

**THE CHINESE UNIVERSITY OF HONG KONG**

Remarks made by Mr. Jacob Leung, Secretary of the University at the Special Meeting of the Panel on Education of the Legislative Council held on July 6, 2009

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1. The Council of The Chinese University of Hong Kong (CUHK) deliberated on the proposal for establishing an independent inter-institutional complaints committee earlier this year, and informed the Panel on Education of the Legislative Council in writing in January 2009 that the CUHK Council agreed with the position of the Heads of Universities Committee (HUCOM) that they could not support the proposal to establish an independent inter-institutional complaints committee. The position of the CUHK Council has remained unchanged.
2. Subject to institutional autonomy not being infringed upon, CUHK agrees to establish and improve its internal mechanism for handling grievances lodged by its staff in accordance with the principles of fairness, justice and accountability. CUHK has constantly made reference to best practices in local and overseas universities and related organizations for improving its own grievance procedures.
3. Recently, CUHK has consolidated the procedures for handling grievances into a set of Grievance Procedures for University Employees (the Procedures) which has been approved by the relevant administrative committees. CUHK has solicited views from its three staff associations/unions on the consolidated Procedures and the adopted suggestions have been incorporated into the Procedures. Over the years, CUHK has maintained very close relationship and promoted good communication with its staff associations/unions.
4. The final version of the Grievance Procedures for University Employees has already been published on CUHK's website for easy reference of its employees. CUHK's grievance committees include employees of the University who are independent of the units concerned. Final appeal may be made to CUHK's Council. The majority of Council Members are external members who are not employees of CUHK and have abundant experiences in community service, including three representatives of the Legislative Council.

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## Grievance Procedures for University Employees

### Foreword

As a responsible employer the University is committed to providing a work place which allows its employees to carry out their responsibilities in a productive manner in a collegial setting. Despite this, concerns and problems occasionally arise and give rise to grievances or complaints. The Grievance Procedures set out below have been established to resolve such grievances/ complaints from employees.

### Grievance Procedures

#### **General Principles**

##### Applicability

1. These Grievance Procedures (hereinafter 'Procedures') are applicable to all employees of the University.
2. These Procedures are administrative guidelines and do not form part of the contract of employment between the University and its employees. These Procedures may be amended or supplemented by the University from time to time.
3. The rights both of the employer (and its agents) and of the employees provided under the relevant contracts and/or the laws of Hong Kong shall take precedence over these Procedures.

##### Definition

4. In these Procedures, "grievance" means a concern, problem or complaint raised by an employee ("the complainant") over matters relating to the complainant's employment in the University.
5. Where a grievance is directed against another employee(s) ("the complaine(s)") of the University, the latter (the complaine(s)) shall have the same rights as the complainant at all stages of the Procedures.
6. Disagreement with a judgment made or an evaluative outcome (e.g. an assessment rating given) is not a ground for grievance, except where it is alleged that the judgment or evaluative outcome has been caused by procedural error. Dissatisfaction with University policies and regulations which are generally applicable to its employees also does not constitute a grievance under these Procedures.
7. These Procedures shall not apply to employment-related matters for which specific review and appeal procedures have been approved and established by the University, or to matters which are already governed by contractual/statutory provisions. Such matters (for example, Disciplinary matters or Sexual Harassment) will be handled separately under the relevant procedures or contractual/statutory provisions. A list of such matters separately handled is in the Appendix.

### Code of Conduct

8. Every reasonable effort shall be made to ensure confidentiality and to protect the privacy of all parties in accordance with existing University policies and applicable laws. What happens during these Procedures and what is said and done by all parties concerned under these Procedures shall remain confidential and private.
9. No employee shall be subject to victimization or reprisal for lodging a grievance which is justified and in good faith. However, lodging a malicious or vexatious grievance may give rise to disciplinary proceedings.

