

**INDEPENDENT INQUIRY INTO ALLEGATIONS OF SEXUAL  
HARASSMENT AT THE UNIVERSITY OF THE WITWATERSRAND,  
JOHANNESBURG**

**2013**

**FORMAL INQUIRY REPORT**

**Inquiry team:**

**External:**

Joe Mothibi  
Verushka Reddy

**Internal:**

Bonita Meyersfeld  
Jameelah Omar

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## **A. Introduction**

The Independent Inquiry into sexual harassment at the University of Witwatersrand hereby submits its final report. The findings, recommendations and conclusions are contained in this report.

The members of the Inquiry have had absolute cooperation from all involved in this process. The University Community as a whole has taken a unique and unprecedented investigation. The inquiry has brought us into contact with deep sadness but we conclude with hope for effective change.

We applaud the courage of the students and staff who told us their stories and contributed directly and indirectly to our recommendations.

## **B. Terms of Reference**

The terms of reference of the Inquiry require the Committee to establish:

- 1) Whether sexual harassment and quid pro quo relationships are common place at the University of Witwatersrand's ("**University**");
- 2) Whether staff and students are aware of the policy and procedures on sexual harassment and whether they feel comfortable reporting sexual harassment incidents; and
- 3) Whether the process of addressing incidents of sexual harassment at the University (this includes the manner in which incidents of sexual harassment are reported and investigated) is fair, robust, effective and sensitive.

## **C. The Committee**

There are two parts to the Committee of Inquiry ("**the Committee**"), an external team and an internal team. The external team is comprised of lawyers specializing in employment law, from the law firm of Norton Rose Fulbright South Africa, Joe Mothibi, Verushka Reddy and Amelia Berman. The internal team comprises of Bonita Meyersfeld and Jameelah Omar, lawyers at the Centre for Applied Legal Studies, which forms part of the University's Law School.

The two segments, however, provided distinct sets of expertise to the Committee. The external segment provided expertise on employment law and how it regulates sexual harassment, while the internal segment provided expertise on the relationship between gender and power differentials in respect of sexual harassment. Members of both teams attended consultations and interviews.

This Report comprises the consolidation of these distinct approaches into practical recommendations for the improvement of the handling of sexual harassment at the University based on what the Committee observed and was told during the Inquiry.

#### **D. Background to the inquiry**

In 2011, the University's Transformation Office commissioned and began the process of a wholesale review of the formal policies relating to sexual harassment. This review process was undertaken by an external expert, Professor Dee Smythe, the Director of the Centre for Law and Society at the University of Cape Town. By the end of 2012, the policies had been reviewed and new proposed policies were in draft form. Many academics across the University had commented on, and participated in, the drafting of the revised policy.

On 21 September 2012, an article was published in the University student newspaper, the *Vuvuzela*, describing the sexual harassment of students by academics and specifically detailing allegations against an individual academic. The article was entitled "Professor asked student for sex". At this stage the Wits Legal Office began the process of establishing this inquiry into sexual harassment on campus.

In January 2013, the *Sunday Times* published an article detailing alleged incidents of sexual harassment of students by an academic in the School of Arts. Shortly thereafter, the University expedited the establishment of the envisaged campus-wide inquiry ("**Inquiry**"). On 1 February 2013 this Inquiry was formally commissioned. A separate inquiry to investigate specific allegations of sexual harassment at the University was commissioned and is being conducted by a team of lawyers at the firm Bowman Gilfillan Incorporated. This is a distinct and separate process.

#### **E. Objective of the inquiry**

It is apparent from the background to the Inquiry that sexual harassment is viewed by students, staff and University management as a problem at the University. However, the

extent of the problem and the reasons why it had not come to the fore earlier, despite the University having a policy and process in place, was not readily apparent. Thus, the purpose of the Inquiry was to ascertain the prevalence of the problem, the extent of the problem, and the role of institutional culture, if any.

Ultimately the Committee's recommendations seek to assist the University to:

- 1) Prevent instances of sexual harassment through the implementation of educational and contractual mechanisms; and
- 2) Ensure that processes are in place to deal effectively with specific allegations of sexual harassment.

Furthermore, the committee is required to make recommendations on measures which can be implemented in order to achieve the above.

## **F. Methodology**

Information for the Inquiry was gathered between 1 February 2013 and 15 August 2013.

The mandate of the Committee was not to investigate specific allegations, and therefore it was not necessary to obtain documentary or other evidence other than oral accounts from persons relating to their experiences and opinions of sexual harassment at the University. On occasion, the Committee received supplementary written information.

The Committee obtained information from face-to-face inquiries with staff, students and former students. These meetings were conducted on an absolutely confidential basis. All interviewees provided their personal views on the process and their respective experiences.

The Committee obtained information from various distinct individuals and groups of persons, *inter alia*:

- Relevant roleplayer offices ("**Roleplayers**") in the University system;
- Staff members who complained of sexual harassment;
- Staff members who have participated in the various sexual harassment processes;
- Students who complained of sexual harassment; and

- Open meetings with students at residences and in lecture halls.

The Committee interviewed more members of staff than students. The general explanation for this was that students were nervous, scared and felt that nothing would be done.

## **G. Findings**

This section details the general findings and observations by the Committee during the consultation process. To protect the anonymity of the persons with whom we consulted, all findings are drafted in general and neutral terms, without referring to specific persons or designations in the University, and without detailing specific events that could be attributed to any individual.

There is indeed a problem of sexual harassment at the University. It must be stated, however, that there is no one person or office responsible for this phenomenon. Our inquiry revealed that there is a deficient system, comprising well-meaning individuals who have no training and limited resources to address this systemic problem. Our recommendations similarly seek to address this.

## **1. LACK OF UNDERSTANDING OF SEXUAL HARASSMENT**

### **1.1. The Label “Sexual Harassment”**

One of the most pronounced findings was the number of different understandings of sexual harassment across the University. Therefore, one of the key recommendations is that the University adopts a very clear and broad definition of sexual harassment, one that is capable of explaining the range of activity that constitutes sexual harassment.

Sexual harassment should be understood as a spectrum of activity, ranging from inappropriate or suggestive comments to threats and acts of physical violence. Obviously the severity of acts ranges, as should the consequences. However, all such conduct will constitute sexual harassment.

The common theme throughout the inquiry is that the sexual harassment is behaviour causing distress, is alienating and inconsistent with the spirit of the University, and which is directed at an aspect of a person other than their academic ability in an academic context.

It should also be noted that sexual harassment complaints were very rarely a once-off incident. There was usually a continuum of conduct that was initially uncomfortable, developing over time into a more invasive version of harassment. The slow progression of harmful behaviour means that many people do not identify themselves as victims of sexual harassment until there is an extreme incident of sexual harassment at which point many feel that they are to blame or somehow complicit.

### **1.2. Lack of Understanding of the Nuances of Sexual Harassment in the University Context**

There are several offices in the University tasked with dealing with sexual harassment in different capacities. This results in confusion as to roles, responsibilities and lines of accountability.

These Roleplayers are:

- i. The Legal Office;
- ii. The Employment Relations Office;

- iii. The Transformation Office;
- iv. The Sexual Harassment Advisor;
- v. Campus Control;
- vi. Campus Health; and
- vii. University Management.

The Roleplayers involved in handling sexual harassment across the University do not possess all the necessary expertise in sexual harassment matters.

None of the persons working in the Roleplayer offices has been provided with training on handling sexual harassment, or sensitivity training in dealing with integrated issues such as gender, race and power differentials.

It is not unusual that legal and investigatory responses to sexual harassment are managed without the necessary expertise. This is in stark contrast to the approach, for example, to cases of fraud. Investigations into fraud often rely on experts in forensic auditing, with expertise in financial fraud and with the skills to investigate the matter appropriately, make verifiable findings and propose workable solutions.

The same level of specialised expertise is required in respect of sexual harassment. Responses to sexual harassment do not cater for the nuanced nature of such abuse and the associated elements of fear and power disparity.

The expertise required in respect of sexual harassment cases is an understanding of the psycho-social impact of sexual harassment and the context of power relations in which it occurs. This includes an understanding of the limited choices students and staff members have in negotiating advances made by those in senior positions.

At the moment, this specialisation is housed in the individual qualifications of the incumbents of the Transformation Office (who is no longer in office) and the Sexual Harassment Advisor (“SHA”), situated at CCDU.

These offices, however, operate distinctly from the other Roleplayers, including the Legal Office and Employment Relations Office. The two sets of expertise, namely law and psycho-social responses, are inextricably linked and ought to be housed in one seamless office.



### **1.3. No discussion, training or public engagement to facilitate the understanding of sexual harassment**

From year-to-year, there is no consistent period or event at which a student or staff member of the University is informed about the sexual harassment policies, principles of expected interpersonal behaviour and the consequences of non-compliance.

As a result, staff and students are not aware of the different types of behaviour that encompass sexual harassment. The most common view is that only violent physical conduct constitutes sexual harassment.

This perception promotes the view that unless it is physical, it is not worth reporting, and that inappropriate behaviour such as sexual innuendo is acceptable.

This is unlike the University's approach to plagiarism. Every member of staff and every student is made aware, repeatedly, of what plagiarism is and the consequences thereof. Physical and personal safety, dignity and well-being, are as seminal to the academic project as intellectual property and research facilities. Their protection requires as robust, open and consistent discussion as ethics and plagiarism.

There are no consistent education programmes available to staff on sexual harassment or integrated issues such as gender, race and power differentials. Many staff members outside of the Roleplayers are involved in sexual harassment issues by nature of their proximity to students within respective academic Schools and Departments, and are not provided with the tools to handle these matters appropriately.

Many staff members are uncertain about how to behave towards their students for fear of crossing a line, without knowing exactly where that line is.

Many students are not aware that there is a SHA or that CCDU offers counselling for personal issues. Students have the perception that CCDU is aimed at their studies and career options alone.

### **1.4. No support for staff who handle sexual harassment complaints**

There is no formal support for staff members (both in and outside of the Roleplayers), who deal with the difficult and emotional issues that are raised in sexual harassment issues.

A number of the staff members handling these issues have had to take special sick leave due to their emotional and mental fatigue. A number have also suffered severe illnesses as a result of the stress of handling these issues.

Within Schools and Departments in which sexual harassment allegations have been lodged against academics, staff members have described the *“toxic environment”*, the *“level of anxiety”* and the *“feelings of humiliation at being painted with the same brush”*. These are emotions and reactions that have an impact on job satisfaction as well as specifically on teaching and staff-student relationships.

Staff members who have tried to engage with the issue of sexual harassment with their students, have reported confrontational, overly legalistic or aggressive responses from certain Roleplayers.

In particular, staff members who have attempted to raise this issue publicly with students have faced internal censure. While there is a need to be cautious in handling the legalities of sexual harassment cases, the tendency is to be overly legalistic. This is another example of the legal process progressing without the psycho-social considerations that permeate this type of harm.

The current University sexual harassment policy stipulates that a complainant may approach ‘anyone’. As a result, many students approach academics and staff members in whom they feel comfortable confiding. Staff members have reported that in instances where students have approached them to report and seek guidance, it has afterwards been implied by the University that they *“incited students to come forward”*. This has a silencing effect on all members of staff.

These staff members are also not part of the Roleplayers and their role in responding to sexual harassment complaints is neither acknowledged nor facilitated. Staff members reportedly spend significant time on sexual harassment complaints but are not provided with resource assistance or support and perform this role over and above their teaching and research requirements.

When a staff member is placed on special leave, the colleagues must burden the extra load without the necessary support. This is an additional and unquantifiable pressure on staff, particularly in terms of providing additional teaching and research capacity.

## **1.5. Unclear University Code of Conduct Regarding Relationships**

### **1.5.1. Relationships in General**

One of the key determinants exacerbating instances of sexual harassment is the lack of clarity regarding acceptable student and staff behaviour. Although there is a Relationships Policy, it is confusing in practice. Its key components are:

- i. It does not prohibit romantic or intimate relationships between staff members and students.
- ii. Relationships between staff and students must be disclosed to the line manager of the particular staff member. The interpretation of this requirement is that it applies to long-term relationships and does not include casual sexual engagement. The latter is rarely reported.

Such encounters also occur within the dynamic of power disparities, which impede, if not obviate, the existence of meaningful choice on the part of the student. Where relationships are disclosed, there is no consistency in how line managers deal with such disclosure.

The result of this policy is that there has been an increasing informalisation of relationships between staff and staff, and between staff and students. This informality is laudable in many respects and speaks to a progressive environment. However, it has started to develop into a culture, which may be absent of dignity and respect, where abuse can flourish under the guise of a non-hierarchical community.

Interviewees were divided as to whether platforms such as social networking ought to be allowed between staff and students (there is no University position on this). The most common view from staff is that social media can be a useful educational tool when used academically, and not for personal relationships with students. Students mostly felt uncomfortable with personal engagement on social media.

### **1.5.2. Lack of Clarity for Staff**

There is no formal procedure whereby a new member of staff is apprised of the sexual harassment policy. Staff members are not provided with the Sexual Harassment Policy when entering the University and are not required to commit to its contents. Although the employment contract includes a clause that states that “the employee will be required to abide

by all policies, rules and regulations applicable to University staff members”, this is deficient for the following reasons: there is no specific reference to the sexual harassment policy; there are approximately 70 HR policies in place at a given time; the sexual harassment policy is not attached to employment contracts; and it is not easily accessible on-line.

