

<b>Corporate Policies And Procedures</b> <b>Section 2 : Human Resources</b>			
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Applies From:	Immediately		

## **Harassment Complaint Procedure**

### Including sexual and racial harassment and intimidation

*This revision clarifies the various roles in the harassment procedures, given recent staffing changes, and cross references relevant sections to the Complaints Involving CPIT Staff policy. Other aspects of the policy remain the same.*

#### **1 Purpose**

The purpose of this policy is to reinforce the commitment that staff and students have the right to study and work unhindered by any form of harassment and to ensure that any allegations of sexual harassment, racial harassment or intimidation are dealt with fairly, swiftly and effectively.

#### **2 Application**

*This policy:*

- 2.1 applies to all CPIT staff, students and visitors
- 2.2 covers all forms of unwanted sexual attention, including that which occurs off campus, during the course of staff and students' duties or studies
- 2.3 covers all forms of harassment that occurs because of a person's membership of any racial, ethnic or national group or because of their skin colour
- 2.4 covers all forms of intimidation, including bullying, threats, blackmail, and verbal assault that interferes with a staff member's or student's ability to work or study

*It does not cover:*

- 2.5 management practices such as unreasonable expectations, withholding of information, lack of or excessive feedback on work performance, or any other behaviour that is best described as 'bad management practice' by a staff member's supervisor or manager. Such matters are dealt with under the Complaints Involving CPIT Staff policy and Personal Grievance procedures. However, staff members can make complaints against their managers under the Harassment Complaint Procedure policy if they believe this policy more accurately describes the behaviour giving rise to the complaint. Note that a complaint lodged under one policy cannot be transferred to another.
- 2.6 relationships and social behaviours that all those involved in want to be part of and which are free of the risk of actual or perceived pressure that occurs when there are differences in power or status. In relation to sexual harassment particularly, but not exclusively, those holding positions of authority (for example, academic staff in relation to students, senior academic staff in relation to junior academic or allied staff) shall not abuse the power they have because of their position. Any staff member who enters into a sexual relationship with a student or another staff member where a professional power differential exists must realise that, if a charge of sexual harassment is subsequently lodged, it will be extremely difficult to defend the conduct on the grounds of mutual consent.

### 3 Policy Statement

CPIT does not condone any form of sexual or racial harassment or intimidation. Students and staff have the right to study and work unhindered by any form of sexual or racial harassment or intimidation. CPIT endeavours to protect staff, students and visitors from harassment and will handle any complaints of alleged harassment/intimidation fairly, swiftly, and effectively in accordance with relevant current legislation (in particular the Human Rights Act 1993 and the Employment Relations Act 1991).

### 4 Definitions

#### 4 4.1 Harassment

Any form of behaviour that is unwanted by the recipient, that is repeated or significant enough to interfere with their work or study performance or environment. All harassment can have an element of power abuse that makes it hard for the person being harassed to stop it from happening. It includes sexual and racial harassment and intimidation. The motive or intention of the perpetrator(s) is irrelevant.

#### 4.2 Sexual Harassment

Any form of sexual attention (verbal, physical, written, or visual) from an individual or group that is unwelcome, persistent or offensive to the recipient. It can include any of the following behaviours, although the list is not exhaustive:

- Displaying offensive pictures, posters, cartoons, graffiti, screen-savers, electronic images or literature.
- Personally offensive verbal comments
- Loud conversations of a sexual nature in front of others.
- Sexual and smutty jokes.
- Leering (suggestive staring at a person)
- Teasing or comments about a person's alleged sexual activities or private life.
- Harassment via email or use of obscene screen savers.
- Offensive hand or body gestures.
- Playing pornographic videos or watching TV pornography in the presence of others who do not want to see it.
- Unwelcome social attention or telephone calls.
- Being followed.
- Unwanted or deliberate physical contact such as patting, pinching, kissing, touching, or putting an arm around another person's body.
- Repeated requests for dates or favours after being told "no".
- Requests for sexual favours or intercourse.
- Offering benefits in return for sex.
- Threatening a person's career, salary, grades, or wellbeing if sexual favours are refused.
- Harassment of lesbian or gay workers or students or those thought to be lesbian or gay.
- Physical assault.