### **Stages of the Grievance Procedures**

10. When a grievance is raised, the parties involved should attempt to resolve the grievance by informal means as far as possible. If an informal resolution cannot be reached, one or more of the following stages of action can be taken:
  - (a) Stage 1: Formal Complaint
  - (b) Stage 2: Appeal to the Vice-Chancellor
  - (c) Stage 3: Appeal to the Council

### **Informal Resolution**

11. Where an employee intends to raise a grievance, he/she should, if possible, first discuss it with the immediate supervisor (or the next level of supervisor if deemed more appropriate) with a view to resolving the matter informally.
12. Very often, face-to-face communication between/amongst the parties concerned can help resolve the grievance. If need be, mediation, being a voluntary process through an independent third party or mediator, may also be an effective means to help the parties in dispute to reach a voluntary agreement to resolve the grievance.
13. If an informal resolution can be achieved, the parties involved are strongly advised to keep a record of any agreement reached in writing for future reference.
14. If the grievance cannot be resolved by informal discussion or mediation, the employee may raise a formal complaint, which shall then be dealt with in accordance with the steps below.

## **Stage 1: Formal Complaint**

### Lodging a Complaint

15. The employee (the complainant) must, without unreasonable delay, and in any event within 90 days of the occurrence or discovery of the alleged cause of grievance, set out the nature of the grievance in writing on the prescribed Form (the "Grievance Statement"), and send the duly signed Grievance Statement together with any and all supporting evidence to the following Responsible Authority:
  - the Chairman/ Director/ Head of Department/ School/ Unit (the Head); or
  - the Supervising Officer of the Head if the grievance concerns the Head, or if the employee raising the grievance is the Head; or
  - the Vice-Chancellor if the grievance concerns the Supervising Officer of a Head, or if the employee raising the grievance is the Supervising Officer of a Head.

The complainant shall also send a copy of the duly completed and signed Grievance Statement and the related documents to the Personnel Office for registration of the case.

### Initial Consideration

16. If the person receiving the Grievance Statement is not the Responsible Authority as defined in paragraph 15 above, he/she shall normally refer the case without unreasonable delay to be dealt with by the relevant Responsible Authority. Wherever deemed appropriate, the person concerned may refer the case to be dealt with by a Responsible Authority that is one level above that specified in paragraph 15 (e.g. by the Supervising Officer of the Head instead of the Head).
17. Where the Responsible Authority deems it appropriate and more effective, he/she may refer the grievance to the immediate supervisor of the complainant and/or of the complainee, and/or relevant parties for informal resolution (e.g. where attempts as in paragraphs 11 and 12 have not been made before), subject to the agreement of the complainant and the complainee, where applicable. If the grievance still cannot be resolved, the following steps (as set out in paragraph 18 and the ensuing paragraphs) shall apply.

### Grievance Meeting

18. If the grievance falls within the scope of these Procedures, the Responsible Authority may deal with the case directly, or may seek approval from the supervisor of the Responsible Authority to establish an Ad Hoc Panel to hear the grievance and make recommendations.
19. The Ad Hoc Panel, if one is formed, should normally include three members:
  - (a) the Responsible Authority;
  - (b) one staff member appointed by the supervisor of the Responsible Authority; and
  - (c) one staff member from a standing list of potential members maintained by the Personnel Office, to be assigned on a roster basis on the principle that the person should not be from the Department/School/Unit with which the complainant or complainee is affiliated.

20. The Responsible Authority must invite the complainant to attend a meeting (with the Responsible Authority or the Ad Hoc Panel) to discuss the grievance. The meeting should take place without unreasonable delay, normally within 20 working days of the receipt of the complainant's grievance in writing. The complainant, and the complainee where applicable, must take all reasonable steps to attend the meeting arranged by the Responsible Authority.
21. If more time is needed to consider the matter (e.g. if the Responsible Authority requests the complainant to clarify the basis of the grievance or if further initial investigation is required), the Responsible Authority must communicate in writing to the complainant: (i) the reason for such delay; and (ii) the new meeting schedule. Any such delay and the reason for it must also be communicated to the complainee in cases where the grievance is raised against another University employee (the complainee).
22. The complainant may be accompanied at the grievance meeting (paragraph 20) by a companion nominated by him/her, who shall not be his/her legal representative. If the companion is nominated by or is an officer of a staff association or union, he/she should attend the meeting as a fellow worker but not as a representative of the staff association or union. The companion must sign a confidentiality agreement before the meeting to undertake that what happens during these Procedures and what is said and done by all parties concerned under these Procedures shall remain confidential and private.
23. At the grievance meeting, the companion may confer privately with the employee, but may not ask or answer or clarify questions on behalf of the employee. However, if invited by the Responsible Authority (or the Ad Hoc Panel), the companion may address the meeting.
24. At the meeting, the complainant will be accorded an opportunity to explain the nature of the grievance. In explaining the grievance, the complainant should adhere strictly to the facts and avoid language which may be considered abusive or insulting.
25. If the Responsible Authority (or the Ad Hoc Panel) needs more time to conduct further investigation or seek advice, the Responsible Authority should explain this to the complainant and, where relevant, the complainee and may adjourn the meeting and inform the complainant and the complainee accordingly. Where there is such an adjournment, the meeting must be reconvened without unreasonable delay, normally within 15 working days.
26. On the basis of the evidence presented at the meeting, the Responsible Authority (or the Ad Hoc Panel) will reach a decision and recommend what follow-up or remedial action, if any, should be taken by the parties concerned.
27. Following the conclusion of the meeting, the Responsible Authority shall inform the complainant (and the complainee where applicable) in writing of the decision without unreasonable delay, and normally within 10 working days after the decision is made.<sup>Note</sup> Where it is deemed necessary and appropriate, follow-up or remedial actions should be taken by the parties concerned.
28. A formal written record of the meeting(s) and any and all related documents shall be kept by the Responsible Authority. The record of the proceedings and of the decision on the grievance shall be filed with the Personnel Office without unreasonable delay by the Responsible Authority.

