



## **Reference Materials: Formulating Policy on Sexual Harassment in Sports Organisations**

### **I. Introduction**

#### **Background:**

Sexual harassment is an issue that every sector in society has to deal with, with no exception of the sports sector. Under the Sex Discrimination Ordinance (SDO), individual sports organisations, as an employer and a service provider, have the obligation to provide a sexual-harassment free environment for the management, the employees, the coaches and the members (athletes) to work, receive training or participate in sports activities.

In 2007, the International Olympic Committee (IOC) issued a *Consensus Statement on Sexual Harassment and Abuse in Sport* which advocates the development of effective preventive measures, and raises the awareness of people in the sports sector on sexual harassment and abuse so as to enhance the protection of athletes from sexual harassment and abuse. One of the recommendations of the Consensus Statement is to develop a sexual harassment policy. In 2016, the IOC extended the “*Consensus Statement on Sexual Harassment and Violence in Sports 2007* ”.<sup>1</sup> The updated consensus statement stressed that the well-being and health of athletes would be adversely affected by sexual harassment. Additional evidence showed that elite, disabled, child and lesbian/gay/bisexual/transgender (LGBT) athletes are at highest risk of sexual harassment and abuse. Sports organisations and related stakeholders must strengthen protective measures to prevent sexual harassment and abuse, in order to create a safe sport environment for all athletes.

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

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<sup>1</sup> Consensus statement - International Olympic Committee consensus statement: harassment and abuse (non-accidental violence) in sport. <http://bjsm.bmj.com/content/50/17/1019>.



## **Developing a sexual harassment policy for sports organisations**

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 custom-made, subject to the needs and resources of individual sports organisations. For instance, it may not be feasible for a small-size organisation to set up a panel to handle complaints. Through the formulation process, the sports organisations can further 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 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 all the important elements into a "Framework for Sexual Harassment Policy in Sports Organisations" for reference.

## **II. Framework for Sexual Harassment Policy in Sports Organisations**

Regardless of whether a sexual harassment policy has been formulated in your sports organisation 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 to consider making any further improvements.



## **Framework for Sexual Harassment Policy in Sports Organisations**

### **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 of the sports organisation, and may also entail civil liability and even criminal consequences. Once an act of sexual harassment occurred, any person of the sports organisation has a right to lodge a complaint. The determination of the organisation to eliminate and prevent sexual harassment should be clearly conveyed. Sexual harassment will not be tolerated in the organisation.



### **2. Objectives and Responsibilities of the Organisation**

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

The objectives of sexual harassment policy and the liability of organisation include but are not limited to:

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





<ul style="list-style-type: none"><li>• communicating, through effective means, the sexual harassment policy and the channels to lodge complaints to all relevant persons of the organisation;</li><li>• providing appropriate training for members of the management, employees, coaches and members (athletes) in order to raise their awareness on sexual harassment and to nurture the right and proper value of respecting others;</li><li>• 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;</li><li>• handling complaints on the principles of fairness, impartiality and confidentiality, and in a serious and discreet manner; and</li><li>• ensuring that nobody will be punished because of lodging a complaint in good faith.</li></ul>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<b>3. Obligation and Responsibility of the Organisation and All Members</b>	
<ul style="list-style-type: none"><li>• The policy should clearly state that all relevant persons of the organisation (including the organisation management, employees, coaches and athletes) 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 behavior, and supporting others to take reasonable steps to stop sexual harassment.</li><li>• The policy should clearly state that any person of the organisation can lodge a complaint with the panel / person-in-charge of handling sexual harassment complaints if he/she witnessed any other person of the organisation committed any sexual harassment act or being sexually harassed. Both the complainant and the witness(es) are protected under the SDO (please refer to item 7 of the Framework).</li></ul>	<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, 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, 39 and 40 are relevant 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 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 she 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 organisation policy related to sexual harassment are applicable to both sexual harassment between men and women as well as between persons of the same sex.