There is also no Code of Conduct that clearly sets out what is appropriate or inappropriate conduct for staff in dealing with students. In the absence of specificity, the University community operates in a context of differing assumptions of what constitutes appropriate staff-staff, student-student, and staff-student engagement. It is clear that this lack of certainty exacerbates the experience of complainants who are never sure if the University sanctions their experiences.

There is an ad hoc discussion about sexual harassment in the orientation programme but the orientation programme for new staff members is not compulsory, and more particularly, does not include induction or training on the sexual harassment policy. The programme is available simultaneously for academic staff and support staff, and separate sexual harassment training for the two distinct staff groups would be important to the extent that the relationship between academic staff members and students, and non-academic staff members and students differs.

### 1.5.3. Lack of Clarity for Students

As part of orientation packs, first year students are provided with a description of sexual harassment. However, neither a discussion nor induction of the policy is included in the orientation programme. Students are oftentimes not made aware of the Sexual Harassment Advisor, or given clear guidelines as to whom they can turn with complaints of sexual harassment.

The sexual harassment policy is available on the University intranet, but it is not easy to find.

An example of where problems arise:

*Students on the Student Representative Council have in the past requested that the sexual harassment policy be emailed to the student body at large. This was not done because of an unwritten University policy that students, who have complained about excessive emails, ought not to receive more than five bulk emails per year from the University. The competing considerations in this*

*instance are worth examining as they reveal the formalistic approach to student engagement and are part of the problem in responding to sexual harassment. In our view, the University ought to have distributed the policy. Why this policy and not others? First, because the students asked for the policy; second, the problem of excessive emailing is less prejudicial on balance than sexual harassment.*

The policy should not only be made available; it should be distributed as one of the key induction documents and involve mandatory engagement and training.

#### **1.5.4. Lack of Clarity for Tutors**

Interviewees commented on the particular difficulty in respect of tutors and sexual harassment. Tutors operate in a zone between staff and students. Although tutors are not members of staff, they have a large degree of influence over students. There is no policy in place that regulates their relationship with students or clarifies what is inappropriate conduct towards a student.

## **2. TOO MANY DISPARATE ROLEPLAYERS**

### **2.1. Role of the Legal Office**

#### **2.1.1. What It Is and What It Does**

The Legal Office is responsible for the regulation and enforcement of legal issues at the University. The Legal Office has three lawyers who are available to handle sexual harassment cases. The Legal Office only deals with cases of sexual harassment or sexual violence between students (i.e. both the complainant and the perpetrator are students) and not between staff and students or staff and staff. The latter cases are handled by the Employment Relations office (discussed below). The Legal Office also assists and works alongside Employment Relations on incidents of sexual harassment between a staff member and a student. The Legal Office may call other members of staff to assist with sexual harassment cases and disciplinary proceedings where necessary. The Legal Office may also brief outside counsel when necessary.

The Legal Office has several challenges in addressing sexual harassment. It must be stated that there are individuals within the legal office who are deeply committed to eradicating sexual harassment but are unable to do so effectively for the reasons described below.

#### **2.1.2. Deficiency One: Legal Office Faces a Conflict of Interest**

The Legal Office houses the University's internal legal counsel and is the office tasked with handling legal matters across the University. In cases of sexual harassment, it is often unclear in whose interests the Legal Office is, or should be, acting. In sexual harassment cases, there are three competing interests: the University's reputation; the complainant's interests; and the interests of the alleged perpetrator.

The Legal Office is required to represent all three competing interests simultaneously, namely, the interests of the University, including a safe campus and reputational interests, the complainant and the alleged perpetrator.

As the University's lawyers, the Legal Office's first responsibility is to the University. This makes it difficult for the Legal Office simultaneously to be involved in protecting the interests of the complainant, who feels the need to be protected and believed; and alleged perpetrator, who feels the need to be vindicated; and the University, which wants a safe and just environment.

For example, by issuing a protection order against the alleged perpetrator, which prohibits the alleged perpetrator from contacting the complainant or any witnesses pending further investigation and the disciplinary hearing, the Legal Office tries to protect the complainant and make them feel safe, ensure that the University campus is safe in the interim and ensure that the disciplinary process is fair to all parties, including the alleged perpetrator. In almost all cases, these protection orders have worked to ensure safety pending the finalisation of the process.

Complainants indicated that the Hillbrow police station is reluctant to open cases because *“they see no point in helping Wits students, because the next day the University lawyers come there and cover up for the perpetrator”*.

The Legal Office reportedly told complainants that, *“you realize if you go ahead with this you’ll be ruining this person’s life; are you prepared to do that?”*.

In both instances, the Legal Office is trying to protect students who are arrested and prepare complainants for what lies ahead. The complainants understood this to be a message of intimidation, dissuading further proceedings against the alleged perpetrator. This demonstrates the conflict, which the Legal Office faces in representing numerous competing interests.

The Legal Office’s role in sexual harassment matters should be restricted to representing the University’s interests in a safe and flourishing campus at the disciplinary hearings.

### **2.1.3. Deficiency Two: Conflation of roles**

It is unclear which entity in the University is responsible for investigating sexual harassment claims. Some Roleplayers are of the view that this is the task of the Legal Office while the Legal Office clearly sees itself as the body to receive a completed investigation, which it can then pursue. The result of this uncertainty is that cases are not always investigated expeditiously. No one is absolutely clear as to who is tasked with investigating the matter and handling any disciplinary process arising therefrom. It is also in the discretion of the Legal Office whether to proceed with a disciplinary process, after discussing and receiving approval from the Vice-Chancellor or his appointed nominee (ordinarily one of the Deputy Vice-Chancellors).

It is clear, however, that the Legal Office is responsible for preparing the complainant and the alleged perpetrator for the procedure during the disciplinary process. During disciplinary

proceedings, the Legal Office presents the case at the disciplinary hearing. In some cases, the perpetrator is permitted to have legal assistance present.

These conflicting roles lead to a perception that the Legal Office has the discretion as to whether or not to proceed with formal disciplinary hearings and that it exercises that discretion in the interests of the University's reputation. There is also a sense of randomness and a lack of accountability, in the sense that it is not always made clear to the complainant on what basis a case proceeds or not.

In our view the Legal Office is simply tasked with too many disparate roles to address sexual harassment claims comprehensively.

#### **2.1.4. Deficiency Three: Insufficient expertise**

The Legal Office consists of persons trained as attorneys by profession. However, for the most part, they have no specialised training or expertise in sexual harassment or gender-related matters.

The perception is that it is not necessary for specialists to be brought in to handle these matters, either because they are not important, or because the Legal Office currently consists largely of female attorneys, and it is believed that sexual harassment is a "woman's issue", which can be handled by any woman.

The Legal Office also does not have any training or specialised skills to investigate sexual harassment matters. In most matters, the Legal Office obtains assistance from the head of the investigation unit of Campus Control. However, this is not done in every case and Campus Control is not necessarily trained in sexual harassment sensitivity. It is also not a formal part of the policy but an ad hoc process.

Unique and specialised expertise is needed to manage the nuanced nature of sexual harassment and abuse.

#### **2.1.5. Deficiency Four: Inconsistent application of policies**

At the outset of the Inquiry it became clear that there is no uniform understanding of the sexual harassment policy at the University and the procedure for reporting and managing sexual harassment cases. This was a common theme for students, staff members and management.



In practice, for the most part, sexual harassment cases are dealt with on a case-by-case basis. All Roleplayers within the system tend to proceed with complaints in an unguided manner, with no clear sense of the prescribed steps that ought to be taken. Often the policy is not consistently pursued due to a lack of practicality, time and certainty.

#### **2.1.6. Deficiency Five: Perception that the Legal Office would prefer to have problem go away**

The Legal Office cannot proceed with a case due to a lack of evidence. This is not properly understood by complainants nor is there effective or standardised communication. This creates the perception that the Legal Office would prefer to ignore difficult problems.

The complainant is often not provided with follow-up information timeously (or sometimes at all) regarding the status and progress of the investigation. The result is that complainants indicate that they feel abandoned and that their case disappeared into a “*black hole*”.

This is often the result of an immeasurable overload of responsibility on the Legal Office, coupled with deficient training to handle the specialisation of sexual harassment cases. The effect is defensiveness and a perception of covering up. It is not as a result of negative intentions.

#### **2.1.7. Deficiency Six: Overly Legalistic**

The Legal Office is the veritable round peg in a square hole. It approaches sexual harassment matters in a highly legalistic manner, without an understanding of, or time to address, the power dynamics, psychological impact and gendered nature of sexual harassment.

This results in a number of complications.

- i. The first is that there is an improper focus on employment law to the exclusion of the right to equality and physical autonomy. The right to equality is relevant because sexual harassment predominantly affects an individual because of their sex or sexual orientation. There is also a very clear racial dimension, with the majority of complainants being black (although this should not be understood to be a statistical fact but merely a representation of the information that came to our inquiry). The result is that the seemingly neutral standard legal response to this violation, has a disproportionate and negative impact on black women.

- ii. The second is that the power disparity inherent in University sexual harassment is mirrored in the University response: the formality of the legal process along standard lines – without understanding the imperatives that drive complainants, fear of retribution and the need for a nuanced response – begins to replicate the power of authority that led to the violation. Complainants (both staff and students) noted that the University proceedings were worse than the violation itself. The students who came to our inquiry indicated that they wish they had never reported the matter (both where the perpetrator was a member of staff or a student).
- iii. Staff members reported being admonished by the Legal Office for wishing to speak to students about sexual harassment. The reason provided by the Legal Office is that *“possible future investigations will be influenced by it”* i.e. that the legal case may be compromised by public statements. In reality, the inverse has occurred and students and staff perceive this cautious approach as a method of silencing complainants. A middle path is needed to avoid the interpretation that the imperative of properly handling a case constitutes complicity and endorsement by the University.

#### **2.1.8. Conclusion**

The Legal Office should not be responsible for sexual harassment cases as a whole. The Legal Office should represent the interests of the University in such cases but it should not be responsible for investigating, prosecuting, adjudicating or implementing this process.

### **2.2. Role of Employment Relations**

#### **2.2.1. What it is and what it does**

This office is responsible for all aspects that affect the employer (the University) and its employees (academics and other staff members). The discipline of employees in the wider sense is one of its mandates.

It is also responsible for employees’ wellbeing, including health and safety. This leads to an interplay between this office and the Legal Office should a complaint of sexual harassment involve a student and a University employee. It was not readily apparent to the team that the roles of these two offices were clearly understood by University community. This again points to a need for constant awareness and education campaigns about the roles and responsibilities of the various offices tasked with dealing with sexual harassment.

In terms of sexual harassment, Employment Relations handles matters where the alleged perpetrator is a staff member, regardless of whether the complainant is a staff member or a student.

Employment Relations may call other members of staff to assist with sexual harassment cases and disciplinary proceedings where necessary, and oftentimes works alongside the Legal Office.

### **2.2.2. Deficiency One: Employment Relations Office Faces a Conflict of Interest**

Employment Relations offers information to staff who face disciplinary enquires regarding the disciplinary process. They also deal with the complainants and offer support to them. It is often unclear as to whose interests are being represented by Employment Relations. At a disciplinary hearing for a sexual harassment matter, Employment Relations represents the case for the University, which is similar to the role played by a prosecutor in a court of law. However, being the office of human resources, Employment Relations also plays a role in support of the accused staff member. There are therefore three competing interests: the University's reputation, the complainant and the alleged perpetrator.

Employment Relations, like the Legal Office, is required to represent all three competing interests simultaneously, namely, the University's, the complainant and the alleged perpetrator.

As the University's human resource department, the first priority will be to protect the University in matters of employment disputes. This renders the role of Employment Relations in dealing with complainants particularly inappropriate.

### **2.2.3. Deficiency Two: Conflation of roles**

Employment Relations is often introduced to student complainants who have been to the office of the SHA. They investigate the complaints and where deemed necessary, confer with the Legal Office.

Employment Relations prepares the complainant and witnesses for the disciplinary process, if the matter proceeds to that level. In doing so, they try to offer support, but feel that this may be better placed within the office of the SHA.

Students often go through several processes before they begin engaging with the Employment Relations. Students are sometimes already frustrated by the process by this time and are reluctant to undergo preparation for and giving evidence at the disciplinary enquiry.

Employment Relations is responsible for preparing the complainant and the alleged perpetrator for the procedure during the disciplinary process. During disciplinary proceedings, Employment Relations represents the complainant's case at the disciplinary hearing.

It appears that Employment Relations is also responsible for investigating complaints of sexual harassment and preparing the evidence for the disciplinary hearing.

These conflicting roles lead to a perception that the Employment Relations Office may encourage students to report but the Office is not available to support students through the process. Staff similarly view this Office as representing the University and is beyond reproach. It is improper for the incumbent of this office to handle these competing interests.

#### **2.2.4. Deficiency Three: Insufficient expertise coupled with deficient resources**

The staff of Employment Relations do not have special training in dealing with sexual harassment matters. This office is under-resourced and must be allocated additional resources to employ more people to assist it in dealing with complaints of this nature. It is in our view, already stretched which may explain the frustration expressed by some of those interviewed regarding its effectiveness. As is apparent below, the same can be said of the SHA Office. The complainants also need to be properly prepared for the disciplinary process, in particular, being cross-examined and facing the alleged perpetrator. Moreover, the evidence, which has to be produced at the disciplinary enquiry, may have to be led again at the Commission for Conciliation, Mediation and Arbitration ("**CCMA**"), in the event that there is a dismissal, which is subsequently challenged. Complainants may not want to appear at the CCMA, alternatively, feel further victimised by having to repeat the process. Employment Relations is not necessarily equipped to deal with complainants in these situations and needs to be better resourced.