#### 4.3 Racial Harassment

Behaviour of a racial nature (such as words, gestures, actions or threats relating to skin colour, race, or ethnic or national origin) that is: unwanted or offensive to the recipient, repeated, or of such a significant nature that it has a detrimental effect on the recipient's work or study performance or environment.

Racial harassment can include:

- displaying offensive pictures or posters
- offensive verbal comments of a racial nature.
- racial jokes.
- teasing or comments about (supposed) racial characteristics.
- harassment on racial grounds via email.

- harassment related to membership of a particular race or national or ethnic group.
- making threats with racial inferences.
- physical assault on racial grounds.

This list is indicative, not exhaustive.

#### 4.4 Complainant

The person who wishes to make a complaint of alleged sexual or racial harassment or intimidation by any person, whether a student or staff member or visitor to CPIT during the course of her or his duties or studies on or off campus.

#### 4.5 Alleged Harasser/Respondent

The “Alleged Harasser” is the person against whom a complaint is made. The “Respondent” is the person against whom a Complaints Committee is formed.

#### 4.6 Harassment Prevention and Complaints Management

The Human Resources Manager has overall responsibility for harassment prevention. Managers should consult the Human Resources Manager in all complaints that progress beyond Stage 2, and at Stage 2 if necessary. In respect of managing complaints, the following will apply;

4.6.1 The Human Resources Manager will manage any complaint that involves a staff member as an alleged harasser/respondent. Where a student is the alleged harasser/respondent and a staff member the complainant, the Dean/Head of School will consult with the Human Resources Manager as to which of them will most appropriately handle the complaint.

4.6.2 Where both alleged harasser/complainant and respondent are students, the complaint will be coordinated by the relevant Head of School up to and including Stage Two. Should such a complaint proceed to Stage 3 it will be managed by the Associate Registrar or the Dean, whoever is most appropriate. As a general guideline, complaints arising from behaviour in teaching situations will be managed by the Dean, and those arising from behaviour in non-teaching situations will be managed by the Associate Registrar. The Dean and the Associate Registrar will decide which of them is the most appropriate person to handle a complaint in each specific instance. Should the complaint proceed to Stage 4 it will be managed by the Registrar. Each will consult with the Human Resources Manager (Stage 3) or the Human Resources Director (Stage 4).

4.6.3 For the remainder of this policy, the term ‘Manager’ will be used to refer to the person managing the complaint at the level being discussed.

#### 4.7 Contact People

The nominated people on campus who have been trained as the initial contact point for anyone who wishes to make a complaint or discuss any harassment related issues.

#### 4.8 Fairness

In this policy, the concept of fairness is designed to ensure that any complaint is handled in a manner that is fair to everyone involved, including witnesses. In this policy, the term fairness requires that:

4.8.1 Any person has the right to be informed about any written complaint about him or her.

4.8.2 Any person complained about has the right to an opportunity to respond to any complaint before any decision as to its merits is made.

4.8.3 Any person complained about has the right to advice and representation.

4.8.4 Any person has the right to support throughout any investigation.

4.8.5 Any person involved in the complaint has the right to be listened to.

#### 4.9 Resolution

4.9.1 A complaint is resolved when:

- a the complainant is satisfied that she/he has been heard and that the complaint has been addressed
- b AND the respondent is satisfied that she/he has been heard
- c AND all those involved agree that the matter has been resolved as satisfactorily as possible and that the matter is at an end.

4.9.2 When a complaint is not resolved by agreement, but by a decision of the Complaints Committee at Stage 4 of the Complaints Procedures (Section 5.3.4 of this policy) the complaint will be described as "settled".

4.9.3 The Human Rights Act 1993 (section 62) and the Employment Contracts Act (Section 20) define the relevant unlawful behaviours as:

- a to make a request of any other person for sexual intercourse, sexual contact or other form of sexual activity which contains an implied or overt promise of preferential treatment or an implied or overt threat of detrimental treatment;
- b the use of language (whether written or spoken) of a sexual nature, or of visual material of a sexual nature, or by physical behaviour of a sexual nature to subject any other person to behaviour that:
  - (i) is unwelcome or offensive to that person (whether or not it is conveyed to that person);
  - (ii) is either repeated, or of such a significant nature, that it has a detrimental effect on that person in that person's employment or education.
- c language (whether written or spoken), or visual material or physical behaviour that expresses hostility against, or brings into contempt or ridicule, any other person on the grounds:
  - (i) of the colour, race or ethnic or national origins of that person; and is hurtful or offensive to that person;
  - (ii) is either repeated, or of such a significant nature, that it has a detrimental effect on that person.

