



L-Università
ta' Malta

Sexual Harassment Policy

Policy and Procedures for Dealing with Complaints of Sexual Harassment

1. SCOPE

1.1 This sexual harassment policy (the “**Policy**”) applies to all persons who work or study at the University of Malta (“**UM**”) including G. F. Abela Junior College, whether on a full-time, part-time, casual or incidental basis, regardless of their role, as well as to all persons who are present on any UM premises or otherwise collaborate with UM staff or students in any way, including, without limitation:

- (a) Persons conducting paid or unpaid internships or placements;
- (b) Paid or unpaid research collaborators;
- (c) Volunteers;
- (d) Persons undertaking duties at or for UM and paid by third parties (including persons paid under any scheme operated by the Government of Malta or any public or private body); and
- (e) Employees of UM subsidiary or affiliate companies or foundations;

1.2 Notwithstanding Section 1.1, where persons:

- (a) are directly employed by third parties on the basis of a tender or other competitive process issued by UM or otherwise under the Public Procurement Regulations (Subsidiary Legislation 601.03, Laws of Malta), for the provision of services on UM premises or otherwise the provision of services to UM; or
- (b) are assigned a placement or internship with third parties for the purpose of completing the requirements of their programme of studies at UM,

UM shall support any such person being an alleged victim of Sexual Harassment (as defined herein) in any such circumstance. In any such event, if the alleged perpetrator of the Sexual Harassment is a member of UM staff or a UM student, UM shall make available to him/her/them the guidance services of the Advisors hereunder.

2. INTERPRETATION

Unless the context otherwise requires, in this Policy, the following terms shall have the meaning attributed to them below:

“Advisor”	shall have the meaning attributed to it in Section 4.1;
“Case Review”	means the process undertaken by the Case Reviewers under the formal procedure set out in Section 5.3;
“Case Reviewer”	shall have the meaning attributed to it in Section 5.3.2(c);
“Complaint”	means an allegation of Sexual Harassment made by a Complainant under this Policy with such details as set out under Section 5.2.2;
“Complainant”	means the alleged victim of Sexual Harassment in a UM context, and therefore the person lodging a Complaint hereunder;
“Council”	means the Council of the University of Malta;
“Designated Disciplinary Body”	means student/ academic staff/ administrative and technical staff/ other duly-authorized disciplinary body tasked with the consideration of disciplinary measures in terms of the applicable UM policy, procedure, manual, code or regulation;
“Executive Police”	shall have the meaning attributed to it under the Laws of Malta;
“GDPR”	Regulation (EU) 2016/679 - the General Data Protection Regulation;
“NCPE”	means the National Commission for the Promotion of Equality established under the Equality for Men and Women Act (Chapter 456, Laws of Malta);
“Policy”	means this document, being this “University of Malta Policy and Procedures for Dealing with Complaints of Sexual Harassment”;
“Resolution”	means a document by means of which the Complainant and Respondent resolve the Complaint under the informal procedure, as set out in Section 5.2.8;
“Respondent”	means the person about whom a Complaint is made hereunder;

“Section”	means a section of this Policy;
“Sexual Harassment”	has the meaning attributed in Section 3.3;
“Social Media”	means all types of social media and social networks including, without limitation, Whatsapp, Facebook, Instagram, LinkedIn, dating apps;
“Stakeholders”	means all groups which are concerned with the application of this Policy (including, without limitation) unions, experts, student and staff associations, associations representing minorities/ vulnerable groups/ victims; and
“UM”	means the University of Malta, inclusive of G.F. Abela Junior College.