Unique and specialised expertise is needed to manage the nuanced nature of sexual harassment and abuse.

#### **2.2.5. Deficiency Four: Inconsistent application of policies**

As mentioned in the same section under the “Legal Office”, our investigation has shown that for the most part, sexual harassment cases are dealt with on a case-by-case basis. All Roleplayers within the system tend to proceed with complaints in an intuitive rather than a prescribed manner.

Often the policy is not consistently pursued due to a lack of practicality, time and certainty.

In one case, a staff member was able to challenge their conviction and dismissal in a case of sexual harassment at the CCMA. This was partly due to procedural irregularities in handling the case, such as, insufficient time periods provided for the staff member’s comment and the late receipt of the formal charge.

It is clear that inconsistent application of policies results in uncertainty for all parties involved, as well as opening the University process to challenge once the internal process is complete. Where such a challenge results in re-instatement of the staff member, this further perpetuates the perceptions that *“nothing will get done if you come forward”*.

Employment Relations frequently receives complaints from trade unions regarding senior academics. It becomes difficult to deal with these complaints when these members of staff out-rank the office.

#### **2.2.6. Deficiency Five: Lack of resources**

There are only two human resource personnel in the Employment Relations Office. On top of sexual harassment cases, they are required to deal with all other employment related issues at the University.

Employment Relations deals with a large volume of matters. The number of complaints has increased significantly in the recent past. The current staff complement appears to be inadequate to deal with the large number of staff and the large number of complaints. This may have the effect that there is a delay in finalising matters, which naturally frustrates complainants and leads to the perception of the University wanting to make the problem go away.

Various persons, who came before the Inquiry, expressed the view that Employment Relations indicated that they were burdened by their complaints and did not do their best to deal with

the matter. These complaints included lack of communication from Employment Relations as well as inconsistent communication and not providing follow up or progress reports in respect of these cases. The Employment Office acknowledged that the myriad duties results in slow or deficient communication but it unsure how to fix it given the multiplicity of roles it plays. It would appear that this is strongly linked to the lack of resources in Employment Relations.

In a context of such under-capacity, it is not surprising that sexual harassment cases are perceived as not being prioritised.

#### **2.2.7. Deficiency Six: Poor follow-up of cases**

Many of the cases reported to Employment Relations come from the SHA. The Employment Relations Office provides little or no feedback to the SHA or the complainants.

There are instances where cases have been dormant for six months or more with no investigation being conducted, and no information being relayed back to the complainant.

In 2011, a student approached the SHA with a complaint of sexual harassment. The SHA referred the matter to Employment Relations. Neither the student nor the SHA received any further information about the matter until 2013, when the matter was brought to the attention of Employment Relations by journalists from the Vuvuzela. Employment Relations did not recall that this matter had been referred to them previously.

This demonstrates the lack of systemised responses to sexual harassment cases.

#### **2.2.8. Deficiency Seven: Emphasis on Employment Law**

Employment Relations handle sexual harassment matters where a staff member is involved. By nature, this involves employment law. However, the fact that Employment Relations handles the entire process in this context, results in too great an emphasis being placed on employment law to the exclusion of other relevant factors, such as gender and race equality and power relations.

We have been advised that there is no single grievance policy, but that “disputes of interest” and “disputes of right” are dealt with in terms of different procedures. These policies form a part of collective bargaining with the University unions, and this also serves to offer more protection for the staff member from an employment perspective, than for the complainant.

### 2.2.9. Conclusion

Employment Relations should not be responsible for sexual harassment cases. Employment Relations should represent the interests of the University in such cases but not investigate, prosecute, adjudicate or implement this process.

### 2.3. Role of the Trade Unions

The Trade Unions too are conflicted: their members are both complainants and alleged perpetrators.

It has been made abundantly clear to us that the Trade Unions have a zero tolerance policy vis-à-vis sexual harassment and are committed to managing these competing roles in partnership with all those affected by harassment.

### 2.4. Role of the Transformation Office

#### 2.4.1. What it is and What It Does

The role of the Transformation Office is to:

- i. Develop and improve a transformation plan;
- ii. Implement the transformation plan;
- iii. Handle financial grants and bursaries aimed at promoting transformation;
- iv. Support transformation issues generally across the University; and
- v. Be the custodian role of the sexual harassment policy.

Transformation originally focused on equity issues relating mainly to race, in relation to access and development of staff members and students.

Sexual harassment was not initially a part of the role. However, it became a component of the Transformation Office's work as a result of the previous incumbent. It appeared that the Transformation Office was one of the custodians of the sexual harassment policy itself, and therefore set about to support the current Roleplayers handling sexual harassment at the University.

#### 2.4.2. **Deficiency One: Problems with the hierarchy in its reporting structure**

The Transformation Office currently falls under Human Resources, and reports to the Director of Human Resources. It previously fell under the office of the Vice Chancellor. This has proven to be an impediment and point of contention.

This reporting structure is an anomaly, since the Transformation Office is not intended only for staff issues. This is similar to the problem with the SHA reporting to the Dean of Students, when sexual harassment is not only a student issue.

In receiving reports relating to senior academics and management of the University, the Transformation Office encountered difficulties in taking these complaints through the processes, as a result of the seniority of the alleged perpetrators. This office was of the view that it was not adequately supported by senior management. It felt marginalised and not taken seriously.

#### 2.4.3. **Deficiency Two: Lack of resources**

Although clearly an important office it seemed to us that its profile and gravitas need to be lifted so that it can be more effective in the discharge of its mandate. Similarly, the view expressed and shared by the Inquiry is that it too needs to be better supported by additional resourcing and perhaps placing it under the Vice-Chancellor's office once more. For example, the external review of the sexual harassment by Professor Dee Smythe, was funded by external donor funding and not by the University.

#### 2.4.4. **Deficiency Three: Lack of clarity regarding its role in the sexual harassment process**

The University's Sexual Harassment Policy states that the Director of Transformation and Employment Equity ("**the Director**") is one of the individuals to whom it would be appropriate to refer an initial complaint of sexual harassment.<sup>1</sup> This notwithstanding, in practice it is not clear to the Transformation Office, nor to other Roleplayers exactly what its role is in sexual harassment matters. This creates confusion and resentment among the Roleplayers resulting in a "turf-war" over sexual harassment matters.

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<sup>1</sup> See 2(a) on page 3 of the University Sexual Harassment Policy



The SHA is required to report issues of sexual harassment to the Director of the Transformation Office. These reports should include notification of complaints, discussion of policy issues, alerting University management to trends and problem areas and proposing appropriate changes to the procedures. The Director is also required to receive reports in urgent matters in which the SHA is not available. The Director and the Director of CCDU should provide initial support and assistance with the compilation of a report, but shall thereafter refer the matter to the SHA for on-going follow up. The SHA's report must be sent to the Director, the Director of CCDU and the Vice Chancellor.<sup>2</sup> In practice this does not appear to happen or it happens inconsistently.

The SHA is also required to discuss with the Director cases in which the alleged offender is a staff member. The SHA and the Director, together with the Employment Relations and/or Legal Office, will liaise in order to use the mediation procedure, the student disciplinary procedure, the student grievance procedure, the staff disciplinary procedures or the staff grievance procedures if necessary.<sup>3</sup>

The Director must be consulted by Employment Relations regarding the appointment of individuals to hear staff disciplinary matters relating to sexual harassment. The Director is also involved in cases in which a complainant wishes to remain anonymous. In such instances the Director, along with the Director of CCDU and/or the alleged perpetrator's line manager, as the case may be, may then have a discussion with the alleged offender, without revealing the identity of the complainant, explaining that certain forms of conduct constitute sexual harassment, are offensive and unwelcome, make employees or students uncomfortable and interfere with their work/studies. The University also retains the right to follow a formal procedure where the complainant wishes to remain anonymous.<sup>4</sup>

It is not clear from the University's Sexual Harassment Policy what exactly is required of the Director. Although she is required to receive reports and to assist in the absence of the SHA, the Director does not have a clearly defined role in cases of sexual harassment.

Other than naming the Transformation Office as one of the designated offices for reporting of sexual harassment offices, the policy does not delineate any specific portion of the process that the Transformation Office is required to control.

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<sup>2</sup> See paragraphs 2(c) and (d) on page 4 of the University Sexual Harassment Policy

<sup>3</sup> See paragraphs 2(e) and (g) on page 4 of the University Sexual Harassment Policy

<sup>4</sup> See paragraph 2(l) on page 5 of the University Sexual Harassment Policy

It is for this reason that we suggest the streamlined approach to sexual harassment cases contained in the 'Recommendations' section of this report.

## **2.5. Role of the Sexual Harassment Advisor**

### **2.5.1. What it is and what it does**

SHA is currently held by a qualified social worker. She has been employed at the University in this role since 2008. The SHA is located at CCDU.

Prior to the current SHA appointment, the role of SHA was a half-day post. Between that appointment and the appointment of the fulltime incumbent there was a period of six months where there was no SHA employed, and CCDU counsellors temporarily filled the role.

The SHA has two key functions, namely, awareness-raising and case management.

#### **i. Awareness-raising**

This role involves education drives across the University for both staff members and students. It also entails the development of campaigns around issues of sexual harassment.

There are no clear directions or guidance on what types of education programmes and campaigns must be conducted, nor are there any formal University platforms available for education programmes.

The SHA has attempted to conduct sexual harassment training during staff orientation offered by the Centre for Learning Teaching and Development ("**CLTD**"), however, in 2012 and again in 2013 it was determined to be unnecessary and removed from the orientation programme.

The SHA does not enjoy the support of management to conduct education programmes during student lectures, or to include sexual harassment in the curriculum in some way, and thus is not able to approach Schools to conduct these programmes.

#### **ii. Case management: This role involves:**

- Accepting formal and informal complaints of sexual harassment from staff and students;

- Referring complaints to the relevant Roleplayer office; Providing counselling and emotional support to the complainant, and should it be required, to the alleged perpetrator; Accompanying the complainant to Milpark Hospital, where necessary;
- Advising the complainant on University processes;
- Advising the complainant on legal options outside of the University structures;
- Conducting mediation proceedings where the complainant does not wish to lodge a formal complaint, or the Legal Office or Employment Relations has deemed that there is insufficient evidence to proceed with the matter formally; and
- Keeping records of trends of sexual harassment at the University.

#### **2.5.2. Deficiency Two: Conflation of roles**

The SHA is responsible for three disparate elements of sexual harassment:

- i. Awareness-raising / education;
- ii. Case management / investigation; and
- iii. Psychological support.

Separate individuals should handle each of these functions. This conflation of roles is exacerbated by the fact that there is only one SHA for the entire University, including academic staff, support staff and students. Additionally, as part of the SHA's placement at CCDU, the SHA is also expected to assist with counselling of non-sexual harassment cases that come to CCDU. The SHA is unable to manage such a large range of responsibilities, especially as the roles and responsibilities are quite distinct.

Apart from the overload of disparate workloads, the office of the SHA is often faced with a conflict of interests (in a manner that is similar to the Employment Relations and the Legal Office).

The SHA is expected to handle the reporting of cases, as well as provide emotional support and counselling to the complainant. This is a conflict, especially where the complainant does not wish to proceed with formal proceedings. This results in one person having to "wear two hats" simultaneously. Where the alleged perpetrator requires counselling, the SHA is precluded from

providing such as there is a professional conflict of interests where the complainant has lodged a complaint through the SHA.

The SHA is expected to report all incidents to the Legal Office, for the purposes of record keeping and statistics, even if the complainant does not wish to pursue formal proceedings. In instances where the complainant does not wish to proceed with formal proceedings, this is done on a no-names basis. However, there have been numerous instances where the Legal Office has insisted that the SHA convince the complainant to report formally so they can obtain evidence to take legal proceedings. This technically compromises the relationship of trust with the complainant, who should be able to obtain guidance from the SHA without being pressurised into a particular course of action. This once again highlights the need for the legal and psychosocial responses to be aligned in one specialised office.

Students, knowing that the SHA handles reporting as well as counselling, also fear that if they choose to go to the SHA for counselling, they may be compelled to lay a formal complaint.

There is also confusion among the Roleplayers as to who should be conducting investigations. It is clear that the SHA sees her role as hearing the initial complaint, assisting the complainant with the preliminary filling out of the complaint form and referring the complainant to either the Legal Office or Employment Relations, as necessary. However, it is clear that the Legal Office sees the SHA role as ensuring that all aspects of the complaint form are filled out and obtaining all necessary information from the complainant. This confusion, which results in problems with the handover of matters as well as with the relationship between the two offices, also demonstrates the lack of certainty that even the Roleplayers have of the procedure.

### **2.5.3. Deficiency Three: Lack of power in the institutional structure**

The SHA is located in CCDU, and reports to the head of CCDU, who in turn reports to the Dean of Students.

The SHA is much lower in the institutional hierarchy than the other Roleplayers. In practice, this impedes cooperative work and limits the extent to which the SHA can make suggestions on appropriate ways of dealing with individual cases to the other Roleplayers. It also impedes the ability of the SHA to hold senior academics and Roleplayers to account.

The office is inappropriately placed in a unit which lacks sufficient power to effect institutional change. CCDU is also focused on individualised student needs. The office should be moved to a location that is higher in the hierarchy and will have the necessary support from management and other Roleplayers to effect institutional change. It should also clearly cater for both staff and students.