<ul style="list-style-type: none"><li>● <b>Intention is irrelevant:</b> 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.</li><li>● <b>Single incident:</b> the policy should state that a single incident may also amount to sexual harassment.</li><li>● <b>Power relationship:</b> 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., an athlete harasses a coach; or harassment between athletes and peers. Under such circumstances, the act also amounts to unlawful sexual harassment, which should be addressed and properly handled by the organisation.</li></ul>	<input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>
<b>5. Examples of Sexual Harassment</b>	
<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 coach has physical contact, which is unwelcome and unnecessary, with an athlete; or an athlete makes unwelcome remarks of a sexual nature to a coach. Please refer to <i>Preventing and Dealing with Sexual Harassment</i> on the website of the EOC for relevant examples.</p>	<input type="checkbox"/>
<b>6. Rights of victim and various actions to be taken</b>	
<ul style="list-style-type: none"><li>● Every person has a right to lodge a complaint against sexual harassment.</li><li>● When a person is sexually harassed, he/she may take the following actions:<ul style="list-style-type: none"><li>■ Speak up at the time. Tell the harasser that his/her act is unwelcome and should be stopped immediately.</li><li>■ 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.</li></ul></li></ul>	<input type="checkbox"/>  <input type="checkbox"/>



<ul style="list-style-type: none"><li>■ Tell someone he/she trusts and ask for emotional support and advice.</li><li>■ Lodge a formal or informal complaint with the organisation. 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 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.</li><li>■ 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 other means of making enquiries or filing complaints, please refer to the EOC website: <a href="http://www.eoc.org.hk/eoc/graphicsfolder/complaint.aspx">http://www.eoc.org.hk/eoc/graphicsfolder/complaint.aspx</a></li><li>■ Consult a lawyer, report to the police or file a civil law suit against the harasser in the District Court.</li></ul> <p>● It should be clearly stated that the complaint handling procedure of the organisation does not affect the complainant's lodging complaints with the EOC, reporting to the police or filing a lawsuit in the District Court.</p>	<input type="checkbox"/>
<b>7. Principles of handling sexual harassment complaints</b>	
<ul style="list-style-type: none"><li>● <b>Fairness:</b> 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.</li><li>● <b>Confidentiality:</b> 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.</li></ul>	<input type="checkbox"/> <input type="checkbox"/>



- **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:** organisations 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, coaches, members and other related persons in the organisation. If a complaint involves minors, 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 victimization, 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 organisation may need to make inquiries or to conduct investigation. If it is suspected that the victim of sexual harassment is a minor or a person with disability, the case should be handled more discreetly.
- **Handling cases discreetly:** showing empathy to 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 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	
<ul style="list-style-type: none"><li>Names and contacts of persons who handle complaints should be listed out.</li></ul>	<input type="checkbox"/>
<ul style="list-style-type: none"><li>Both informal and formal complaint handling mechanisms for sexual harassment complaints should be established.</li></ul>	<input type="checkbox"/>
<ul style="list-style-type: none"><li>Before deciding about using formal or informal ways to resolve the conflict, the complainant should be informed of the difference in purpose, procedures and possible results for informal and formal handling mechanisms.</li></ul>	<input type="checkbox"/>
<ul style="list-style-type: none"><li>The complainant may ask the designated persons to handle the complaint using the formal handling mechanism when he/she finds the informal process has failed to effectively resolve the issue.</li></ul>	<input type="checkbox"/>
<ul style="list-style-type: none"><li>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.</li></ul>	<input type="checkbox"/>
<ul style="list-style-type: none"><li>Informal handling mechanism:<ul style="list-style-type: none"><li>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 as soon as possible. It does not involve an investigation. 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.</li></ul></li></ul>	<input type="checkbox"/>



- 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 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 or a person with intellectual disability, 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.
- 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 an 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. The mutually agreed settlement agreement should be documented, for instance, the settlement terms of making apologies and paying compensation.
- Organisations 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.
- Taking into account the age, the education level, the disability status of, and the distress suffered by the complainant after the sexual harassment incident, the organisation 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.