3. DEFINITION OF SEXUAL HARASSMENT

- 3.1 Sexual Harassment is a discriminatory assertion of power that has no place:
- (a) within the UM premises; or
 - (b) during the carrying out of any duties for or on behalf of UM; or
 - (c) during the course of following a programme of studies at UM.
- 3.2 Sexual Harassment is essentially defined as ‘unwelcome sexual conduct’ and is unlawful under the Equality for Men and Women Act (Chapter 456, Laws of Malta) and under the Employment and Industrial Relations Act (Chapter 452, Laws of Malta). Sexual Harassment is unethical and unprofessional and a threat to the integrity of the individual and the institution. Sexual Harassment may exist in one or a series of incidents, and the purpose of this Policy is to deal with all alleged incidences of Sexual Harassment effectively and expeditiously in order to prevent any incidences of Sexual Harassment leading to an erosion of the atmosphere of trust that is essential to any institution of higher or further education.
- 3.3 Herein, the UM adopts the definition of **“Sexual Harassment”** contained in article 9(1) of the Equality for Men and Women Act (Chapter 456, Laws of Malta), reproduced below, or such other definition as may be set out in the said law from time to time.

Without prejudice to the provisions of article 29 of the Employment and Industrial Relations Act (Cap. 452, laws of Malta), it shall be unlawful for any person to sexually harass other persons, that is to say:

- (a) *to subject other persons to an act of physical intimacy; or*
- (b) *to request sexual favours from other persons; or*
- (c) *to subject other persons to any act or conduct with sexual connotations, including spoken words, gestures or the production, display or circulation of any written words, pictures or other material, where the act, words or conduct is unwelcome to the persons to whom they are directed and could reasonably be regarded as offensive, humiliating or intimidating to the persons to whom they are directed; or*
- (d) *the persons so subjected or requested are treated less favourably by reason of such persons' rejection of or submission to such subjection or request, it could reasonably be anticipated that such persons would be so treated.*

3.4 In furtherance of Section 3.3, Sexual Harassment may involve any unwelcome or unwanted act, including, without limitation, any of the following:

- (a) physical contact such as touching, hugging or kissing;
- (b) leering;
- (c) suggestive comments or jokes;
- (d) persistent and pestering invitations to go out on a date;
- (e) requests for sexual interaction;
- (f) intrusive questions about a person's private life, body or sex characteristics;
- (g) unnecessary familiarity;
- (h) insults or taunts based on your gender identity and expression, sex or sexual orientation and sex characteristics;
- (i) sexually explicit or offensive emails, SMS messages, phone calls, postings or any other kind of communication in written, print, electronic or Social Media;
- (j) unwanted contacts / intrusion;
- (k) outing/disclosing a person's sexual orientation or gender identity without that person's consent, whether via electronic or print media, Social Media or word of mouth;

- (l) the display or sharing of sexual images or sexually explicit images, whether via electronic, print media or Social Media (including, without limitation, in the form of screen savers and posters); and
- (m) behaviour which would also be an offence under the applicable criminal law, such as physical molestation, sexual assault, indecent exposure, and obscene or pornographic communications (including telephone calls, emails, letters, etc).

Provided that, expressly for the avoidance of doubt, the above list is simply indicative and shall, in the course of the application of this Policy, expressly not be considered exhaustive.

- 3.5 UM is an equal opportunity employer and as such will not tolerate any form of Sexual Harassment at the workplace. UM and all persons referred to in Section 1.1 are duty bound to safeguard and uphold the principles set forth in this Policy. Whilst UM employees and students will be informed about this Policy, new students and recruits will be informed about this Policy also through their respective induction programmes. The Policy will also be made available on the UM website and publicised via various UM Social Media.

4. ADVISORS ON SEXUAL HARASSMENT

- 4.1 Under this Policy, Council shall appoint a minimum of **six (6)** Sexual Harassment Advisors (“**Advisors**”) from among people of different genders, as follows:

- (a) at least two (2) Advisors being appointed from UM staff (excluding G.F. Abela Junior College); and
- (b) at least two (2) Advisors being appointed from the G.F. Abela Junior College staff,

provided that Advisors appointed from among G.F. Abela Junior College staff may assist University of Malta staff and vice versa.