#### **2.5.4. Deficiency Four: Inappropriate location for staff reporting**

The location of the SHA in CCDU is predominantly a student unit, reporting to the Dean of Students. Staff members who experience sexual harassment do not know they can utilise the CCDU counselling facilities. Where staff members do know about the SHA, they expressed discomfort at going to a student facility for counselling and feared it may compromise their anonymity. Staff members rarely report incidents of sexual harassment to the SHA.

Sexual harassment is not a student-only issue and its placement in a student unit is inappropriate. The office should be moved to a more neutral location in terms of staff and student reach, without fear of being identified.

#### **2.5.5. Deficiency Five: Under-resourced**

There is only one SHA at the University. There are approximately 29 000 students (permanent and part-time) as well as 11 000 (permanent and fixed-term contract) staff members. This is untenable as it is impossible for one person to effectively deal with the range of responsibilities allocated to the SHA.

The SHA does not have a clear resource-budget for educational campaigns and programmes.

There was a period of some months in 2012 when the SHA was on maternity leave. CCDU arranged two replacement counsellors to fill the role temporarily, but the individuals were unable to effectively deal with sexual harassment complaints, as they were not experts or specially trained in sexual harassment issues.

#### **2.5.6. Deficiency Six: Lack of Feedback from Other Roleplayers**

The SHA rarely receives feedback from the Legal Office or Employment Relations regarding cases that have been referred to them. If any feedback is given, it is given telephonically, and written feedback is not provided. This makes it difficult for the SHA to fulfil its responsibility of keeping records of trends of sexual harassment at the University.

This places the SHA in a position of distrust vis-à-vis the students. As the contact point for many complainants, when the SHA is unable to provide updates on a matter, or is even aware of whether investigation is underway, complainants are left with the perception that “*nothing is being done*”.

### **2.5.7. Conclusion**

Awareness-raising, counselling and case management must be separated, as these are distinct roles that require different skills and resources.

The role of reporting office and counselling must also be separated. In order to maintain a relationship of trust with complainants, it is necessary that the person providing emotional support is not the same person responsible for navigating the investigation. Counselling must be entirely confidential, and complainants must be satisfied that it is a safe and private and safe space.

The Inquiry revealed that very few people know that there is a SHA or that counselling for non-academic related issues is available at CCDU. In our view, this is not because the incumbent of this position is incapable; on the contrary, the feedback from student and staff members was that the incumbent, when they find her office, is helpful. Rather, the office of the SHA is rendered invisible by its placement in CCDU, its workload and its lack of institutional support. It has become a Band-Aid on a very large wound.

## **2.6. Role of Campus Control**

### **2.6.1. Its role in sexual harassment matters**

Campus Control does not get involved in sexual harassment matters unless the Roleplayers or complainants specifically request their assistance, for example, to accompany a student to her residence at night.

If an event is reported after-hours, Campus Control will report the matter to the Dean of Students or the Head of Residences.

Campus Control also performs the following in relation to sexual harassment:

- Provide transport to Milpark Hospital in the case of a complaint of rape;
- Secure the scene if an incident occurs on campus;

- Request that complainant write a statement while waiting to be transported to Milpark Hospital (but this does not always happen as complainant is often too traumatised to do so); and
- Record the incident in the Campus Control occurrence book.

Campus Control does **not** do the following:

- Phone the police. This is done by Milpark Hospital;
- Phone the family. This is done by the Dean of Students or Head of the Residences;
- Provide psycho-social support; and
- Speak to the complainant en route to Milpark Hospital.

#### 2.6.2. **Deficiency One: Insufficient expertise and training sexual harassment**

Campus Control guards do not seem to be familiar with the University's Sexual Harassment Policy. In general they only assist with these types of matters when they are requested to do so by the SHA, Campus Health or the Legal Office. Their assistance extends to taking victims of sexual assault to Milpark Hospital for treatment, and securing a scene where a victim has been raped.

Campus Control officers are not trained in sexual harassment matters or in gender sensitivity. They are provided with briefing sessions once or twice a year on how to handle complaints if they come to Campus Control. Briefing on sexual harassment is not always conducted every time new officers are employed.

It is accepted that Campus Control does not have the requisite training, and therefore are not permitted to speak to the complainant en route to Milpark Hospital, as in the past there have been complaints that officers made inappropriate remarks to the complainant.

There are only a handful of female officers, and very seldom are they available after hours. It is clear that Campus Control does not know the sexual harassment policy.

### **2.6.3. Deficiency Two: Unqualified to handle investigation of sexual harassment cases**

Campus Control does not investigate sexual harassment matters. They work with the South African Police Services and assist them with their investigations. They may assist the Legal Office in obtaining witness statements or putting together the docket. However, there is no specific specialisation to investigate sexual harassment matters.

There is a perception that they are powerless to assist students because they do not have the power to arrest alleged perpetrators. There have, however, been incidents reported at which Campus Control have apprehended students stalking other students and directed them to desist.

### **2.6.4. Deficiency Three: Lack of resources**

Campus Control does not have a sufficient amount of officers to patrol the campus in a manner that makes them visible constantly or that makes the University community feel safe in areas that are dark and isolated. A greater presence on campus may be a deterrent in respect of sexual assaults and rape on campus.

Campus Control does not have any particular facilities for victims needing to be transported to Milpark Hospital. Victims are required to wait in a general waiting area where there is frequent foot traffic.

Campus Control is usually responsible for transporting complainants to Milpark Hospital where necessary. They have an Advancer that permits the complainant to have a friend with her. However, most of the time, complainants are transported in a bakkie, which leaves space only for the driver and the complainant. Most of the drivers are male, and this creates a very uncomfortable environment for the complainant.

Campus Control does not have enough officers to deal with the number of requests that they receive for the "escort service". This service offers students living in residences to request an escort to walk with them to their residence at night, for example from the library. Students are often forced to wait because there are not enough security guards available.



## **2.7. Role of Campus Health**

### **2.7.1. Role in sexual harassment matters**

It appears that Campus Health rarely receive direct reports of sexual harassment. In most cases, the complainant approaches Campus Health for information regarding contraception or anti-retroviral drugs (“**ARVs**”). On occasion, complainants report incidents of sexual harassment.

If they wish to lay a formal complaint, they are referred to the SHA.

In most cases, complainants request only a pregnancy test and emergency contraception (the morning-after pill). In some cases, Campus Health will also accompany the complainant to Milpark Hospital.

Campus Health informs the SHA of all complaints of sexual harassment that are made to Campus Health, and this is done anonymously according to the wishes of the complainant.

### **2.7.2. Deficiency One: Under-resourced**

Campus Health is staffed by five nurses, who run two facilities, one being at the Wits Education Campus. There is a vacant position for a medical doctor, which should be filled without further delay and should be properly resourced to attract an appropriately qualified medical practitioner.

There is a general reluctance among students to report incidents of sexual harassment to Campus Health, only doing so when pressed. This reluctance is especially prevalent among first year students. Homosexual male students are reluctant to come to Campus Health for assistance. They are more comfortable dealing with men, but Campus Health does not have any male nurses in its staff compliment.

Campus Health does not have its own vehicle and cannot transport complainants to the necessary points of assistance. Campus Health has to rely on Campus Control for transport. Campus Health requires its own vehicle, or at least an emergency vehicle to be shared with the SHA for sexual harassment cases.

Campus Health is not able to provide free ARVs to patients, other than in the case of rape.

### 2.7.3. Deficiency Two: Inappropriate Location

Campus Health is situated in the basement of the Matrix. There is no fresh air. The physical conditions are unhygienic, with common cases of flooding from the top floors, which causes damp. There is also the constant smell of food from the restaurants above.

The location is not suitable for disabled people, as there are stairs and the outside entrance is unsafe as it is usually abandoned and unhygienic.

Students have expressed the view that *“everyone will know if you’re going to Campus Health”* because of its location in the basement, and everyone will assume *“you’re going for an HIV test”*.

Campus Health is aimed at staff members and students. However, Campus Health reports to the Dean of Students, rendering the office inappropriate for staff members in a manner that is similar to CCDU.

### 3. AD HOC AND UNPREDICTABLE SEXUAL HARASSMENT PROCESS

#### 3.1. Vague Policies

The University's current Sexual Harassment Policy is vague in respect of the Roleplayers. This is particularly evident in respect of reporting. Currently sexual harassment may be reported to "any individual". Certain persons are named as "most appropriate to report to". These persons include the SHA, the Dean of Students, the Director of the CCDU, the University's Industrial Relations Advisor<sup>5</sup>, the Director or any person identified by a faculty as being responsible for receiving such complaints. The named individuals, however, "should" refer the complainant to the SHA. It then falls on the SHA to advise the complainant of the options available to deal with the matter. Paragraph 2(h) of the University's Sexual Harassment Policy provides:

*"h) The process will, in general, be driven/guided by the needs and wishes of the complainant (but see point 2f, above). S/he may choose:*

- not to pursue any process involving the alleged harasser*
- to participate in counselling*
- to follow a process of mediation*
- to lay a formal internal complaint, resulting in a formal grievance and/or disciplinary process*
- to take legal action outside of the University (in terms of criminal, civil or labour law)"*

However, various "individuals" are to be informed of the complaint where the complainant is a University resident and if the alleged offender is a staff member.

It is not clear what these individuals are required to do with this information, if anything. There are no clear steps to be followed once the method of approach is chosen by the complainant.

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<sup>5</sup> We understand that the references in the University's Sexual Harassment Policy to the Industrial Relations Advisor should be to the Employment Relations office. This is because there was a name change after the Policy was drafted.

### **3.2. Lack of Knowledge About the Policy**

It is abundantly clear that the majority of staff and students are not aware of the University's Sexual Harassment Policy. Some are aware that there is a policy but do not know the content thereof or where it may be accessed. This leaves complainants – and those to whom they report – in the invidious position of not knowing where to turn for assistance or how to assist.

This is one of the reasons that a number of people who have experienced sexual harassment do not report these incidents. In addition, when they are reported, they are not taken further as those receiving the complaints do not know how to deal with the complaint. There is a need for continued education and awareness campaigns throughout the year to highlight the avenues available to complainants – and the individuals to whom they respond – within the University.

### **3.3. Inconsistent Implementation of Policies**

As indicated above, the uncertainty of roles and responsibilities amongst the Roleplayers impedes the proper investigation into sexual harassment, resulting in a sense of impunity. This is fuelled by a lack of resources and the lack of a strong co-ordinator who can ensure that there is closer collaboration between the various Roleplayers.

Each of the Roleplayers has their own “internal policies” for handling sexual harassment matters. The result is an utterly confused and disparate system, where Roleplayers become defensive, overloaded and unable to provide the response many of them would like to provide.

### **3.4. Disciplinary hearing panel approach sexual harassment cases at the University with same level of evidentiary burden as a criminal trial**

There appears to be a lack of understanding in some cases of the burden of proof required to find a person guilty of sexual harassment in the context of a disciplinary enquiry against either a student or an employee.

It appears that some decision makers on the disciplinary hearing panel require the University to prove cases beyond a reasonable doubt. This is a criminal standard of proof that is entirely inappropriate in quasi-judicial matters such as disciplinary hearings. This indicates a clear misunderstanding of the applicable standard of proof and often results in perpetrators not being found guilty or being found guilty of less serious charges.

This invariably leaves the complainants feeling that justice was not done. For example, in cases of rape at the University, there has not been a single successful case in this regard in the past five years.

### 3.5. **Poor communication between the Roleplayers**

As has been discussed elsewhere in this Report, the Roleplayers do not work together and there is a sense of “territoriality” in relation to handling sexual harassment cases, while simultaneous differing expectations of who is responsible for what part of the sexual harassment process.

This is largely a symptom of the vague delineations of roles in the policy, as well as having too many different Roleplayers handling sexual harassment matters at different stages and in different instances.

An interactive resolute forum (**IRF**) was formed amongst the various role players, including Campus Health, Campus Control, the SHA, the Transformation office, the Dean of Students, the Legal Office and the Employment Relations Office. Despite these efforts, there appears to be poor communication and a lack of focused co-ordination. Several Roleplayers simply do not attend.

Each role player appears to be functioning in a vacuum, with its own understanding of the University’s sexual harassment policy. A strong and senior central leader is required.

## **4. EXPERIENCE OF STUDENTS**

### **4.1. Student lack of trust in the University**

Students uniformly expressed a lack of trust in the University. Students have described themselves as "*being just a number*". This is symptomatic of their experience of sexual harassment cases as well as other bureaucratic obstacles in the University.

One student related that "*I was right not to speak before – and I understand why others have not spoken because this experience has not been soothing at all – on the contrary*".

This has had an impact on the Inquiry itself: students were reluctant to come forward and speak to the Committee. Although the Committee is independent, there was the perception that because it was commissioned by the University, the Committee was not in a position to effect any real change. Students were concerned about confidentiality, and more importantly, they were unconvinced that anything would be done after this Inquiry to substantially change how the University deals with sexual harassment.

Most students who engaged with the Committee came forward to the Committee in the last month.

### **4.2. Complaints are treated with suspicion**

It seems that the University is concerned with false complaints as well as with the risk of employees challenging the outcome of the University disciplinary proceedings in the CCMA thereafter. As a result, student complainants feel that they are treated with mistrust and suspicion when they are referred to certain of the Roleplayers, in particular the Legal Office and Employment Relations.

Immediately upon reporting at these offices, student complainants are alerted to deficiencies in their case, such as a lack of evidence. This immediately creates the perception that they are not believed.

For example, a student was asked by a staff member to "*act out*" the incident, so that the authorities (not one of the Roleplayers) could understand what happened. The humiliation

involved in this was acute and forced the individual to relive the experience in a careless and hurtful manner. The individual refused to take the matter further as a result.

