



平等機會委員會  
EQUAL OPPORTUNITIES COMMISSION

# **Managing Complaints in the Workplace**

**Hong Kong Baptist University**  
**29 March 2019**

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# Objectives

- ◆ To identify options for resolving workplace complaints of discrimination and harassment
- ◆ To explore how employees can be supported to resolve such complaints at earliest possible instance
- ◆ To identify effective intervention strategies to ensure that inappropriate behaviour are contained
- ◆ To identify effective ways for managers to resolve such complaints on an informal basis
- ◆ To explore issues involved in the investigation of formal complaints



# A Complaint is...

## ◆ An expression of

- Dissatisfaction/concern
- Feeling of injustice

## Consider

- Can complaints be avoided?
- Whether complaints are negative or positive?



# Workplace Complaints

## ◆ Issues that may cause workplace complaints

- Working environment
- Work relations
- Health and safety
- Work practices (current/new)
- Organizational change
- Terms and conditions of employment
- Bullying and harassment
- Equal opportunities



# Options for Aggrieved Persons

- ◆ Lodge internal complaints
- ◆ Approach external groups or departments, e.g.
  - Equal Opportunities Commission
  - Labour Department
  - Police
  - ... ..
- ◆ Take legal actions
- ◆ Resign / avoidance
- ◆ Do nothing
- ◆ Others?



# Why People Do Not Complain

- ◆ Not aware of policy and procedures
- ◆ Do not know who to complain to
- ◆ Lack of education /guidelines on acceptable behaviour in workplace
- ◆ Not realise some behaviour may even be unlawful
- ◆ No trust /confidence in complaint handling process
- ◆ Not believe complaining will result in desired change
- ◆ Complaint process is perceived as too stressful to embark upon



# Why People Do Not Complain

- ◆ Do not wish to be seen as trouble maker
- ◆ Hope the situation will right itself
- ◆ Fear of victimisation, reprisals, repercussions
- ◆ Fear of not being believed
- ◆ Fear others will say they "asked for it"
- ◆ Self-blaming / internalisation



# Complaint Procedures: Necessary?

- ◆ Implement organisational policies
- ◆ Promote fairness and consistency in treatment of individuals
- ◆ Discharge of vicarious liability
- ◆ Reveal problems in employment, services, etc.
- ◆ Important component in preventing and minimising impact of inappropriate behaviour
- ◆ Help creating and ensuring a safe, efficient and respectful workplace





# Information

- ◆ Who can staff approach for information about their options?
  - EO Advisers, human resources
  - Department / faculty heads, direct supervisors
- ◆ Where would these information be available? Are they accessible?
- ◆ Rights and responsibilities



# Assistance and Support

## ◆ Communicate

- University's commitment to create safe workplace
- Different options for resolution

## ◆ Explain University's policies and procedures

## ◆ Explain

- Available support from the organisation
- Assurance of right to raise concern
- Confidentiality
- Purpose and use of notes taken



# Assistance and Support

- ◆ Set aside sufficient time
- ◆ Ensure privacy
- ◆ Maintain neutrality
- ◆ Listen
- ◆ Respond and not react
- ◆ Ask open questions
- ◆ Empower the complainant (does not mean directing them to take certain action)
- ◆ Help sort out the complaint



# Sorting Out the Complaint

- ◆ By going through this process you will assist parties make an informed decision
  1. Issues
  2. Options
  3. Outcomes



# Prompt Handling

- ◆ “Nib the bud”
- ◆ Timeliness
- ◆ The quicker the problem is resolved the better chance of ensuring proper future relationships
- ◆ Emotions need attending to
- ◆ Beware of “knowingly aiding”



# Victim-friendly Approach

## ◆ Sensitivity

- Understand why people are reluctant to complain
- Appropriate use of language
- Victim's situation: Special needs?