- 4.2 Advisors are to be chosen from among persons who are duly qualified in any caring profession that is regulated at law (e.g. social workers, counsellors, psychologists, nurses, doctors, and youth workers) and are to be persons who have a demonstrable track record of being sensitised to issues relating to Sexual Harassment.

- 4.3 The role of the Advisors is to:
- (a) provide information, advice and assistance to the Complainant and Respondent hereunder in terms of the applicability of the relevant procedures, and avenues for resolution and/or redress; and
 - (b) assess Complaints in the manner detailed in Section 5.
- 4.4 Given the critical nature of the work, two (2) Advisors will conduct sessions and take action together. Prior to taking action on a particular Complaint, the Advisors will be required to confirm that they are not familiar with the Complainant or the Respondent by consanguinity, affinity or a close work relationship and that they do not have any claims of whatsoever nature against the Complainant or the Respondent. In the event of any familiarity or claims as described herein, the Advisor shall not take on the Complaint.
- 4.5 Advisors will have adequate access to legal advice.
- 4.6 The Advisors shall review this Policy and recommend (of their own motion or further to consultation with Stakeholders) changes hereto that may be necessary to facilitate the UM's ability to deal effectively with alleged incidences of Sexual Harassment.
- 4.7 Advisors will be required, subject to the applicable provisions of the GDPR and the Data Protection Act (Chapter 586, Laws of Malta) as well as all other privacy and data protection legislation as in force from time to time to:
- (a) keep a written record of their activities hereunder; and
 - (b) prepare a detailed annual report on the number and nature of Complaints and submit the same to the Rector on or around the end of March of a given year (in respect of the previous calendar year).

5. PROCEDURES

5.1 Initial Report of Alleged Sexual Harassment

- 5.1.1 Reports can be sent to sexualharassmentcomplaint@um.edu.mt. All reports of alleged Sexual Harassment will be dealt with in a confidential manner.
- 5.1.2 If a Complainant approaches an Advisor, a consultation meeting will be held between two Advisors and the Complainant wherein:
- (a) The Complainant will be encouraged to make a direct request to the alleged harasser for the offensive behaviour or actions to cease; and

- (b) The Complainant would also be encouraged to seek counselling services, if considered appropriate by the Advisors.
- 5.1.3 If (a) the direct request by the Complainant to the alleged harasser is unsuccessful or considered inappropriate, or (b) if the Complainant feels uncomfortable making such a request, the Complainant may seek further advice and help from the Advisors to resolve the matter in accordance with this Policy.
- 5.1.4 Further to Section 5.1.3, separate Advisors will assist each party (two per party - the Complainant and the Respondent) involved in allegations of Sexual Harassment.
- 5.1.5 The Advisors will assist the Complainant as follows:
 - (a) in determining the basis, if any, for a Complaint;
 - (b) in formulating the written Complaint;
 - (c) by explaining the options available under this Policy; and
 - (d) by providing information on Maltese legislation concerning Sexual Harassment.
- 5.1.6 The Advisors will assist the Respondent as follows:
 - (a) by explaining the options available hereunder; and
 - (b) by providing general information on Maltese legislation concerning Sexual Harassment
- 5.1.7 The rules of natural justice will be adhered to at all stages of dealing with allegations of Sexual Harassment. These rules include, without limitation, the rule against bias, the right to a fair hearing, the right to hear the other party, and the principles that one should not be condemned unheard and that one has the right to be represented.
- 5.1.8 Following the initial consultation process with his/her/their Advisors, the Complainant shall have available the following options:
 - (a) to follow the informal procedure set out in Section 5.2; or
 - (b) to follow the formal procedure set out in Section 5.3; or
 - (c) to take no further action.