#### **4.3. Insufficient psycho-social support**

The only counselling available is that provided by the SHA or other CCDU counsellors, who do not have specialised training in sexual harassment.

The SHA does not have the resources to provide on-going emotional support to the complainant before, during and after the disciplinary hearing, except for support during formal counselling sessions.

Counselling services are not available after hours or over weekends, notwithstanding that many incidences occur at night at the residences.

The University, including Campus Health, does not offer psychiatric services to students who may require medication in order to deal with trauma that they may have experienced.

Psycho-social support is often not understood, notwithstanding that it is a seminal part of responding to sexual harassment. Many complainants have experienced exhaustion, inability to concentrate, fear of the person harassing them again and a sense of wanting to move away from the environment in which they were victimised. This is similar to the experience of being in a car accident where survivors find themselves replaying the accident in their mind and wanting to avoid the location of the crash. Complainants have additional hurdles or barriers to surpass in the performance of their academic work as a direct result of having experienced sexual harassment.

Students often have to explain the abuse repeatedly. As one student recounted, *“I’ve retold this story too many times this year, which was not my expectation of my life this year”*.

#### **4.4. Dissuaded from lodging formal complaints**

Complainants reported that they were dissuaded from pursuing complaints. They are told that the process will be a long, tedious, and a harrowing experience and that, if the case is not successful, they will have to face the perpetrator coming back to the University. This is done for the purpose of preparing the complainant for the legal process. While this preparation is crucial, the manner in which it is done is unknowingly antagonist and sends a strong message that the easier route is to leave the matter alone.

It is true that sexual harassment is difficult to prove but by stating these difficulties *in this manner*, the abandonment of the claims leads to a culture of impunity.

In our view, sexual harassment has been normalised throughout the University, with the result that incidents of hurtful behaviour, ranging in extremes, are seen as “fun”, “liberal engagement” or inevitable. In the absence of other and continual emotional support, the complainant often feels that it would be preferable to refrain from laying a formal complaint. The real problem inherent in this is that the process should not be so precarious, fraught and lengthy that such warnings are needed.

Complainants are reluctant to lay complaints based on the experiences that they have heard from other complainants. These experiences include:

- i. Lengthy processes;
- ii. Difficulty in facing the alleged perpetrator at the hearing;
- iii. The trauma of the hearing, especially the cross-examination; and
- iv. The trauma of the alleged perpetrator remaining at the University.

The complainant is also dissuaded from laying a formal complaint by worries that their actions will impact on the alleged perpetrator’s career. This is exacerbated by being questioned as to whether they are willing to potentially “*ruin the career*” of the alleged perpetrator. While it is necessary to manage the expectations of complainants and alert them to all the possible stumbling blocks, it is done in a manner that is interpreted by complainants as dissuasion from pursuing complaints.

It is also complicated by the feelings of guilt experienced by the complainant in raising a complaint against someone that they respect and admire. Many complainants have felt conflicted because the alleged perpetrator is an academic who is highly respected, and is for example, “*the only lecturer willing to assist black students*” or “*to discuss black consciousness*”.

In one instance of persistent sexual harassment by an academic of junior students, the students felt that the academic’s approach and subject matter in his courses were so important and dynamic that they could not bring themselves to risk the “*loss of such a great mind in the Department*”.



Students often feel guilty for having been complicit, where for example, the harassment involved conversations over SMS or social media. Students respond to these advances by academics, either because they believe it to be innocent at first or because they are concerned that if they do not, there will be negative academic consequences for them. Often these students' experience is complicated by a sense of being flattered that an academic has seen something special in them.

The stealth at which these communications are sent also makes it very confusing for a complainant, as they often start off with discussions of work and only thereafter do they become sexually explicit or inappropriate in some other way.

The result is that the student (or junior staff member) is often unaware that s/he is caught in a power dynamic over which they have no control. Their own uncertainty of the situation impedes their agency and ability to denounce the behaviour. This obviates meaningful consent and exacerbates the impunity associated with sexual harassment.

#### **4.5. Cases lie dormant for lengthy periods of time**

There are cases where six months to a year have past without a decision as to whether or not to proceed with formal disciplinary proceedings.

Even once decisions have been made to proceed with formal proceedings, the disciplinary hearing can take months to begin.

During this period, complainants are in a state of turmoil and uncertainty regarding the outcome, and are unable to find closure.

The problem is even worse where the staff member or student perpetrator remains on campus during this time and they have to come into contact with them, either occasionally or regularly.

#### **4.6. No effective communication with complainants**

A large part of this problem is due to the lack of communication with complainants. Student complainants feel that there is no one in the University that keeps them updated on the investigation or the disciplinary process.

The report by interviewees (both students and staff) is that the Legal Office and Employment Relations Office are unapproachable and that the SHA often does not have the necessary

information regarding the status of the case. This perpetuates the view that nothing is being done.

We have also heard accounts of complainants wishing to speak to one or both of the Inquiry Committees (the Inquiry which produced this report and the case-specific inquiry by Bowman Gilfillan), and approaching certain Roleplayers for information on getting in touch with the Committees. Complainants were told to leave their details and they would be referred to the inquiries. This inquiry did not receive such referrals. This may have fuelled the general student view that the University is unresponsive.

If complainants were provided with more information on the process as well as regular updates on the status of the matter, the uncertainty around the response to sexual harassment would be reduced.

It must be stressed that the University and its Roleplayers may not be able to solve all the difficulties associated with sexual harassment; however, an open, honest and respectful engagement with complainants *on a standard and systemic basis* is sorely needed.

#### **4.7. The negative impact on student and student-life**

Many students who have experienced sexual harassment have experienced:

- i. A decrease in their grades;
- ii. Failing courses;
- iii. Changing degrees;
- iv. Abandoning activities they enjoy;
- v. Changing universities; or
- vi. Dropping out of University.

There are no statistics or records kept by the University regarding the consequences of sexual harassment incidents on the complainant.

Where a complainant is publically known, they often face secondary victimisation from their peer group, many of whom support the alleged perpetrator.

This is demonstrated particularly in recent cases involving male lecturers, where some held the view that complaints should not be laid against them because either, the complainant itself is racially motivated, or because black academics must be promoted within the University. In these instances, complainants were individually targeted and coerced into retracting complaints.

Students spoke to us of a lack of closure, noting the following: *“Closure? I want the university to take responsibility for this. There are dozens of girls who he has hurt I think the various offices need to realise where they went wrong”*.

## 5. EXPERIENCE OF STAFF

### 5.1. Culture of Silence

Staff members indicated that there is a culture of silence in the University around sexual harassment. Staff members have been told to remain silent about sexual harassment in general.

This raises two conflicting concerns: on the one hand, it is imperative that the name of both the alleged perpetrator and the complainant are kept confidential. This will ensure that investigations can be undertaken with as much protection as possible to the wellbeing of both the complainant and the alleged perpetrator. On the other hand, the staff in particular feel they are being gagged and, as such, are perceived as being complicit in the secrecy surrounding sexual harassment.

The following fuels the perception of secrecy and silence:

- i. When there is a complaint that is publicly known and the University fails to make a public statement to staff and students;
- ii. When the University fails to take responsibility for debriefing staff and students in Schools and Departments in which an allegation of sexual harassment has been made public;
- iii. The lack of advocacy campaigns aimed at educating staff and students about sexual harassment; and
- iv. When silence by the University is perceived as endorsement.

There is no communication between the University and individual Schools, especially those Schools that are currently dealing with academics who have been accused of sexual harassment. This silence *“puts everyone into a cycle of ongoing stress”*. The silence by the University is also perceived as a lack of leadership and vision on the part of the University.

The fact that both the Roleplayers and the University community feel there is a problem, speaks not to the integrity of students, staff or the Roleplayers but rather to the policies, systems and individualised and ad hoc nature of intervening in sexual harassment cases.

A balance must be struck and a culture of openness should be encouraged but without the specificity of names.

### **5.2. Insufficient psycho-social support for complainants**

Staff members expressed a lack of adequate support from the University when they reported harassment.

Staff members do not have sufficient access to psychological support services. Although CCDU is technically available to staff and student alike, it is clear that CCDU is a student office, and this is exacerbated by the fact that CCDU reports to the Dean of Students.

### **5.3. Impediments to Lodging Formal Complaints**

Members of the University staff on the whole do not know how to deal with complaints of sexual harassment against both students and staff. Complainants, and the individuals in whom they confide, are frustrated, uncertain and the complainant is often faced with a brick wall of uncertainty and a lack of clarity about the process to follow. This in turn chills sexual harassment reporting.

Staff members reportedly are dissuaded from pursuing sexual harassment complaints. They cite stories of secondary trauma involved in the process and the possibility that nothing will be done. This advice is based on observations of how sexual harassment is handled in the University.

Many staff members have communicated a lack of trust in the University in dealing with sexual harassment matters.

In some cases, this stemmed from the junior staff members, who feared that they would lose their job or be victimised for having laid a complaint against a senior staff member.

Finally, many staff members reportedly complained to someone within the Faculty according to standard line-management criteria. There was no response and the complainants felt they would get their manager into trouble for not dealing with their complaint. The complaints were abandoned.

#### 5.4. **Victimisation of “Whistle Blowers”**

Several staff members, who encourage students to report their experiences of sexual harassment, have been victimised by the University. This word is not used lightly. Members of staff have indicated that they feel like unprotected whistle-blowers, who are side-lined, marginalised, silenced and have been accused by alleged perpetrators of a conspiracy against them. The “conspiracy allegation” is evident in almost every case of sexual harassment under investigation.

In other cases, staff members who have attempted to assist with sexual harassment in the past, have experienced humiliation and silencing by Roleplayers, and in some cases been actively labelled by fellow staff-members for causing trouble.

In both these contexts, staff members have observed that the University does not take a proactive stance on sexual harassment, and that matters are often not dealt with effectively.

For example, in one case, a staff member has reported that a contract worker in partnership with the University had, on numerous occasions, aggressively targeted female staff. Although this has been reported, to date nothing has been done from the University’s side, and as a result, there has been a high turnover rate of female staff in that department, who simply cannot work under such conditions.

To the extent that staff members are at the coalface of interactions with students, it more likely that students will turn to them with sexual harassment cases. Staff need to be constantly educated, trained, supported and made aware of the various policies and mechanisms that are available to them when complaints of this nature come to their attention.

#### 5.5. **The Unrecognised and Unquantifiable Workload involved in the informal responses to sexual harassment**

As has been discussed earlier in this Report, sexual harassment claims are often addressed at the level of Schools and Faculties, which are not provided with the resources, training or certainty to deal with these issues.

Additional workload includes:

- i. Handling student complaints of sexual harassment: this takes time and is often accompanied with high levels of stress, both in terms of dealing with an aggrieved

complainant but also in navigating the uncertain and, at times, hostile University system.

- ii. Where a colleague is placed on special leave, this is often done without attending to her/his teaching load. The additional secrecy around sexual harassment means that there is uncertainty around the duration for which there will be a teaching gap, creating in-school tensions.

Employees of the University who complained about sexual harassment to their superiors within the School or Faculty, in which they taught, found that their complaints were not dealt with to their satisfaction. Schools and faculties do not have a uniform approach to dealing with complaints of sexual harassment from their staff nor do they receive the necessary resource or training. There seems to be no direction as to who may be approached to guide the school or faculty in dealing with these matters. A complaint against a staff member triggers the involvement of Employment Relations. However, the School and Faculties are not provided with support or feedback about the process.

When a staff member is accused of sexual harassment, it creates an unhealthy atmosphere in the School or Faculty. Staff members have also described how they question their own behaviour and that of other colleagues, and are unable to deal adequately with these difficult issues.

#### **5.6. Inconsistent Messaging About the Role of Schools and Faculties**

We received reports that once the University's sexual harassment policy had been triggered and disciplinary processes were underway, the school and/or faculty in which the alleged offender was employed, was ordered not to address its students on the issue of sexual harassment and in particular, the process being followed in relation to the alleged offender. This created a strong sense of frustration among staff remaining in the relevant department, school or faculty, as they were constantly faced with questions from students and did not know how to respond. Greater attention should be placed on supporting and guiding schools and faculties when sexual harassment disciplinary processes or allegations are being dealt with by one of the other offices of the University. The schools should be kept apprised of the proceedings and communication and support are essential to healing fractured working environments.

## **5.7. Negative impact on career**

Reports were received that those staff members who were vocal in their opposition to sexual harassment and required the University to take a more proactive role in dealing with such issues, were treated differently after making their views known. The reports indicated that there was certainly a change in attitude towards the relevant employee. This does not encourage a culture in which sexual harassment is openly discussed and opposed by the University community.

Staff members who complained that they were being sexually harassed by students felt that their complaints were not taken seriously and that the University did not take adequate steps to protect them.

Staff members who have experienced sexual harassment have expressed the following problems in carrying on with their careers at the University:

- i. They become despondent in their jobs;
- ii. There is a negative impact on research output; or
- iii. They choose to resign.

There are no recorded statistics that keep track of the long-term effect on staff members who are victims of sexual harassment.

## **6. UNIVERSITY'S "POLITICAL WILL"**

### **6.1. Acknowledgment**

During the course of the Inquiry, there have been three stories of systemic sexual harassment at universities in the United States. It is also apparent that sexual harassment is not unique to the University.

Many individuals have expressed admiration for the robust approach of the University in instituting a formal investigation with a view to systemic change.

### **6.2. Problems at various levels of management**

There are several issues at different levels of management that require review.



