



Reference Materials: **Formulating Policy on Sexual Harassment in Churches**

I. Introduction

Background:

Sexual harassment is an issue that every sector in society has to deal with, with no exception of the religious sector. Under the Sex Discrimination Ordinance (SDO), individual churches, as an employer and a service provider, have the obligation to provide a sexual-harassment free environment for the pastoral staff, the lay church leaders with management duties (e.g. the elders, deacons, council members, ministry heads, church board members, parish pastoral council members), other ministry personnel, the congregation, the employees and the relevant persons of the church to serve, work and participate in religious activities.

Fail to handle sexual harassment incidents in a timely and proper manner would cost the reputation of a church. It would also give a perception to the congregation that the pastoral staff may have concealed, connived at, and even covered up the incidents. Hence, the congregation may cast doubt on their religious belief and lose confidence in the church. Worst still, unscrupulous individuals may continue to abuse the victim and even other church members, and the church may also be held liable.

The Bible teaches disciples to "act justly and to love mercy". Be that as it may, forgiveness, although remarkable in sexual harassment incidents, shall not become an obstacle to do justice; otherwise, the wrongdoers will not reflect and rectify his/her misdeeds.

Since sexual harassment makes a significant impact on both individuals and churches, 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 for churches.



Developing a sexual harassment policy for churches

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 churches. For instance, the complaint handling mechanisms may not be the same among churches of different scales and denominations. Through the formulation process, churches 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 pastoral staff / employees / and congregation 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 Churches" for reference.

II. Framework for Sexual Harassment Policy in Churches

Regardless of whether a sexual harassment policy has been formulated in your church 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 Churches**

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



2. Objectives and Responsibilities of the Church

The objectives of sexual harassment policy should be listed out so that all parties in the church 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 the church include but are not limited to:

- ensuring all relevant persons of the church, including pastoral staff, the lay church leaders with management duties (e.g. the elders, deacons, council members, ministry heads, church board members, parish pastoral council members), ministry personnel (e.g. Sunday school tutors and fellowship leaders), congregation (including catechumens), employees (including persons seeking to be employed by the church), workplace participants and other persons who provide service to the church (including voluntary helpers, contract workers/contract service providers/agents) are able to serve, work, participate in religious activities or provide/have access to services in a safe environment free of sexual harassment;





<ul style="list-style-type: none">• communicating, through effective means, the sexual harassment policy and the channels to lodge complaints to all relevant persons of the church;• providing appropriate training for pastoral staff members, lay church leaders with management duties, ministry personnel, congregation and employees, 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.	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
3. Obligation and Responsibility of the Church and All Members	
<ul style="list-style-type: none">• The policy should clearly state that all relevant persons of the church (including the pastoral staff members, lay church leaders with management duties, other ministry personnel, congregation and employees) 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 steps to stop sexual harassment.• The policy should clearly state that any person of the church can lodge a complaint with the panel / person-in-charge of handling sexual harassment complaints if he/she witnessed any other person of the church 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).	<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, 23A, 24, 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 church 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">● 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: 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 church member harasses a pastor. Under such circumstances, the act also amounts to unlawful sexual harassment, which should be addressed and properly handled by the church.● Sexual harassment incidents outside Hong Kong: Even if the act of sexual harassment occurred outside Hong Kong, it may still be unlawful under the Sex Discrimination Ordinance, provided that both parties are in an employment relationship or working in the same organization, and they are in the course of employment during their overseas trip. In addition, even if the act of sexual harassment between a service user and a service provider occurred when they were travelling on an aircraft or a ship outside Hong Kong, given that the aircraft or ship is registered in Hong Kong, the protection of the SDO still applies.	<input type="checkbox"/> <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, the making of unwelcome and unnecessary physical contact in the name of caring for another person, unwelcome enquiry about another person's sex life in an unwelcome circumstance, and unwelcome remarks of a sexual nature. Please refer to <i>Preventing and Dealing with Sexual Harassment</i> in the "Resource Center" of the EOC website for relevant examples.</p>	<input type="checkbox"/>



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 dates, 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 person-in-charge of complaint handling of the church. 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 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.
 - Make an enquiry or 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:
<http://www.eoc.org.hk/eoc/graphicsfolder/complaint.aspx>
 - Consult a lawyer, report to the police (if the incident amounts to criminal offences) or file a civil law suit against the harasser in the District Court.