5.1.9 Notwithstanding Section 5.1.8, it is expressly noted that, for the avoidance of doubt, the Complainant has, at law, the following avenues for redress:

- (a) to report the alleged Sexual Harassment directly to the Executive Police; or
- (b) to report the alleged Sexual Harassment directly to the NCPE under the Equality for Men and Women Act (Chapter 456, Laws of Malta),

Provided that, in any of the two latter cases, UM shall temporarily stop further action under this Policy until the NCPE investigation or the Executive Police investigation is concluded or the competent criminal court issues its judgment against the Respondent, as applicable. In such event, the following shall apply:

- (i) UM shall continue to offer full support to the Complainant and the Respondent in the form of provision of advice;
- (ii) In the event that any criminal proceedings instituted against the Respondent result in a finding of guilt on the Respondent's part, the Rector shall, *ex officio*, be entitled to refer the matter to the Designated Disciplinary Body, which shall deal with the matter in such manner as set out in the applicable UM policy, procedure, manual, code or regulation; and
- (iii) In the event that the NCPE or Executive Police investigation does not result in any charges being made against the Respondent, the UM shall officially record the fact that no further action is to be taken against the Respondent hereunder; provided that, in such event, also for the avoidance of doubt, Section 7.2 shall apply.

5.2 The Informal Procedure

If a Complainant wishes to proceed with the informal procedure, the following steps shall be taken:

- 5.2.1 The Advisors assigned to the Complainant shall meet with the Complainant and listen carefully and supportively to his/her/their account.
- 5.2.2 The Complainant must provide the Advisors with a signed and dated written complaint (the "**Complaint**") providing details of the alleged act or acts of Sexual Harassment, including dates, times, places/locations (whether in person or online), names of individuals

involved in the incident(s), names of any witnesses and any other relevant information.

- 5.2.3 The Complaint must be submitted by the Complainant to his/her/their Advisors within six (6) months of the last incident constituting the alleged Sexual Harassment.
- 5.2.4 Within ten (10) working days from the receipt, by the said Advisors, of the Complaint, the Advisors of the Complainant shall provide the Respondent with a copy of the Complaint.
- 5.2.5 Within thirty (30) working days of the Complaint being submitted as described in Section 5.2.2, the respective Advisors (of the Complainant and the Respondent) shall separately assess the Complaint and shall organise a meeting to discuss the same with the Complainant or Respondent, as applicable.
- 5.2.6 The Advisors, may, if they deem necessary, and with the consent of the Complainant, also recommend a further joint meeting with both the Complainant and the Respondent.
- 5.2.7 Throughout the informal process and any meetings and discussions under this Section 5.2, the Complainant and the Respondent may be accompanied by a trusted person, at their expense.
- 5.2.8 The options for the informal resolution of a Complaint (the **“Resolution”**) shall be of a voluntary nature and shall not include the power of formal administrative action such as discipline.
- 5.2.9 If a Resolution is achieved as a result of this informal process, a written copy of the Resolution shall be signed by the Complainant and the Respondent.
- 5.2.10 A copy of the written Complaint and of the signed Resolution shall:
 - (a) be handed to the Complainant and the Respondent;
 - (b) be stored securely in a confidential file and under lock and key at the Office of the Pro-Rector for Student and Staff Affairs and Outreach for a period of five (5) years from the date of the signing of the said Resolution;
 - (c) be destroyed thereafter, except where any such documentation pertains to ongoing legal proceedings or a criminal or police investigation in any jurisdiction, in which event, the said documentation may be retained until the conclusion of such proceedings or investigation; and

(d) not be retained by the Advisors, who shall destroy any hard or electronic copies of the same confidentially.

5.2.11 Where the Complainant or Respondent does not sign the Resolution within ten (10) working days of the signature version of the Resolution being proposed to each of him/her/them by his/her/their Advisors for signature, the Advisors shall inform him/her/them that:

(a) The other party (Complainant or Respondent) will be informed of such fact;

(b) The Complainant will be advised that he/she/they can proceed with the formal procedure under Section 5.3;

(c) The Complainant will be advised that he/she/they can forward the Complaint to the NCPE in terms of the Equality for Men and Women Act (Chapter 456, Laws of Malta); and

(d) The Respondent may also choose to proceed with the formal procedure under Section 5.3.