### 6.2.1. At a senior level

In the past, there have been allegations of sexual harassment levelled against very senior managers, including members of SET, which comprises the senior executives of the University, namely, deputy Vice-Chancellors and Deans.

Other than the Vice-Chancellor, there is no office or individual sufficiently senior to be able to deal with a complaint against someone of this seniority.

For example, the Committee received information that a very senior member of management, accused of sexual harassment, used their influence in the University to encourage other staff members and student representatives to coerce the complainant (a student) to retract the complaint and not to take the matter any further. The complainant felt pressured to do so, and to date has not taken the matter forward.

### 6.2.2. At Faculty, School or Department level

The current sexual harassment policy designates a Dean or Head of School as an appropriate person to whom a complaint of sexual harassment may be laid.

However, the problem is that there is no consistency on how complaints are dealt with at School or Department level, and oftentimes are not referred to the appropriate Roleplayer to be taken forward. While there are attempts to deal with this problem internally, they are impeded by the following factors:

- i. The Head of School or Dean is asked to take a colleague to task who may be a long-standing colleague, a more senior academic or a friend. In one instance, an academic described how they had received a complaint against a colleague. That colleague had provided immeasurable support to the academic in a time of crisis and they felt they would betray the colleague by taking this up but also betray the student by remaining silent.
- ii. The officers in these positions are often overloaded and do not have the time to be trained in the expertise of managing sexual harassment cases. Their ability to do so is even less than that of those in the Legal Office.

The result is that the handling of sexual harassment by these office bearers is inconsistent, ad hoc, and depends on a range of inconstant variables, such as the extent to which the office

bearer is trained in sexual harassment matters or feels sufficiently independent to take on the matter. The worst situation is where the office bearer *believes* they are taking the correct steps, without realising the unintended consequences of alienating complainants.

While some individuals may feel more comfortable reporting to someone they know, there is the danger that not all complaints are dealt with uniformly. In many ways this is always going to be the case. The inconsistency, however, can be ameliorated by certainty around policies and the responsibilities of the Roleplayers.

### 6.2.3. Student councils and committees

The student perception is that certain student structures, including the SRC, is ANC Youth League aligned and acts as a political, rather than a student body.

A number of sexual harassment complaints have been lodged against individual SRC members, creating the perception that the SRC is not an appropriate office for students to seek assistance with sexual harassment matters, or for any student-driven campaigns against sexual harassment to be housed.

Other student-run committees and clubs have also experienced more general gender-related discrimination. Female members in particular have experienced abuse from their male peers when they challenge the structures currently in place.

In one instance, where a student-member of a student club was publicly discriminated against for reasons of race and gender, the matter was quickly silenced by the threat of disbanding the club if the matter was not discarded. The matter was eventually escalated to a Roleplayer. The student was informed that the type of harassment she faced was not sexual harassment, but only amounted to "gender-labelling". The student has given up the activity that formed a seminal part of their University life. The response of the student's family was *"I trusted you (the University) with my child and look what you have done"*.

### 6.3. **Nothing New**

As various alumni of the University have informed us, sexual harassment has been ongoing for many years, and in some Schools is considered part of the culture. They believe that the University has always been aware of sexual harassment, but has chosen not to do anything until it was revealed in the mainstream media.

The perceived inertia or refusal by the University in dealing with sexual harassment matters promotes the perception that the University is tolerant and accepting of sexual harassment.

The student perspective is that staff members, as with the general student body, are aware of sexual harassment by their colleagues but choose to (or are forced to) remain silent.

There is also the perception by the student body that only black lecturers are being targeted. This is clearly not the case but the perception reveals a lack of trust and concern about the meaningful transformation of the university in respect of race

#### **6.4. Perception that Inquiry was launched due to publicity of sexual harassment and to protect the reputation of the University**

There is the perception that only when sexual harassment at the University became public, care of the Sunday Times article, did the University take coherent steps to investigate these matters.

Certain Roleplayers disagree. This remains a point of dispute between the various people interviewed by the Inquiry, with the dominant view being that the University was forced into the public inquiry because of the media coverage.

For example, in 2011, a student approached the SHA with a complaint of sexual harassment. The SHA referred the matter to the Employment Relation Office. Neither the student nor the SHA received any further information about the matter until 2013 when the Vuvuzela contacted Employment Relations for comment on the case. The matter was then referred to the Bowman Gilfillan Committee. But for the media intervention, the perception is that no investigation would have occurred.

There is the view that in order to get the University to take sexual harassment seriously, it is necessary to use the public media.

We would like to stress:

That it is not appropriate to cast responsibility on one office. The mass of work for one office is simply not manageable and it is impossible to prevent this type of delay or failure in the current system. It must also be stressed that the Roleplayers are not dismissive, callous or deliberately malicious. They themselves feel an enormous burden and are simply unable to respond properly. The situation is akin to asking a lawyer trained in German family

law to investigate and manage hundreds of cases of tax fraud in the United States without any training or expertise. It is inevitable that the matter would not be properly addressed.

That, irrespective of the debate around the appropriateness of the Vuvuzela article, the students involved in this have been, and should be, praised for their courage and willingness to move this issue forward for their fellow students.

#### 6.5. **The problem of handling sexual harassment at the University: the interplay between employment law and sexual harassment**

In the context of sexual harassment, the University has two broad identities, namely, as the employer of academics and support staff, and as the provider of services of tertiary education to students.

##### 6.5.1. **Employment Issues**

In dealing with allegations of sexual harassment involving a staff member and a student, or two staff members, the approach adopted in default by the University in handling such matters is to treat them as primarily an employment law issue. Employment law offers various protections to the employee as well as processes that must be followed in dealing with employment-related disputes.

In order to give effect to the Constitutional right to equality, which includes the right not to be the subject of direct or indirect discrimination, the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (“**PEPUD**”) was passed. Similarly to the EEA, this Act prohibits unfair discrimination by any person against any person. It is not limited to the employment context. Harassment is expressly prohibited.<sup>6</sup>

Harassment is defined as:

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<sup>6</sup> Section 11 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000

*“Unwanted conduct which is persistent or serious and demeans, humiliates, or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and which is related to –*

- (a) Sex, gender or sexual orientation; or*
- (b) A person’s membership or presumed membership of a group identified by one or more of the prohibited grounds or a characteristic associated with such group”.*

The prohibited grounds listed in the PEPUD are race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth; or any other ground where discrimination based on that other ground (i) causes or perpetuates systemic disadvantage; (ii) undermines human dignity; or (iii) adversely affects the equally enjoyment of a person’s rights and freedoms in a serious manner that is comparable to discrimination on the aforementioned grounds.

The Legislature has recognised that harassment of an employee is a form of unfair discrimination. This principle is given effect to in section 6 of the Employment Equity Act, 1998 (**the EEA**), which provides the following:

*“(1) No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth.*

*(2) It is not unfair discrimination to –*

- a) Take affirmative action measures consistent with the purpose of this Act; or*
- b) Distinguish, exclude or prefer any person on the basis of an inherent requirement of a job.*

*(3) Harassment of an employee is a form of unfair discrimination and is prohibited on any one, or a combination of grounds of unfair discrimination listed in subsection (1).”*

The Minister of Labour has published a Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace (**“the Code”**). The Code constitutes a guideline to

employers, employees and applicants for employment. The purpose of the Code is to eliminate sexual harassment in the workplace. To this end the Code recognises that perpetrators and victims of sexual harassment may include owners, employers, managers, supervisors, employees, job applicants, clients, suppliers, contractors and others having dealings with a business.<sup>7</sup>

The Code provides that a non-employee, who is a victim of sexual harassment, may lodge a grievance with the employer of the harasser, where the harassment has taken place, or in the course of the harasser's employment.

Section 4 of the Code provides a test for sexual harassment:

*"1) Sexual harassment is unwelcome conduct of a sexual nature that violates the rights of an employee and constitutes a barrier to equity in the workplace, taking into account all of the following factors:*

*1.1 Whether the harassment is on the prohibited grounds of sex and/or gender and/or sexual orientation;*

*1.2 Whether the sexual conduct was unwelcome;*

*1.3 The nature and extent of the sexual conduct; and*

*1.4 The impact of the sexual conduct on the employee."*

Of importance to this report, for reasons, which will become apparent below, is the fact that the Code recognises that there are different ways in which an employee may indicate that sexual conduct is unwelcome. These include non-verbal conduct, such as walking away or not responding to the perpetrator. Further, the Code recognises that previous consensual participation in sexual conduct does not necessarily mean that the conduct continues to be welcome.<sup>8</sup>

It is equally important to note that unwelcome conduct of a sexual nature may include physical, verbal or non-verbal conduct. The physical conduct includes all unwelcome physical contact,

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<sup>7</sup> Section 2(1) of the Code

<sup>8</sup> Section 5.2 of the Code

from touching to abuse to rape. Verbal conduct includes unwelcome innuendos, suggestions, hints, sexual advances and inappropriate enquiries about a person's sex life.<sup>9</sup>

The impact of the conduct is also relevant. Sexual harassment should constitute an impairment of an employee's dignity, taking into account, amongst others, the respective positions of the employee and the perpetrator in the work place.<sup>10</sup> This can only be judged by the complainant and is a subjective determination. It is not a question of what one ought to feel.

The Code establishes important guiding principles in section 6, which states, amongst others:

- 1) *“Employers should create and maintain a working environment in which the dignity of employees is respected. A climate in the workplace should also be created and maintained in which complainants of sexual harassment will not feel that their grievances are ignored or trivialised, or fear reprisals.”<sup>11</sup>*

It is trite law that employers are under a general duty to take reasonable steps to protect employees against sexual harassment, and further that employers are vicariously liable for sexual harassment by employees in the event that the employer fails to take reasonable steps to protect the victim.

These obligations are balanced against section 185 (a) of the Labour Relations Act, 1995 (“**the LRA**”), which affords every employee the right not to be unfairly dismissed. If an employer is able to prove that the reason for the dismissal was related to the employee's conduct and was affected in accordance with the fair procedure, the dismissal is fair.<sup>12</sup>

Dismissal will only be justified where the conduct of the employee has led to a breakdown in the trust relationship between the parties. An employee owes his or her employer a duty of good faith. This duty of good faith, in the context of the University, includes the duty to treat students and fellow employees, with dignity, respect and in accordance with the University's policies, procedures and values.

The guidelines set out above provide a useful basis to analyse the University's current disciplinary practices and policies. The prohibition of sexual harassment is encapsulated in the

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<sup>9</sup> Clause 5.3.1.1 and 5.3.1.2 of the Code

<sup>10</sup> Section 5.4 of the Code

<sup>11</sup> Section 6 of the Code

<sup>12</sup> Section 188 of the LRA

University's Sexual Harassment Policy and Procedures (HRG/10 C2006/466) ("**the Policy**"). This policy is currently under review. It is clearly stated, in the policy, amongst others, that sexual harassment is a form of unfair discrimination, which infringes on the rights of the victim and constitutes a barrier to equity. It is further stated that sexual harassment of staff and/or students by staff and/or students will not be tolerated.<sup>13</sup>

#### 6.5.2. **Protection of Students and Staff**

The dominant emphasis on employment law conflates the two roles played by the University. While there are certainly elements of employment law inherent to the context, and the protections offered to employees by the law cannot be ignored, sexual harassment is a more complex issue engaging other areas of law. This is particularly the case in the University context where a student is the victim of a staff member's harassment, as this cannot be limited to an employment issue.

The University needs to take into account a number of other considerations, which will be important requirements in the handling of all sexual harassment cases. Key considerations are (1) the protection of the learning environment, (2) power differentials and (3) gender equality and relations at the University.

##### a. The protection of the learning environment

In addition to complying with employment law requirements, the University is under an obligation to ensure that it preserves and facilitates a healthy learning environment when handling allegations of sexual harassment.

Unlike an ordinary workplace context, in the University context, the University owes a fiduciary duty towards the students. It has to protect students from harm while on campus and from persons employed or associated with the University. The University puts students in this vulnerable position, and therefore has an even greater duty to protect students from staff members that have been hired by the University.

A sexual relationship between a senior staff member and a junior staff member, or between an academic and a student, even where it is consensual, can change the substance of the student's relationship with academic staff such that the trust and respect between the parties, essential

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<sup>13</sup> See Statement of Policy on page 1 of the University's Sexual Harassment Policy



for maintaining a nurturing learning environment, is challenged. It is this academic relationship that needs to be safeguarded in order to protect the integrity of the assessment process, to prevent coercion due to an academic power differential, and to protect the intellectual and emotional development of students. The University is under an obligation to ensure not only the physical safety of students and staff members while on site at the University, but also to ensure that the learning environment remains insulated from potentially harmful conduct, including sexual harassment.

#### b. Power differentials

The manner in which the University addresses allegations of sexual harassment must also take into account the power differentials between students and staff, between staff members of different seniority, and between students of varying seniority.

These power differentials have an immense impact on sexual harassment issues, including whether complainants feel secure enough to lay a formal complaint.

It will also have a great impact on the credibility of the complainant as a witness, as the complainant may be concerned about other issues such as negatively affecting their job or academic success.

Power relations that are inherent to matters of sexual harassment mirror power relations among the persons and offices handling sexual harassment in the University. Persons pushing sexual harassment to be addressed are generally less senior than some persons who do not believe that sexual harassment must be seriously addressed. These more junior members themselves experience harassment within the University structure, and this plays a role in the sexual harassment process as well as the overall University culture.

#### c. Gender relations

In particular, the University as a public institution has to recognise the difficulties posed by social and cultural conditions, which affect women, both students and staff. This is not to suggest that there is an inherent vulnerability or weakness that exists in all women. Rather, systemic and often invisible patterns of discrimination permeate many of the interactions in the University.