<ul style="list-style-type: none">• It should be clearly stated that the complaint handling procedure of the church 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"/>
<ul style="list-style-type: none">• 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.	<input type="checkbox"/>
<ul style="list-style-type: none">• Avoiding delay: complaints should be handled promptly because both the complainant and the alleged harasser are under pressure from the sexual harassment complaint case.	<input type="checkbox"/>
<ul style="list-style-type: none">• Transparent procedures: churches should incorporate the handling procedures related to sexual harassment complaints in their complaint policy/sexual harassment policy and make them known to the pastoral staff, the lay church leaders with management duties, ministry personnel, congregation, employees and other relevant persons. If a complaint involves minors, the relevant rules should also be made known to the person and his/her parents.	<input type="checkbox"/>
<ul style="list-style-type: none">• 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.	<input type="checkbox"/>
<ul style="list-style-type: none">• 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.	<input type="checkbox"/>



<ul style="list-style-type: none">• Anonymous complaint: whether the complaints are anonymous or not, the church 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.	<input type="checkbox"/> <input type="checkbox"/>
8. Mechanism for handling sexual harassment complaints	
<ul style="list-style-type: none">• Names and contacts 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 possible results for informal and formal handling mechanisms.• 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.• Sexual harassment acts may also amount to criminal offences such as indecent assault, distribution or display of indecent and obscene articles. The church may consider referring those cases to the police.• Informal handling mechanism:	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>



- 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 such acts amount to sexual harassment. If so, 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.
- 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 church'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 church's policy and of how their behavior is affecting others. However, complaints handled under this mechanism are usually made verbally and hence less easy to monitor and church'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.





<ul style="list-style-type: none">■ 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, a person with intellectual disability or a person with communication difficulties due to his/her 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, 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 church 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.● The church 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"><input type="checkbox"/><input type="checkbox"/>
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<ul style="list-style-type: none">• 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 church 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.	<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 to the District Court should be made within 24 months after the incident occurred.	<input type="checkbox"/>
<ul style="list-style-type: none">• Having considered that any delay could cause difficulty to the investigation and the collection of evidence, the church 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, churches may specify that delayed complaints with justifiable reasons would be handled at the church's own discretion.	<input type="checkbox"/>
10. Disciplinary Action	
<ul style="list-style-type: none">• 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 from service duties, terminated, disqualified from pastoral positions, etc. Actions that may be taken by the church should also be stated. For instance, if the case involves criminal offences, the church 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.	<input type="checkbox"/>



11. Measures to prevent sexual harassment	
<ul style="list-style-type: none">● Promulgation of policy: churches should promulgate the policy to all relevant persons of the church on a regular basis, including pastoral staff, the lay church leaders with management duties (e.g. the elders, deacons, council members, ministry heads, church board members and the parish pastoral council members), ministry personnel (e.g. Sunday school tutors and fellowship leaders), congregation (including catechumens), employees and other persons who provide service to the church (e.g. voluntary helpers, contract workers/contract service providers/agents). When new pastoral staff, congregation and employees join the church, the church should distribute and explain the sexual harassment policy to them.	<input type="checkbox"/>
<ul style="list-style-type: none">● Accessible information: the policy should be uploaded to the church 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 church has zero-tolerance to any sexual harassment acts and should be provided with the relevant information.	<input type="checkbox"/>
<ul style="list-style-type: none">● 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 church to understand if there are any unwritten ways in which the operation may breed a culture of sexually hostile environment, and makes changes to avoid the occurrence of potential problems.	<input type="checkbox"/>
<ul style="list-style-type: none">● 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 pastoral staff, the lay church leaders with management duties, ministry personnel, congregation and employees, and also arrange relevant persons to receive training on how to handle sexual harassment complaints.	<input type="checkbox"/>
<ul style="list-style-type: none">● Elimination of offensive articles or information: the church should clear	<input type="checkbox"/>



all articles that may possibly lead to sexual harassment and should prevent any improper use of computer technology and social media in the church, in order to prevent sexual harassment.

- **Designated persons to implement the measures: the church** should designate person(s) of particular positions in church 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 church should require all prospective employees, 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 church should also require existing employees who need to renew their contract to apply for the SCRC. **The definition of “work” covers services provided to an organisation or enterprise under a contract of** employment, apprenticeship or on a self-employed basis. If a person, who provides services relating to minors and/or mentally incapacitated persons for the church, is self-employed, the church may also require the person concerned to undergo SCRC. If a job applicant comes from an area outside Hong Kong, the church 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.



III. Implementation of sexual harassment policy

Developing a policy on sexual harassment is the first step to prevent sexual harassment. Churches should adopt corresponding measures to implement the policy. The following questions may remind the church to be aware of the progress of policy implementation:

1. Has the sexual harassment policy been reviewed or amended ever since its development and promulgation?
2. When was the last review of the church sexual harassment policy conducted?
3. Does all the pastoral staff, the lay church leaders with management duties, ministry personnel, congregation and employees know about the policy on sexual harassment?
4. When was the last training conducted for all relevant persons of the church on gender equality or prevention of sexual harassment?
5. When was the last training conducted for designated persons on handling sexual harassment complaints?
6. As a policy maker, when did you receive your last training related to prevention of sexual harassment?

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