## ◆ Show empathy but not perceived as advocating for either party

## ◆ Unbiased communication / questioning skills

- Challenge own stereotype(s) towards complainant



# Assurance

- ◆ Assurance of right to raise concern
- ◆ Victimization is unlawful under anti-discrimination laws
  - Protected from victimisation for making / being involved in a complaint (e.g. witness)
  - Not penalized for making a complaint in good faith
- ◆ Fairness in process



# Options in Dealing With Complaints

1. Self-management approach
2. Informal complaint resolutions
  - How managers can assist
  - Mediating disputes
  - Proactive: Early intervention
3. Formal procedures (Investigation)





# Self-management Approach

- ◆ Complainant approaches respondent directly
- ◆ Describe behaviour and explain impact
  
- ◆ Basis
  - Everyone has the right to complain
  - Duty to do so constructively



# Self-management Approach

## ◆ Points to note

- Take action as soon as possible
- Do not label the respondent (goodwill)
- If act not stop, decide next step
- Record event details such as nature, date, time, place, witnesses, etc.
  
- Provide a safe environment for staff to learn how to self-manage the situation
- Staff should learn how to respond appropriately when being confronted for their behaviour



# Informal Resolutions

## ◆ Emphasis on

- Resolution
- Importance of early intervention

## ◆ Suitable for

- Less serious allegations
- Person responsible may admit the behaviour
- Address individual concern rather than systemic or operational concerns
- Parties likely to have ongoing contacts and complainant wishes to pursue informal resolution



# Informal Resolutions

## ◆ Mediating disputes

- Objectives
  - Resolve matter(s)
  - Learn to work together in the future
- Willingness of both parties
- Encourage listening to each other
- Managers
  - Be fair, non-judgmental and impartial
  - Role: Facilitate process, not impose outcomes
  - Create conditions for effective communication to occur



# Informal Resolutions

## ◆ Early intervention

- When inappropriate behaviour is observed / known
  - Explain expectation of changes in behaviour
  - Supervise staff to stop inappropriate behaviour
  - Raise the subject in staff meetings and express strong disapproval
- ‘Management by walking around’



# Informal Resolutions

## ◆ Advantages

- Can deal with a significant proportion of workplace issues
- May be less intimidating than formal approach
- Less punitive than formal approach
- Involve less work than formal approach
- Can deal more quickly with concerns
- More likely to encourage open communication
- Flexible



# Informal Resolutions

## ◆ Disadvantages

- Not guarantee respondent a chance to put their side of the story
- Power dynamics may unfairly influence the outcome
- May actually escalate the problem
- Consequence of behaviour not necessarily made clear
- Resolution may not be enforceable



# Informal Resolutions

## ◆ Disadvantages

- Absence of guidelines may lead to inconsistent decisions and outcomes
- No formal record of steps taken to remedy situation if problem later escalates or legal action is taken
- Management cannot track repeat problems





# Formal Procedures

## ◆ When to use

- Complainant 's wish from the outset
- Informal attempts at resolution have failed
- Complaint involves serious allegations of misconduct and informal resolution could compromise the rights of the parties
- Complaint is against a more senior staff member
- Allegation is denied
- Complainant has been victimised



# Formal Procedures

## ◆ Advantages

- Consistency: Steps specified in detail
- Formal record is kept which can be produced to an external agency if required
- Clear and enforceable outcomes
- Resolutions can be monitored
- Complainant may be vindicated and may also be empowered



# Formal Procedures

## ◆ Advantages

- Respondent is informed of seriousness of behaviour and potential consequence
- Confidentiality is supported because formal procedures generally specify serious consequence for breach of confidentiality
- Mechanism to deal with workplace complaint as well as specific individual complaint



# Formal Procedures

## ◆ Disadvantages

- Formality and potential punitive outcome may discourage some people
- Formality of procedure may inadvertently take away complainant's choice and control of complaint
- Can take much longer than informal approach
- Inflexible because steps are set out



# Formal Procedures

## ◆ Key messages

- Few workplace complaints escalate to this level but when they do, it is imperative to have a clear procedure in place which can be consistently implemented
- Ideally, all other avenues for redress should have been explored by this point



# Investigating Formal Complaints

## ◆ Issues

- Process: Timeframe, etc.
- Principles: Confidentiality, conflict of interest, procedural fairness, substantive fairness, etc.
- Assessment: Evidence, standards of proof, decision-making, recommendations, etc.
- Documentation



# Clear and Simply Process

- ◆ Objective: Effective handling of complaints
- ◆ Process put in writing, using simple language
- ◆ Accessible to ALL employees
- ◆ State clearly core principles
- ◆ Stages of complaint handling process are clear
  - Flowchart serves as an easy guide
- ◆ Special considerations for sensitive issues, e.g. discrimination, harassment, bullying, etc.