There is a tendency to ascribe characteristics to individuals based on stereotypes of gender. Some of the stereotypes appear to be compliments, for example, women are more sensitive or

better caregivers. These perceptions, however, legitimise all stereotypes, including negative ones such as, women are not truthful, women talk too much, women are not logical and therefore their view cannot be trusted. If the same comments were to be made about people based on race – for example, all black people are natural caregivers or all black people lack logic – we would be outraged as a University community. Gender discrimination, on the other hand, is normalised.

Interviewees confirmed that offensive comments, sexual innuendos and suggestive statements are normalised. If a student opposes this, s/he is earmarked as a “prude” or “not being able to take a joke”. The normalisation of sexist comments and behaviour form part of a continuum of harm, where denigration based on sex or gender stereotypes creates an environment of permissible harmful conduct.

Most cases of sexual harassment reported to the University involve a male perpetrator and a female victim. The male perpetrator is ordinarily the more senior person, and therefore has the most power in the situation. Female complainants feel at a disadvantage during the incident because they are oftentimes less physically strong and fear that the perpetrator may get more violent.

They are also more reluctant to report because they fear being labelled as having seduced the male, or because they do not want to “be that girl” who has the stigma of a sexual encounter attached to their record and their reputation. One interviewee related that, after she complained about a harmful experience, she was called a prostitute. Fellow students indicated that they would come to her room for services and asked how much she charged.

The University also appears to practice forms of gender discrimination that some perceive as sexual harassment. This is by not facilitating women being in senior positions. We have been told that management meetings are held at 7.30 in the morning, which makes it impossible for women with children to attend. This hampers women’s career progress. Women are also victimised for taking time off for maternity leave and there are instances when staff or students have been accused of being irresponsible or not taking their job or work seriously when they fall pregnant.

Women, particularly those in support staff roles, have expressed a vulnerability to their superiors, often men, because they are single mothers or the breadwinners in their families and cannot afford to lose their jobs. They are made to feel that they have to “go beyond their job description” in order to keep their jobs, sometimes in ways that constitute sexual harassment.

Notwithstanding the above, it is problematic that sexual harassment is largely seen as a “woman’s issue”. Not only does this perception shun the issue into an area that is reserved for women and in particular feminists, it also ignores the reality that men can be, and are, sexually harassed as well.

The male perspective at University is that there is no safe and comfortable space for men to report. Many men do not feel comfortable speaking to a woman about their experience, because “*they would not feel like a man anymore*”. Others are more concerned that Roleplayers such as CCDU are not sufficiently advertised as being available to anyone who wishes to discuss sexual harassment, not just females. Male victims feel like they cannot come forward with complaints for fear of ridicule.

### **Conclusion**

The University should not discount experiences of trauma as a result of a deficient system. We recommend formal apologies where appropriate.

The Committee met a student who had been through extreme sexual abuse by an academic and a hostile and offensive response from the University. When asked what the student would want ideally from the University, the response was that the student wanted the University to:

**Realise it. Own it. Fix it.**

## RECOMMENDATIONS

### A. PILLARS UNDERLYING THE RECOMMENDATIONS

The Committee has identified three broad pillars underlying its recommendations (“Pillars”).

#### 1. PREVENTION

Entrenching measures, including training, student engagement and contractual undertakings, to prevent sexual harassment and to counter underlying root causes of sexual harassment, namely, unequal gender relations and socially accepted gender-based discrimination.

#### 2. INTERVENTION

Intervening effectively as soon as there is an allegation of sexual harassment in a manner that is meaningful, effective and not overly legalistic.

#### 3. ACCOUNTABILITY

Ensuring that all allegations of sexual harassment are addressed effectively, with the complainant and the alleged perpetrator constantly informed as to the status quo, leading to a system of fair, effective and robust consequences for sexual harassment.

### B. CATEGORIES OF RECOMMENDATIONS

The Committee makes proposals regarding:

#### 1. POLICY RECOMMENDATIONS

This section includes clear policies regarding sexual harassment, student and staff behaviour policies and clarity regarding accountability for non-compliance.

#### 2. STRUCTURAL RECOMMENDATIONS

This section includes proposals regarding optimal and clear structures to address sexual harassment.

#### 3. EDUCATION AND AWARENESS RECOMMENDATIONS

This section includes proposals regarding on-going and effective training for both staff and students regarding sexual harassment, power relations and inequality.

#### **4. INTERIM MEASURES**

This section provides suggestions for interim arrangements pending decisions about the future management of sexual harassment on campus.

### **C. POLICY RECOMMENDATIONS**

#### **1. Clear And Accessible Sexual Harassment Policy**

1.1. We propose the adoption of the re-worked sexual harassment policy prepared by Professor Dee Smythe of UCT. The Committee will only make recommendations where its findings differ from the proposed draft policies on sexual harassment (“**Draft Sexual Harassment Policy**”) and relationships between staff and students (“**Draft Relationships Policy**”).

1.2. The office of the Vice-Chancellor must be the custodian of the final Sexual Harassment Policy.

1.3. The Sexual Harassment Policy must be easily available and form part of every employee’s contract of employment.

#### **2. Precise Definition Of Sexual Harassment**

2.1. People can only be held to account if they have a clear understanding of the behaviour that is prohibited and if they know the consequences thereof.

2.2. There are several possible definitions, including those recommended by Professor Dee Smythe and in the Code of Good Practice on Sexual Harassment in the Labour Relations Act. The following concepts should be incorporated into the definition of sexual harassment:

2.2.1. Conduct relating to sex or gender between any persons within the university that abuses positions of power;

2.2.2. A breach of the Relationships between Staff and Students Policy or conduct prohibited by the University Code of Conduct Relating to Staff-Student Engagement; or

2.2.3. Unwelcome conduct of a sexual nature, whether physical, verbal or in writing, including via social media.

### **3. Clear Policies regarding Relationships between Staff and Students Undergraduates**

3.1. The Committee recommends that the question regarding the preferred policy regarding student and staff relations (“**Relationships Policy**”) becomes the subject of a campus-wide debate.

3.2. The Committee was divided in this recommendation between the following options:

3.2.1. **Option One:** Prohibiting all sexual relationships between staff and undergraduate students and evidence of such relationships constitutes a rebuttable presumption that it was a violation of the Sexual Harassment Policy;

3.2.2. **Option Two:** Permitting such relationships but requiring disclosure.

3.3. The arguments in favour of option one are as follows:

3.3.1. The rule allowing for student and staff relationships facilitates an abuse of power and blurs the boundaries in the academic context.

3.3.2. The allowance of such relationships also facilitates “grooming”, the process whereby a lecturer slowly grooms the student into a position of intimacy and dependence, where the student suddenly finds her or himself in a compromised position but feels equally accountable, and equality in the relationship is impeded.

3.3.3. It facilitates the prevalence of “sugar-daddy” relationships.

3.3.4. The harm done to undergraduate students particularly outweighs the imperative of liberal relationships between staff and undergraduate students, because of the particular vulnerability of younger students.

3.3.5. Relationships between postgraduate students and staff would be permissible and subject to different rules.

3.4. The arguments in favour of option two are as follows:

3.4.1. It is neither practical nor desirable to attempt to regulate human intimate relations in what is an adult environment.

3.4.2. At best, the University should require disclosure, the express aim of which is to ensure that there are no conflicts of interest.

### **Postgraduates**

3.5. The Committee proposes that the Relationships Policy permits romantic and sexual relationships between staff members and postgraduate students, subject to the following:

3.5.1. Any relationship must be disclosed in writing to the proposed Sexual Harassment and Safety Office (“SHSO”) (described below) as soon as the relationship develops. This includes temporary or once-off sexual relationships.

3.5.2. The student will be contacted by the SHSO to ensure that the relationship is consensual and the student must be allowed to make confidential statements to the SHSO to ensure that the student does not feel victimised or vulnerable.

3.5.3. The SHSO will immediately notify the Dean of the relevant Faculty of this relationship and the academic staff member will be precluded from ever supervising or grading the student, to avoid a conflict of interest.

3.6. All information given to the SHSO will be absolutely confidential.

3.7. If a relationship is not reported to the SHSO, there will be a rebuttable presumption that the relationship was not consensual. Particular emphasis should be placed on avoiding conflicts of interest in respect of supervision and grading.

3.8. The Committee proposes that the Draft Relationships Policy must be amended to include the prohibition of relationships between tutors with students in their classes.

#### **4. Clear Obligations in Employment Contracts**

- 4.1. All future contracts between the University and members of staff (academic and support) should include an undertaking to comply with the University Code of Conduct Relating to Staff-Student Engagement.
- 4.2. A breach of this Code should constitute a breach of the employment contract, with the appropriate due process followed.
- 4.3. The Code is designed to be objective so the process is not subject to subjective interpretation.

#### **5. Clear and Precise University Code of Conduct Relating to Staff-Student Engagement**

- 5.1. The Committee proposes that a detailed Code of Conduct be drafted setting out standards of behaviour between staff members and students. This Code of Conduct will be attached to all staff members' employment contracts, and breach of the Code of Conduct places the staff member in breach of the sexual harassment policy and breach of her/his employment contract.

"The Code of Conduct Relating to Staff-Student Engagement:

This Code of Conduct must be read together with the University's Sexual Harassment Policy and the Relationships between Staff and Students Policy.

This Code of Conduct aims to set out a list of behaviour between staff members and students that is deemed inappropriate by the University, regardless of whether the behaviour is considered inappropriate by the student.

This Code of Conduct forms an integral part of the employment contract. Failure to abide by this Code of Conduct places the staff member in breach of their employment contract.

##### **I. General Engagement**

The academy is a forum for the engagement, development and transfer of ideas. The process to facilitate this should be steeped in mutual respect, dignity and openness.

All behaviour should pass the following test: if you are alone in a room with a student and someone unexpectedly enters the room, would you be embarrassed. If yes, the behaviour is problematic.



## II. Consultations with students

Consultations with students must be conducted:

- On the University campus, in either the staff members office, or in the lecture theatre or tutorial room. Exceptions may be made for class or group gatherings for academic purposes;
- With the door of the staff member's office, lecture theatre or tutorial room open; and
- Physical contact between the staff member and the student, such as hugging, should be discouraged. Human contact is necessary where a student is in distress. The same litmus test described under number I. above applies.
- The gender or sexual orientation of the staff member and/or student is irrelevant.

## III. Electronic contact with students

Any contact with a student must be via:

- The staff member's designated email address that is available to all students;
- The student's email address that is reflected as their chosen email address on registration forms and class lists;

Contact with students via the following media is not permissible:

- Cell phone contact, including, SMS, Whatsapp or Blackberry Messenger, unless there is an emergency;
- Facebook, including being "friends on Facebook", sending private inbox messages on Facebook, "writing on Facebook walls" of students, commenting or "liking" pictures or statuses of students on Facebook. Facebook may be allowed where a Facebook page has been set up for a particular course and all students in that class have access to the Facebook page, however, private contact with an individual student through that page is not permitted; or
- Any other social media."

## **D. STRUCTURAL RECOMMENDATIONS**

One of the key findings, emanating from almost all interviews with the stakeholders, was that responsibility for sexual harassment needed to be in a separate office in the University that is sufficiently senior so that it can address allegations of sexual harassment throughout the University hierarchy.

### **6. Independent Sexual Harassment Office**

6.1. The Committee proposes that an independent sexual harassment office is established, namely, the Sexual Harassment and Safety Office (“**SHSO**”).

6.2. The SHSO will be responsible for:

6.2.1. Hearing initial complaints of sexual harassment;

6.2.2. Investigating and taking the matter forward to completion within the University process; and

6.2.3. Protecting the interests of a safe campus, both for the purposes of complying with basic human rights and also for the purpose of ensuring the sanctity of the academic project.

6.3. The SHSO will report directly to the Vice-Chancellor.

6.4. The details of the SHSO are described below under the recommendations regarding structure.

### **7. The Need for a New Office**

7.1. The current system is dysfunctional and has resulted in an unintended culture of impunity. This dysfunction is as a result of inappropriate policies and an imposition of conflicting roles on individuals.

7.2. It is therefore necessary to have a separate office for this type of problem within the university. Every university is struggling with sexual harassment and sexual violence.

Only if it is addressed as a serious impediment to the academic project will it be controlled. Anything short will, in our view, perpetuate the problem.

## **8. Structures and Lines of Reporting**

8.1. The SHSO must report directly to the Vice-Chancellor and Council. The SHSO will be on the same level as the Deputy Vice-Chancellors and Senate.

8.2. Structure of the SHSO

8.2.1. Director

8.2.2. Prevention unit

8.2.3. Intervention unit

8.2.4. Accountability unit

8.3. The SHSO should be staffed by five personnel, namely, Director, one Prevention Unit Member of Staff; Two Intervention Members of Staff; One Accountability Unit Member of Staff.

## **9. Director**

9.1. This post will require the appointment of one fulltime, non-academic staff member, with training in management, law and psychology.<sup>14</sup>

9.2. The Director will be responsible for the following:

9.2.1. Overseeing and managing the functioning of the SHSO;

9.2.2. Being custodian of the Sexual Harassment and Relationships between Staff and Students Policies;

9.2.3. Engaging with trade unions regarding employment contracts;

9.2.4. Preparing reports to and reporting to the Vice-Chancellor and Council bi-annually; and

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<sup>14</sup> Salary range: R700 000 – R800 000.