5.3 The Formal Procedure

5.3.1 The Complainant or the Respondent may proceed to the formal procedure under this Section 5.3 if:

(a) Either the Complainant or Respondent does not agree to participate in the informal process within ten (10) working days of the rejection by either of them of the informal procedure; or

(b) The Resolution is not signed by the Complainant or Respondent within ten (10) working days of the signature version of the Resolution being communicated to them by their respective Advisors in terms of Section 5.2.11; or

(c) The Complainant wishes to proceed directly through the formal route.

5.3.2 Under the formal procedure, the following must occur:

(a) When the Complainant chooses to proceed to the formal route, the Complainant's Advisors shall forward a copy of the Complaint (in the same form as set out under Section 5.2.2) to the Respondent (with a copy to the Rector) within ten (10) working days of this being submitted to them.

(b) The respective Advisors shall, if so requested by either the Complainant or the Respondent, accompany the Complainant and the Respondent throughout the formal process hereunder.

- (c) Within five (5) working days of the receipt of the written Complaint, as described in (a) above, the Complainant and the Respondent shall be informed by the Rector regarding the three (3) case reviewers appointed by the Rector to determine the outcome of the Complaint. Three (3) case reviewers (being third parties to the Advisors) shall be appointed by the Rector from among a list of case reviewers (each a “**Case Reviewer**”) approved by Council on the recommendation of the Council’s Gender Equality and Sexual Diversity Committee from among such persons as known to it to be sensitised to issues relating to Sexual Harassment.
- (d) Unless exceptional circumstances dictate to the contrary (ref. Section 5.3.3), the Case Review shall be dealt with within six (6) weeks of the date of appointment of the Case Reviewers.
- (e) The Case Reviewers shall:
 - (i) Further to due process (including such meetings as may be necessary with the Complainant or Respondent, during which the Complainant and Respondent shall have the right to be accompanied by a trusted person, at their respective expense; such fact finding and requests for documentation as the Case Reviewers may consider appropriate; and meetings with any witnesses as the Case Reviewers shall consider appropriate), shall determine whether the Complaint is justified in a just and fair way;
 - (ii) Draw up a report regarding their findings and transmit the same to the Rector.
- (f) The Rector shall, within ten (10) working days of the receipt of the Case Reviewers’ report, send a copy of the said report to the Complainant and the Respondent.
- (g) There shall be a right of appeal against the decision of the Case Reviewers, within twenty (20) working days from the date of receipt of the aforementioned report. An appeal shall only be admissible:
 - (i) either on procedural grounds; or
 - (ii) if new evidence is to be considered that was not made available to the Case Reviewers in the initial Case Review.
- (h) Notice of the intention to appeal will be made in writing to the Rector and shall identify the reasons for its basis.

5.3.3 For the avoidance of doubt, it is hereby declared that the Case Review procedure (excluding the appeal process) is intended to operate strictly within the time limits prescribed for taking the various steps outlined above. This notwithstanding, the following shall apply:

- (a) There may occur instances in which adherence to the time limits set out above in Section 5.3.2(d) may not be possible, in which event the Complainant and Respondent may agree in writing to extend any of the above-mentioned time limits; or
- (b) The Case Reviewers (of their own motion, or on a request of either the Complainant or Respondent) may adjust the said time limits, provided that the Case Reviewers are satisfied that there are reasonable grounds for granting an extension; and provided further that that the aggregate period for the finalisation of the Case Review (inclusive of the extension) does not exceed three (3) months.

5.3.4 In the event that an appeal to the initial Case Review is lodged, the following will apply:

- (a) The Rector will refer the appeal to three (3) other Case Reviewers from the approved list as set out in Section 5.3.2(c);
- (b) The result of the said appeal will be final;
- (c) Upon the conclusion of the said appeal, the Case Reviewers tasked with determining the appeal shall submit a “Case Review Appeal Report” to the Rector, informing him/her/them of the outcome of the said appeal within twenty (20) working days from the date of their last meeting to determine the appeal, which in any case shall not be later than three (3) months from the date of the submission of the appeal; and
- (d) The Rector shall transmit a copy of the appeal decision to the Complainant and Respondent within ten (10) working days of receiving the same.