# Timeframes

## ◆ Timelines

- Timelines set for each stage
- Reduce stress on parties
- Guidelines for complaint handler

## ◆ Timeliness

- Act promptly
- Give the investigation priority over other work commitments





# Confidentiality

- ◆ Confidentiality vs secrecy
  
- ◆ On “need to know” basis
  - ? Complainant
  - ? Respondent
  - ? Witnesses
  - ? High level management
  - ? Human resources staff
  
- ◆ Breach: Disciplinary action



# Procedural Fairness

- ◆ Support persons to be available
- ◆ Respondent fully informed of allegation and given opportunity to defend him/herself
- ◆ All relevant information must be considered
- ◆ Irrelevant matters should be discounted
- ◆ Complainant must not determine the outcome
- ◆ Parties be informed of progress
- ◆ Possible outcomes explained



# Conflict of Interest

## ◆ Consider

- Reasons you should not be involved?
- Are you impartial?
- Will others perceive you as impartial?
- Have you pre-judged the situation?
- Any gender implications?



# Beware of “Apprehended Bias”

- ◆ Not a question of whether the decision-maker is biased
  
- ◆ But whether a fair minded person would reasonably expect the decision-maker would not resolve the problem with fair and unprejudiced mind because he/she has
  - Prejudged issue(s)
  - Perceived attitude to a person or class of persons



# Substantive Fairness

## ◆ Consider

- Time lapse between alleged incident and making of complaint
- Supporting information from parties
- Prior conduct of parties
- Corroborative witnesses
  
- Assess credibility of parties (complainant / respondent / witnesses)

# Evidence

- ◆ Gather information to determine if alleged conduct had taken place
- ◆ Assess information if alleged conduct constitutes inappropriate behaviour
  
- ◆ Onus of proof
  1. Complainant
  2. Respondent
  
- ◆ Standard of proof: On the balance of probabilities



# Decision-making

- ◆ Can the decision be justified?
- ◆ What is a fair outcome?
- ◆ The recommendations



# Outcome

## ◆ Disciplinary action against individuals

- Verbal warning
- Suspension without pay
- Written warning
- Training
- Transfer / reassignment of duties
- Mandatory referral to counselling
- Dismissal





# Mitigating Factors

## ◆ May consider

- Respondent's personal circumstances
- His/her employment history / performance
- Whether he/she has been cooperative during the investigation
- Whether he/she has shown contrition for misconduct



# Other Issues

- ◆ Possible resolutions by the University
  - Change particular work practice
  - Remedy a mistake or provide further clarification to an issue
  - Provide more information on why an initial decision was made or revoke that decision
  - Strengthen or change policy/procedures
  - Reconsider an application or request



# Other Issues

## ◆ Appeal mechanism

- Should there be one?
  - If so, handled by more senior level, not complaint handler
- Inform relevant parties of the final stage

## ◆ Monitoring

- Outcome: Compliance, timeframe
- Trend: Types of problems, staff behaviour
- Preventive measures



# Documentation

- ◆ Keep detailed notes of ALL discussions
- ◆ Document the process and the investigation
  - Investigation conducted: How and what outcome
  - Investigation not conducted: Why
- ◆ Think through
  - What records need to be kept
  - Who will keep the records / will have the access
- ◆ Establish complaint filing system
- ◆ Standard forms / formats can be useful



# All Complaints Should Be Treated...

- ◆ Seriously
- ◆ Professionally
- ◆ Impartially
- ◆ Confidentially
- ◆ In a timely manner



# Equal Opportunities Commission

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