## **Stage 2: Appeal to Vice-Chancellor**

29. If either party (complainant or complaine) believes that there are valid grounds for not agreeing to the decision of the Responsible Authority, he/she may submit a written appeal (by completing and signing the prescribed Form) to the Vice-Chancellor within 10 working days of receiving the notification of the decision from the Responsible Authority. The Responsible Authority shall be required to submit a report, including the findings and observations, to the Vice-Chancellor for consideration on appeal by either party.
30. The Vice-Chancellor (or his designate) shall decide to accept, reject or vary the decision of the Responsible Authority, after such consultation/advice he may seek as he deems necessary and appropriate, and shall convey his decision in writing to the respective parties within 30 working days of the receipt of the appeal.
31. The formal written record of the Vice-Chancellor's decision and all related documents will be kept at the Vice-Chancellor's Office with a copy to be filed with the Personnel Office for record.

## **Stage 3: Appeal to Council**

32. If either the complainant or the complaine still feels aggrieved at the decision taken in Stage 2, he/she may lodge an appeal to the University Council. The appeal must be lodged in writing on the prescribed Form (and duly signed) within 15 working days of the receipt of the notification of the decision from the Vice-Chancellor.
33. The written appeal should state clearly the grounds of appeal and any and all supporting evidence for the appeal. Appeals will be considered only where: (i) either party submits with evidence that the decision taken in Stage 1 or Stage 2 is wrong or unjust or biased; or (ii) either party submits that there was a procedural error in the handling of the grievance/complaint under Stage 1 or Stage 2; or (iii) there is new evidence relevant and material to the case which was not or could not have been made available at the preceding stages.
34. The appeal should be addressed to the Chairman of the University Council, with a copy each of the duly completed Form and the related documents sent to the Secretary to the Council and the Personnel Office for registration of the appeal. Upon the advice of the Chairman of the University Council, the appeal may be handled by an appeal committee formed by the Council.

*Words importing the masculine gender include the feminine gender, unless the feminine gender is specifically provided for as an alternative to the masculine gender.*

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Note In case disciplinary actions are recommended, before communicating the decision the Responsible Authority should consult the Personnel Office on the appropriate procedures to be followed.

**Matters to be handled separately under other relevant procedures or contractual/statutory provisions**

- (a) Policy against sexual harassment
- (b) Procedure for staff discipline
- (c) Procedures for review of teachers' appointment for substantiation purpose
- (d) Procedures for review for further appointment upon expiry of a contract
- (e) Procedures for review under the Salary Administration System
- (f) Procedures for the Performance Review and Development System
- (g) Procedures for early termination of appointment for appointees under Terms of Service (A)/ Hospital Authority (HA)-Equivalent Terms of Service, Terms of Service (B)/(C), or equivalent fixed-term contracts
- (h) Procedure for review for calling for early retirement of an appointee
- (i) Removal from office, membership or appointment for good cause (Statute 24 of University Ordinance)
- (j) Contractual provisions in the Employment Ordinance

*This list will be updated from time to time.*

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