5.3.5 In the event of a finding of guilt on the part of the Respondent, further to the initial Case Review (in the event that it is not appealed) or further to a decision on appeal as described above, the Rector shall refer the decision to the Designated Disciplinary Body as a formal complaint against the Respondent that results from the Case Review or the appeal procedure described above.

- 5.3.6 Any formal disciplinary action decided upon by the Designated Disciplinary Body shall be duly communicated to the Complainant and the Respondent, recorded and acted upon in a timely manner.
- 5.3.7 All documentation relating to the formal procedure hereunder shall:
- (a) be treated as confidential;
 - (b) be stored securely under lock and key at the Office of Pro-Rector for Student and Staff Affairs and Outreach for a period of five (5) years from the decisions resulting from the initial Case Review, or from the appeal of the same, as applicable;
 - (c) Be destroyed thereafter, except where any such documentation pertains to ongoing legal proceedings or a criminal or police investigation in any jurisdiction, in which event, the said documentation may be retained until the conclusion of such proceedings or investigation; and
 - (d) shall not be retained by the Case Reviewers, who shall destroy any hard or electronic copies of the same confidentially.
- 5.3.8 The costs of the Case Review (and any appeal thereto) shall be borne by UM, expressly excluding the costs of any trusted person accompanying the Complainant or Respondent.

5.4 Alleged Sexual Harassment Involving Minors

- 5.4.1 When a Complainant who is a minor, puts forward a report or Complaint of alleged Sexual Harassment under this Policy, the Advisors of the Complainant, shall in addition to supporting the Complainant in terms of the procedures above-described, report the alleged Sexual Harassment to the Director (Child Protection) or the Executive Police in terms of the Minor Protection (Alternative Care) Act (Chapter 602, Laws of Malta).
- 5.4.2 This Policy shall ensure the application of the relevant provisions of the Protection of Minors (Registration) Act (Chapter 518, Laws of Malta), in as much as any person who becomes aware of a mode of conduct or the commission of an act which is tantamount to Sexual Harassment on a minor constituting a scheduled offence under the said Act, shall report such fact to the Pro-Rector for Student and Staff Affairs and Outreach, who, in turn, shall report such fact to the Executive Police within forty-eight (48) hours which shall commence to run from the notification of such report.

6. ALTERNATIVE RECOURSE

This Policy does not preclude the Complainant from pursuing other options including:

- (a) Self-referral to the NCPE in terms of the Equality for Men and Women Act (Chapter 456, Laws of Malta);
- (b) Instituting any claim before the Industrial Tribunal in terms of the Employment and Industrial Relations Act (Chapter 452, Laws of Malta); or
- (c) From seeking legal redress through criminal proceedings and/or a civil action for damages.

7. DISCIPLINARY MEASURES

- 7.1. Upon a finding of Sexual Harassment further to a Case Review (or appeal, as applicable) in terms of Section 5.3, the Designated Disciplinary Body shall impose (or propose to the applicable UM governing body or bodies, as applicable) such disciplinary action as is available to it in terms of the applicable UM policy, procedure, manual, code or regulation.
- 7.2. In the event of a decision in favour of the Respondent (further to the completion of the Case Review, or appeal, as applicable, under the formal procedure in Section 5.3), the Respondent may submit a complaint to the Rector against the Complainant if he/she/they deem the Complaint to have been made maliciously or frivolously. In such event, the Rector shall (expressly notwithstanding any other provision in any UM policy, procedure, manual, code or regulation) refer any such complaint by the Respondent to the Designated Disciplinary Body, for due process. This shall be without prejudice to the Respondent to make such a report to the Executive Police of a calumnious accusation in terms of article 101 of the Criminal Code (Chapter 9, Laws of Malta).