prevention of sexual harassment, for the management, employees, members, volunteers who have been serving the agency on a regular basis and other relevant persons, and also arrange for relevant employees to receive training on how to handle sexual harassment complaints.
- **Elimination of offensive articles or information:** the agency should clear all articles that may possibly lead to sexual harassment and prevent any improper use of computer technology in the agency, in order to prevent sexual harassment.



<ul style="list-style-type: none">• 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: social service agencies should require all employees, regardless of gender, who will engage in work relating to minors and/or mentally incapacitated persons, to apply for a Sexual Conviction Record Check (SCRC) to show that they do not have any criminal conviction records in relation to the specified list of sexual offences. The agency should also require existing employees (including social workers, counselors, welfare workers, etc.) who need to renew their contract to apply for the 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: If a code of ethics is already in place, the agency should make sure that factors relevant to the prevention of sexual harassment are included.	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
12. Related resources	
Information related to sexual harassment may be listed out, for instance, links to EOC's Anti-Sexual Harassment Resources webpage (http://www.eoc.org.hk/eoc/graphicsfolder/showcontent.aspx?content=preventing%20sexual%20harassment) and the EOC's training programmes (http://www.eoc.org.hk/eoc/graphicsfolder/training.aspx), and links to articles, news reports, researches and studies on sexual harassment, and related websites of non-government organisations and universities, etc.	<input type="checkbox"/>



III. Implementation of sexual harassment policy

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

1. Has the sexual harassment policy ever been reviewed or amended after its formulation and promulgation?
2. When was the last time the agency's sexual harassment policy was reviewed?
3. Do the management, employees, volunteers, members, newly joined volunteers and members, and new employees know about the policy on sexual harassment?
4. When was the last training for all relevant persons of the agency on gender equality or prevention of sexual harassment conducted?
5. When was the last training for related persons in charge of handling sexual harassment complaints conducted?
6. As a policy maker, when did you receive your last training on the prevention of sexual harassment?

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