<b>9. Time bar for lodging a complaint</b>	
<ul style="list-style-type: none"><li>• 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.</li></ul>	<input type="checkbox"/>
<ul style="list-style-type: none"><li>• Having considered that any delay could cause difficulty to the investigation and the collection of evidence, the organisation 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, organisations may specify that delayed complaints with justifiable reasons would be handled at the organisation's own discretion.</li></ul>	<input type="checkbox"/>
<b>10. Disciplinary Action</b>	
<ul style="list-style-type: none"><li>• 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, etc. Actions that may be taken by the organisation should also be stated. For instance, if the case involves criminal offences, the organisation 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.</li></ul>	<input type="checkbox"/>



## 11. Measures to prevent sexual harassment

- **Promulgation of policy:** organisations should promulgate the policy to all relevant persons of the organisation on a regular basis, including coaches, athletes/members, entourage members, sport managers, medical and therapeutic practitioners, and contract service providers, etc. When new members and staff join the organization, the organisation should distribute and explain the sexual harassment policy to them.
- **Accessible information:** the policy should be uploaded to the organisation 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. Notices may 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 organisation has zero-tolerance to any sexual harassment acts and should be provided with the relevant information.
- **Regular review:** specifically setting the 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. Also after investigation, look at the operation of the organisation to understand if there are any unwritten ways in which the operation which may breed a culture of sexually hostile environment, 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 management, employees, coaches, athletes and members, and also arrange relevant persons to receive training on how to handle sexual harassment complaints.



- **Elimination of offensive articles or information: the organisation should clear all articles that may possibly lead to sexual harassment and should prevent any improper use of computer technology and social media in the organisation, in order to prevent sexual harassment.**
- **Designated persons to implement the measures:** employees of particular positions in organisation 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 sports organisation should require all prospective employees and prospective coaches, regardless of men and women, 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 organisation should also require existing employees and coaches who need to renew their contract to apply for the SCRC. If a coach is a self-employed person, provided he/she provides services relating to minors and/or mentally incapacitated persons for the organisation, the organisation may require the coach to undergo SCRC. If a job applicant comes from an area outside Hong Kong, the organisation may request him/her to provide a certificate of no criminal conviction or other equivalent 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:** Organisations should develop Code of Ethics on sexual harassment for all employees and coaches. If a Code of Ethics is already in place, the organisation should make sure that factors regarding prevention of sexual harassment are included.



12. Related resources	
Information related to sexual harassment may be listed out, for instance, links to EOC's Anti-Sexual Harassment Resources webpage ( <a href="http://www.eoc.org.hk/eoc/graphicsfolder/showcontent.aspx?content=preventing%20sexual%20harassment">http://www.eoc.org.hk/eoc/graphicsfolder/showcontent.aspx?content=preventing%20sexual%20harassment</a> ) and the training programmes ( <a href="http://www.eoc.org.hk/eoc/graphicsfolder/training.aspx">http://www.eoc.org.hk/eoc/graphicsfolder/training.aspx</a> ), and links to articles, news reports, researches and studies on sexual harassment, and related websites of non-governmental organisations and universities, etc.	<input type="checkbox"/>

### **III. Implementation of sexual harassment policy**

Developing a policy on sexual harassment is the first step to prevent sexual harassment. Organisations 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 organisations:

1. Has the sexual harassment policy been reviewed or amended ever since its development and promulgation?
2. When was the last review of the company sexual harassment policy conducted?
3. Do the management, employees, coaches, members (athletes), new members and new employees know about the policy on sexual harassment?
4. When was the last training conducted for all relevant persons of the organisation on gender equality or prevention of sexual harassment?
5. When was the last training conducted for related persons on handling sexual harassment complaints?
6. As a policy maker, when did you receive your last training related to prevention of sexual harassment?

#### **Disclaimer:**

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