#### 4.10 Personal Grievance Procedure

This is a procedure available to staff under the Employment Relations Act. It applies when a staff member wishes to make a complaint against CPIT for, for example, failing to have an adequate Harassment Policy or failing to apply its Harassment Policy fairly. A personal grievance is a complaint made against the employer.

### 5 Procedures for Making Complaint

The following paragraphs set out the procedures that apply to any complaint made under this policy. There are four stages to the procedure. The first three are intended to allow for a complaint to be received and for it to be dealt with relatively informally. The fourth stage is a formal investigation of the complaint by a committee constituted for that purpose.

#### 5.1 Timing

In all cases it is preferable that a complaint be made as soon as possible after the alleged incident(s). The reasons for this are:

- recollection is clear.
- witnesses are more likely to be available.

the behaviour is unacceptable and further occurrences need to be prevented: harassment/intimidation does not “go away” if it is ignored.

## 5.2 Available Procedures

The following procedures are available to complainants:

### 5.2.1 CPIT internal procedure

Complaints under CPIT’s internal procedure must be made within a year of the alleged harassment/intimidation. If special circumstances are claimed, any application for an extension where a staff member is involved will go to the Human Resources Director or to the Registrar when the complainant and the alleged harasser/intimidator are both students. CPIT has established a flexible four stage procedure which is set out in Section 5.3 of this policy. If the internal procedure is chosen, this does not exclude the complainant from seeking or taking advice about the other options. Further information is available from designated contact people throughout CPIT.

### 5.2.2 Human Rights Commission procedure (Note: this procedure applies only to sexual and racial harassment, not to intimidation).

Complaints to the Human Rights Commission must generally be made within a year of the alleged harassment, although this can be extended for special circumstances. The complaint cannot swap between this procedure and the personal grievance procedure (below). Further information is available from designated Contract People throughout CPIT.

### 5.2.3 Personal Grievance Procedure

Where the complainant is a CPIT staff member, rights exist under the Employment Relations Act. Advice can be sought from the appropriate staff union representative or from a lawyer. A personal grievance action must be lodged within 90 days of the alleged offence. The complainant cannot swap between this procedure and the Human Rights Commission procedure (above).

### 5.2.4 Police Complaint Procedure

In serious cases the complainant may make a complaint to the police.

### 5.2.5 Alternative Procedures

The complainant, respondent and CPIT may agree to an alternative procedure to resolve any disputes, other than the one provided in this policy. Applications to use an alternative procedure will be made to the Human Resources Director or the Registrar as appropriate. CPIT’s approval for an alternative procedure may only be given by the CEO, or in his or her absence the person with delegated authority.

## 5.3 Details of the Internal Procedure

CPIT’s procedure for handling allegations of harassment/intimidation consists of four stages. Given that harassment/intimidation can cover a range of behaviours from minor incidents causing embarrassment through to behaviour having severe repercussions, a complainant may lodge a complaint at any of the four stages. Each stage is described below. The Human Resources Manager is available for consultation with staff dealing with a complaint at any level.

### 5.3.1 Stage One (Harassment Contact People)

- a “Contact People” are the initial point of contact for a person who believes she/he has been harassed or intimidated.
- b The role of the Contact Person is to listen, to advise the complainant on their options and the need for confidentiality regarding the identity of the alleged

harasser/intimidator and, if appropriate to help the complainant decide how or whether to proceed with the complaint. In most cases, once the course of action is decided, the Contact Person's involvement will end.