9.2.5. Subject to principles of confidentiality, reporting directly to Council in the event that there is an accusation of sexual harassment against the Vice-Chancellor.

## **10. Prevention unit**

10.1. This unit will require the appointment of one fulltime non-academic staff member, with training in law, gender and power relations.<sup>15</sup>

10.2. This unit will perform the following functions:

10.2.1. Training and workshops on sexual harassment throughout the year;

10.2.2. Developing strategies for reducing sexual harassment at the University;

10.2.3. Relationship-building with staff members and student representative bodies;

10.2.4. Statistics and data capturing; and

10.2.5. Relationship-building with hospitals and police stations in close proximity to the University.

## **11. Intervention unit**

11.1. This unit will require two fulltime, non-academic staff members.

11.2. One social worker / psychologist; and one specialized investigator trained in gender sensitivity.<sup>16</sup>

11.3. This unit has two parts, namely, reporting and support, handles by the social worker / psychologist, and investigation, handles by the investigator.

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<sup>15</sup> Salary range: R300 000 – R400 000.

<sup>16</sup> Salary range: R400 000 – R500 000 each.

11.4. Reporting and support: This person will be responsible for:

- 11.4.1. Hearing initial complaints of sexual harassment;
- 11.4.2. Advising the complainant of mechanisms available, in and outside of the University;
- 11.4.3. Providing emotional support to the complainant throughout the process (including: keeping complainant advised of progress in the matter; preparing complainant for the difficulty of the hearing; attending the hearing with the complainant);
- 11.4.4. Following up on complaints of sexual harassment referred by the Sexual Harassment Panel;
- 11.4.5. Referring the complainant for further counselling at CCDU, if requested by the complainant.

11.5. Investigation: This person will be responsible for:

- 11.5.1. Finding and taking witness statements;
- 11.5.2. Obtaining forensic evidence.

## **12. Accountability unit**

12.1. This unit will require one fulltime lawyer, with specific psycho-social and gender-based violence training.<sup>17</sup>

12.2. This person will be responsible for:

- 12.2.1. Representing the complainant at the disciplinary hearing (regardless of whether the complainant is a staff member or a student);
- 12.2.2. Working with the investigator to prepare the complainant's case;

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<sup>17</sup> Salary range: R400 000 – R500 000 each.

- 12.2.3. Convening the disciplinary hearing panel to hear the matter.

### **13. The Sexual Harassment Academic Advisory Panel**

- 13.1. The University should use its academic experts to populate a formal advisory panel, the Sexual Harassment Academic Advisory Panel.
- 13.2. The Sexual Harassment Advisory Panel will be responsible for:
  - 13.2.1. Receiving complaints where students and staff feel comfortable to do so;
  - 13.2.2. Referring complaints to the SHSO, subject to the consent of the complainant. If the complainant does not want her/his matter referred, the Sexual Harassment Academic Advisory Panel must still submit numbers of complaints without naming or identifying complainants for the purposes of capturing trends;
  - 13.2.3. Identifying policy and systemic issues that frustrate the operation of the Sexual Harassment Policy and proposing recommendations; and
  - 13.2.4. Providing advice and support to the SHSO.
- 13.3. Members of the Sexual Harassment Panel must be made up of staff members from each of the various disciplines relating to, for example, law, gender, politics, hierarchy, behavioural sciences, violence, sociology, linguistics and history.
- 13.4. The Sexual Harassment Academic Advisory Panel will receive appropriate training in sexual harassment and gender-sensitivity.
- 13.5. The position should be treated as a managerial position and relevant workloading assigned to the position. It should *not* be over and above the academic's other obligations.
- 13.6. Members should sit on the Panel for no more than three years to ensure a vibrant committee and effective.

## **14. Clearly Defined Roles for the Other Roleplayers**

### **14.1. Role of the Legal Office**

14.1.1. The Legal Office will be responsible for representing the University's interests at the disciplinary hearing in instances where the alleged perpetrator is a student.

14.1.2. The Legal Office will not engage directly with the complainant or the alleged perpetrator, but will work with the SHSO and/or the alleged perpetrator's representative where necessary.

### **14.2. Employment Relations**

14.2.1. The Committee proposes that an additional person is appointed to Employment Relations to assist with the workload.

14.2.2. Employment Relations will be responsible for representing the University's interests at the disciplinary hearing in instances where the alleged perpetrator is a staff member.

14.2.3. Employment Relations will not engage directly with the complainant or the alleged perpetrator, but will work with the SHSO and/or the alleged perpetrator's representative where necessary.

14.2.4. Employment Relation will also be responsible for ensuring that any employment-related issues are facilitated, for example, special leave or the suspending of pension fund schemes.

### **14.3. CCDU**

14.3.1. Where the complainant requires or requests counselling (outside of the emotional support provided by the SHSO during the process), or the alleged perpetrator requires or requests counselling, the complainant will be referred to CCDU.

14.3.2. CCDU will ensure that a complainant or an alleged perpetrator of sexual harassment will be provided with the necessary counselling and inform the

SHSO if, in the opinion of the CCDU counsellor, the complainant or the alleged perpetrator requires more extensive counselling that CCDU is unable to provide.

14.3.3. The contents and relationship between a CCDU counsellor and the complainant/alleged perpetrator is confidential, and the CCDU counsellor must protect such confidentiality and is not required to report the substance of counselling sessions to any Roleplayer, including the SHSO.

#### **14.4. The Disciplinary Hearing Panel**

14.4.1. We propose a revision of the Panel that hears and decides sexual harassment cases and propose that it ought not to consist of the current structure, which is an academic from the Law School, a member of the Law Students Council and a member of Senate.

14.4.2. The persons appointed to hear sexual harassment matters must be trained and experienced in the field of sexual harassment and/or gender-based violence, with knowledge of law and employment relations.

14.4.3. We would advise that the University set up partnerships with non-governmental organizations doing work in this area or possibly other universities, on a reciprocal basis, to form the Panel.

### **E. EDUCATION AND AWARENESS RECOMMENDATIONS**

#### **15. Education and training of Staff Members**

15.1. Staff members should understand the nuances of sexual harassment and the link between gender inequality, sexism and sexual harassment.

15.2. Prior to signing any contract of employment, new staff members should be apprised of the details of the Sexual Harassment Policy; the Relationships between Staff and Students Policy and the Code of Conduct Relating to Staff-Student Engagement.



- 15.3. All existing staff members must be made aware of the amendments to the various policies and assistance provided in cases of uncertainty regarding appropriate behaviour.
- 15.4. We recommend compulsory training on the Sexual Harassment Policy, the Relationships between Staff and Students Policy, the Code of Conduct Relating to Staff-Student Engagement and gender sensitivity training during induction of new staff members.
- 15.5. Going forward, we recommend compulsory annual training on the Sexual Harassment Policy, the Relationships between Staff and Students Policy, the Code of Conduct Relating to Staff-Student Engagement and gender sensitivity training for existing all members.
- 15.6. We propose that the University Community receives updates about sexual harassment complaints *without* revealing the parties' names or identities.

## **16. Education and training of Students**

- 16.1. Students should understand the nuances of sexual harassment and the link between gender inequality, sexism and sexual harassment.
- 16.2. During Orientation Week, prospective students should receive the Sexual Harassment Policy, the Relationships between Staff and Students Policy and the Code of Conduct Relating to Staff-Student Engagement.
- 16.3. In respect of new students, at some stage during the first term of the year, all students should receive mandatory information about the reporting lines in cases of all forms of sexual harassment, what constitutes sexual harassment. This should be done in a manner that is accessible and meaningful.
- 16.4. At the beginning of the academic year, and again at the beginning of the second term, the students should receive correspondence listing important University policies for students, and in particular, including links to the Sexual Harassment Policy, the Relationships between Staff and Students Policy and the Code of Conduct Relating to Staff-Student Engagement on the University website.

16.5. We strongly recommend a variety of education programmes and campaigns throughout the academic year.

## **F. INTERIM MEASURES**

### **17. Current and Past Complaints**

17.1. The Committee received several complaints about the mishandling of sexual harassment matters by the University and complaints regarding investigations currently under way. We propose that the University address these complaints in a manner, which is responsive and accountable. It is our considered view that students should be treated with appropriate respectfulness and dignity.

17.2. In dealing with complaints regarding matters currently being handled by the University, the University should be open to feedback on the problems experienced in the process. This will assist with remedying the problems in the future.

### **18. Future Complaints**

18.1. In the interim, to ensure that the same irregular processes are not followed pending the adoption of the new Policies and Structure, the Committee proposes an acknowledgement that the time ahead will be a tumultuous but necessary process.

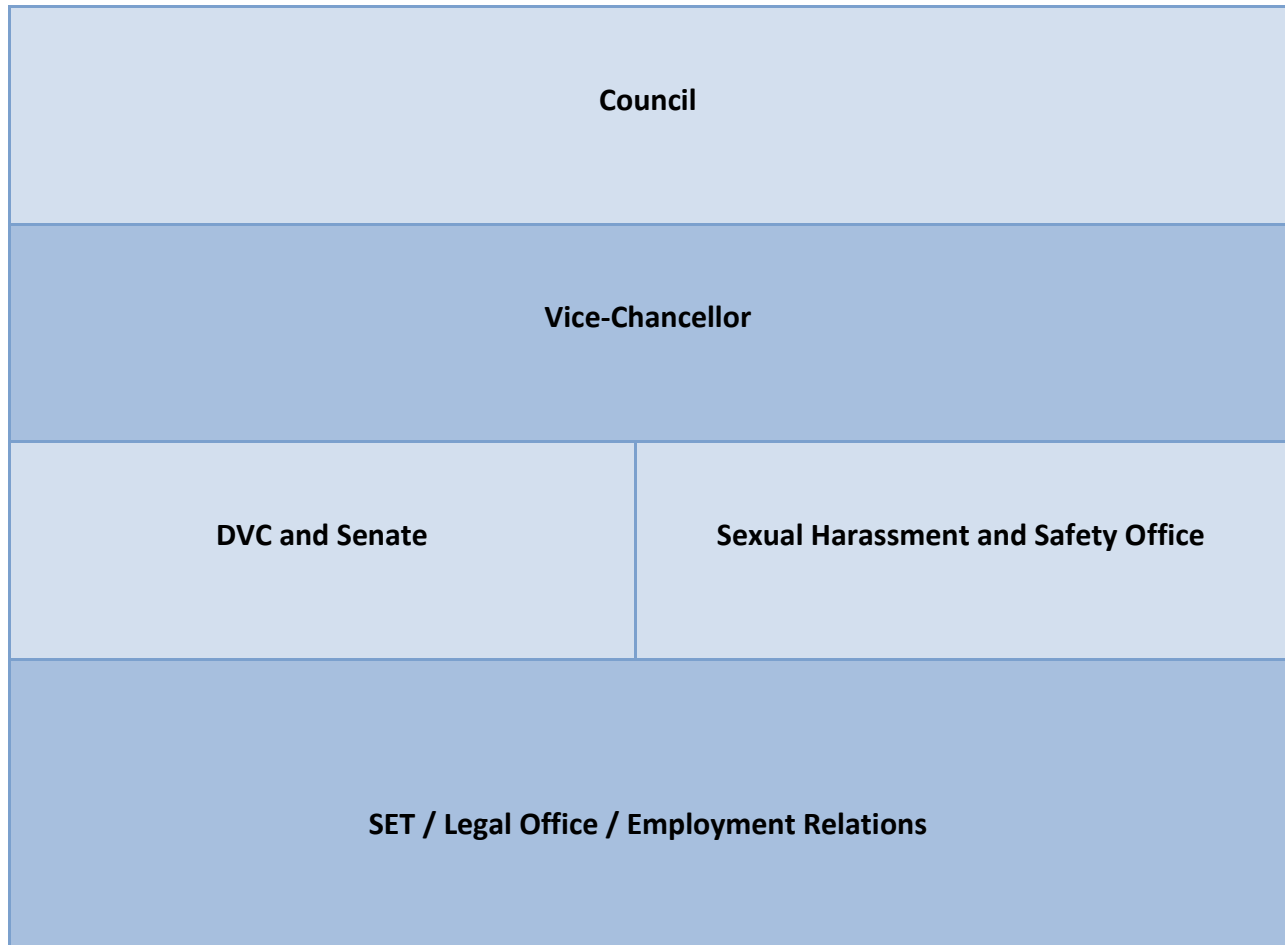
18.2. We propose that student engagement continues with this, or another, Committee to continue to capture stories and trends if this is useful;

18.3. We recommend that the Vice-Chancellor puts in place an ad hoc temporary committee to address specific cases;

18.4. We propose open debates and dialogue, together with anonymous polls, to transition the University from a perception of secrecy to openness.

**ORGANOGRAM**

**1. POSITIONING OF SHSO WITHIN THE UNIVERSITY**



## 2. STRUCTURE OF THE SHSO

Director of SHSO			
Prevention	Intervention	Accountability	Sexual Harassment Academic Advisory Panel
One Fulltime Staff Member: Non academic; activist/ community engagement/ training with specialisation in law, gender and power	Two full-time specialised staff members. One social worker / psychologist and one specialised investigator	One full-time lawyer	
<ol style="list-style-type: none"> <li>1. Training and workshops throughout the year</li> <li>2. Strategy for reducing sexual harassment</li> <li>3. Relationship building with staff and student representative bodies</li> <li>4. Statistics and data capturing</li> <li>5. Relationship building with hospitals and police stations around the university</li> </ol>	<ol style="list-style-type: none"> <li>1. Reporting</li> <li>2. Investigating and Forensic specialist</li> </ol>	Case management	