- c Possible outcomes of Stage 1 include the following:
  - (i) Doing nothing further - talking with the Contract Person may be sufficient.
  - (ii) Complainant writing a confidential letter to the alleged harasser/intimidator.
  - (iii) Complainant contacting the Human Rights Commission or relevant staff union.
  - (iv) Complainant seeing a counsellor - students may use CPIT counselling Service; staff may refer themselves to the Employee Assistance Programme, the external counselling service for Polytechnic staff.
  - (v) Complainant reporting the incident/s to the police.
- d In normal circumstances, complaints that go beyond Stage 1 must be in writing, signed, and dated. A complaint that goes beyond Stage 1 will be directed to one of the following people, as appropriate
  - (i) if the alleged harasser/respondent is a staff member in a faculty, to the Dean of the faculty;
  - (ii) if the alleged harasser/respondent is a staff member in a division, to the Director of that division, except where the staff member is in the Human Resources Division the complaint will go to the Human Resources Manager
  - (iii) if the alleged harasser/respondent is a student, to the Head of School;
- e When a Contact person has referred a complainant to the relevant person at Stage 2 they will inform the Human Resources Manager of this action, without disclosing the identity of either the complainant or the respondent.

### **5.3.2 Stage Two (Resolution Facilitated by the Dean, Divisional Director or Head of School)**

If the Manager has not previously dealt with a complaint under this policy it is strongly recommended that they consult with the Human Resources Manager before proceeding.

- a The Manager may take steps to facilitate a resolution at the complainant's request without a formal written complaint. Where the alleged harasser/intimidator is a staff member very little action can be taken without a written, formal complaint because of CPIT's responsibilities to staff under employment contracts.
- b Possible action where there is no written, formal complaint includes:
  - (i) talking with the parties separately and negotiating a resolution that is acceptable to everyone and consistent with CPIT rules, regulations and responsibilities;
  - (ii) arranging a meeting with all the parties, facilitated by the manager, and negotiating a solution that is acceptable to everyone and consistent with CPIT rules, regulations, and responsibilities. (Note: This course of action is usually appropriate only when the alleged harasser/intimidator accepts that the complaint is valid, at least in part, and is willing to take responsibility for changing the behaviour complained of.) The relevant union/association will be advised of such a meeting and have the opportunity to attend as representatives or advisors as agreed with those involved.
  - (iii) assisting the complainant with any course of action she/he wishes to take that is consistent with CPIT rules, regulations, and responsibilities.

- c When a complainant indicates to a Contact Person a wish to make a formal, written complaint, the complainant will immediately be referred to the appropriate Manager (Refer 5.3.1 d).
- d The Manager will act in accordance with the principles of fairness (see 4.8 and CPIT's policies and obligations in relation to staff and students) This includes ensuring that both the complainant and the alleged harasser/intimidator are offered the advice and support available to them from their staff union or students' association.
- e The Manager (in consultation with the complainant) may take any of the actions described in 5.3.b,above. Informal interviews, for example with witnesses and colleagues may take place.
- f If a resolution is reached all parties will be informed promptly and any notes will be destroyed.
- g In all actions taken under section 5.3.2 Managers will report to the Human Resource Director if a staff member is involved, or the Registrar when a student or students are involved.
- h If the Manager decides
  - (i) The subject matter of the complaint is sufficiently serious to be beyond quick and informal resolution; or
  - (ii) That the attitudes of either or both of the complainant and respondent make quick and informal resolution unlikely; or
  - (iii) Where, if a complaint is upheld, the respondent might be likely to be disciplined, the manager will immediately refer the complaint to Stage 3. This referral to Stage 3 may be made without consulting either the complainant or the respondent.
  - (iv) If the Manager decides that the complaint is frivolous, or vexatious, it may be dismissed. If a complaint is dismissed at this stage the complainant has a right of appeal to the Human Resources Manager or the Associate Registrar or Dean as appropriate. If such an appeal is upheld, then the Human Resources Manager/ Associate Registrar/Dean may either
    - direct the completion of Stage 2
    - OR direct that the complaint proceed at Stage 3.

### **5.3.3 Stage Three (Review by HR Manager, Associate Registrar or Dean)**

Stage 3 is a review by the Human Resources Manager or Associate Registrar or Dean, whichever is appropriate.

- a The Manager who has become responsible for the complaint at Stage 3 will:
  - (i) Advise the complainant and respondent that the complaint has been received at Stage 3.
  - (ii) Remind the complainant and the respondent of their rights to representation and support in accordance with this policy.
- b Where necessary, in his or her absolute discretion, the Manager may:
  - (i) Seek further information from the complainant or respondent, as is appropriate in either case.
  - (ii) Where further information is sought and provided send a copy of it to the complainant or respondent (as appropriate).
- c The Manager may attempt to resolve the complaint by negotiation on such terms as are considered appropriate.
- d Nothing in this Policy obliges the Manager to negotiate. Where the Manager considers:
  - (i) the attitudes of either or both the complainant and respondent make resolution by negotiation unlikely; or

- (ii) The subject matter of the complaint is so serious, or of such a type, or nature, that negotiation would be inappropriate; or
  - (iii) That if the complaint is upheld on investigation at Stage 4, then, disciplinary action (staff) or suspension (student) might result, then the Manager may, without reference to either the complainant or the respondent, direct that the complaint proceed to Stage 4.
- e The involvement of the designated Manager at Stage 3 ceases when a complaint progresses to Stage 4, subject to the provision that the Complaints Committee may interview the Manager if it is the Committee's belief that the Manager may have information relevant to the outcome of the investigation, whether or not the Manager has been identified by the complainant or respondent as a witness.
- f Up to and including Stage 3 informal notes will be taken to assist the Manager making the enquiries. If the complaint reaches Stage 4 these notes will be destroyed. Any documents that have been provided by the complainant or the respondent and disclosed to the other party will be given to the Chairperson of the Complaints Committee. If a complaint is resolved at Stage 1, 2 or 3, a decision will be made at the time of resolution regarding the disposal of documents.

#### **5.3.4 Stage Four (Complaints Committee)**

This stage is the most formal part of dealing with a complaint. The purpose is to investigate allegations made in a complaint where there has been no prior resolution of it, and to determine what action, if any, should be taken. The Committee will be constituted depending on the nature and subject of the complaint.

The Committee will consist of the following:

- a The Human Resources Director, where a staff member is involved, or The Registrar, where both complainant and respondent are students and in each case two other senior Managers appointed on an ad hoc basis. If a staff member is the complainant and a student the respondent, the Human Resources Director and the Registrar will decide, based on the circumstances of the particular case, which of the two of them should be involved.
- b The Complaints Committee will be chaired by either the Human Resources Director or the Registrar depending on which one is a member of the Committee.
- c The Human Resources Director and the Registrar may delegate their position on the Complaints Committee. In this instance they will designate which of the three members will chair the Committee.

Once the committee has been constituted, the procedure will follow that which is set out in Stage Four of the policy, Complaints Involving CPIT Staff.

#### **5.3.5 Suspension (student)**

- a Some complaints may allege behaviour of such gravity, or in such circumstances, that it would be inappropriate for the respondent to continue his or her studies while an investigation is being undertaken. Examples of that conduct might include, but are not limited to, allegations of sexual assault, severe intimidation such as preventing a student attending class, threats of physical harm that are racially based, or other matters which could amount to a serious dereliction of acceptable behaviour.
- b Where a respondent is a student and the nature of the alleged harassment is such that it is not appropriate or possible for the student to continue in his or her studies at CPIT in the normal way, the complaint will immediately be referred to the Associate Registrar.

- c The Associate Registrar will apply the procedures of the Regulations Governing Probation, Suspension and Cancellation/Refusal of Enrolments in relation to the respondent.
- d Notwithstanding the above clauses, the Harassment Complaint will precede in accordance with the Harassment Policy. Such a complaint would immediately proceed to Stage 3 or 4, at the decision of the Registrar.

### **5.3.6 Learning from a Complaint**

CPIT strives to be a 'learning organisation'. Much can be learned or validated by the process of handling any complaint. When any issue is raised or identified that has application or relevance to others in the organisation, the 'What Can We Learn from this Concern/Complaint?' form should be completed and distributed as appropriate. A copy of the form is attached to this policy.

## **6 Attachments/Further documentation**

- What Can We Learn from this Concern/Complaint?

## **7 Related Policies**

- Complaints Involving CPIT Staff
- Evaluation & Review
- Personal Information about Students and Staff : Information Privacy Principles
- Code of Professional Practice
- Student Rights and Responsibilities
- Protected Disclosure Policy

## **8 Note**

This policy is aligned with the Complaints Involving CPIT Staff policy. The procedures at Stage 4 are identical with those set out for handling any other complaint at that level. This policy, therefore, should be reviewed at the same time as Complaints Involving CPIT Staff.