

Guidelines for Preventing and Handling Sexual Harassment

1. Policy

The Agency is committed to the elimination and prevention of sexual harassment and aims to create a respectful and equal working environment free from sexual harassment. It does not tolerate any employee who commits any conduct of sexual harassment.

Sexual harassment is discriminatory and unlawful. Sexual harassment may lead to disciplinary or other appropriate actions of the Agency, and may also entail civil liability and even criminal consequences. Once an act of sexual harassment occurred, any person of the Agency has a right to lodge a complaint.

2 Objectives and Responsibilities

The Agency is committed to:

- 2.1 Ensuring all relevant persons of the Agency, including employees (including persons seeking to be employed by the Agency), persons who provide services to the Agency (such as volunteers, tutors, interns, contract service providers or agents), and other service users are able to work, participate in activities or have access to/provide services in an environment free of sexual harassment.
- 2.2 Communicating, through effective means, the anti-sexual harassment policy of the Agency and the channels to lodge complaints to all relevant persons.
- 2.3 Providing appropriate training and/or information for all employees, volunteers, tutors and service users, in order to raise their awareness on sexual harassment and to nurture the right and proper value of respecting others.
- 2.4 Setting up effective channels for lodging complaints; handling sexual harassment complaints on the principles of fairness, impartiality and confidentiality, and in a serious and discreet manner; and ensuring that nobody will be punished because of lodging a complaint in good faith.
- 2.5 Promoting the idea that all relevant persons of the Agency (including the management, employees, members, interns and volunteers of the Agency) have the obligation and responsibility to prevent and eliminate sexual harassment, including respecting the will and feelings of others, refusing to condone any sexual harassment behaviour, and supporting others to take reasonable steps to stop sexual harassment.
- 2.6 Encouraging any relevant person to lodge a complaint with the “Panel on Preventing and Handling Sexual Harassment Complaints” if he/she was sexually harassed or witnessed any other relevant person of the Agency committed any sexual harassment act. Both the complainant and the witness(es) are protected under the Sex Discrimination Ordinance (SDO).

3. Definition of Sexual Harassment

- 3.1 Sexual harassment means a person makes an unwelcome conduct of a sexual nature to another person. The unwelcome conduct includes unwelcome sexual attention, physical contact, talking about issues of a sexual nature, or making a sexual advance. It also amounts to sexual harassment if that other person finds the environment sexually hostile

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or intimidating.

3.2 Section 2(5) of the SDO provides the definition of sexual harassment. In addition, sections 2(7), 2(8), 9, 23, 23A, 24, 39, 39A and 40 are also provisions in relation to sexual harassment. Under the SDO, the legal definition of sexual harassment is:

(a) If any person

(i) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to another person; or

(ii) engages in other unwelcome conduct of a sexual nature in relation to that person,

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that that person would be offended, humiliated or intimidated; or

(b) the person, alone or together with other persons, engages in conduct of a sexual nature which creates a hostile or intimidating environment for another person.

3.3 Clarification of Common Myths:

3.3.1 Regardless of gender: Sexual harassment may occur to any person, regardless of gender; all provisions in the SDO and the agency policy related to sexual harassment are applicable to both men and women as well as sexual harassment between persons of the same sex.

3.3.2 Intention is irrelevant: Even if the act of sexual harassment is not intentional, it amounts to sexual harassment once the act meets the definition of sexual harassment. Hence, no matter whether the act is intentional or not, or even if the act is of a playful nature, it may amount to sexual harassment.

3.3.3 Single incident: A single incident may also amount to sexual harassment.

3.3.4 Power relationship: Sexual harassment incidents may involve a power relationship, i.e., the powerful harasses the weak. It is also possible for a person weaker in power to harass a more powerful person, e.g., a service user harasses an agency worker; or harassment between agency workers and peers. Under such circumstances, the act may also amount to unlawful sexual harassment, which will be addressed and properly handled by the Agency.

3.4 Examples of Potential Sexual Harassment:

3.4.1 Unwelcome sexual advances: e.g., persistent requests for dates despite being repeatedly rejected, leering or lewd gestures, touching, grabbing or deliberately brushing up against another person;

3.4.2 Unwelcome requests for sexual favours: e.g., implicit suggestions that sexual co-operation or the toleration of sexual advances can lead to certain benefits for a person;

3.4.3 Unwelcome verbal, non-verbal or physical conduct of a sexual nature, including that engaged through spoken words, emails, letters, phone calls, or the like: e.g., sexually derogatory or stereotypical remarks, repeated questions regarding a person's sex life;

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- 3.4.4 Conduct of a sexual nature that creates a hostile or intimidating environment: e.g., sexual or obscene jokes around the workplace, or displaying sexist or other sexually offensive pictures or posters;
 - 3.4.5 Sexual harassment does not have to be intentional or aimed at any particular subject and may be explicit or implicit. Sexual harassment may occur between persons of the same sex or opposite sex; and
 - 3.4.6 Unwelcome behaviour needs not to be repeated or continuous. A single incident can also amount to sexual harassment.
 - 3.4.7 The above examples are taken from the Equal Opportunities Commission (EOC) website. In addition to sexual harassment, some conduct in the above examples may constitute criminal offences.
4. Rights of Victim and Various Actions to be taken
 - 4.1 Every person has a right to lodge a complaint against sexual harassment.
 - 4.2 When a person is sexually harassed, he/she may take the following actions:
 - 4.2.1 Speak up at the time. Tell the harasser that his/her act is unwelcome and should be stopped immediately.
 - 4.2.2 Keep a written record of the incident, including the date, time, location, witness(es) and nature (what the harasser has said or done) and his/her own response.
 - 4.2.3 Tell someone he/she trusts and ask for emotional support and advice.
 - 4.2.4 Lodge a formal or informal complaint with the personnel in charge of handling sexual harassment within the Agency. An informal complaint can be made verbally to let the parties concerned understand the issue from a different perspective in a communicative approach, and to settle the dispute. A formal complaint is normally made in written form and should be formally investigated in accordance with the general complaint handling procedures. The process and findings of the investigation (including disciplinary or other appropriate actions, if any) should be properly recorded, with recommendations. If the complainant dissatisfies with the outcome of the informal complaint, he/she can lodge a formal complaint.
 - 4.2.5 Before deciding to file a complaint at the EOC or not, one may call the EOC's Anti-Sexual Harassment Hotline at 2106 2222 to seek information about or assistance on sexual harassment, including definition of sexual harassment, relevant legal provisions, complaint procedures and other community resources (if necessary).
 - 4.2.6 The relevant person may also lodge a complaint with the EOC and request investigation or conciliation. In case conciliation fails, the complainant may seek legal assistance from the EOC. EOC Online Complaint Form can be found at the EOC website: <https://www.eoc.org.hk/en/Form/Index/2>.
 - 4.2.7 One may consult a lawyer, report to the Police (if criminal element is involved) or file a civil lawsuit in the District Court.
 - 4.2.8 The complaint handling procedure of the agency does not affect the complainant's

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right to lodge complaints with the EOC, report to the police or file a lawsuit in the District Court.

4.2.9 In the event that a sexual harassment complaint is under criminal investigation by a law enforcement agency or is the subject of criminal/civil proceedings in court, the Agency will suspend the relevant investigation and will not resume the same until upon the completion of the criminal investigation or proceedings concerned.

5. Principles of Handling Sexual Harassment Complaints

- 5.1 **Fairness:** Enquiries and complaints should be handled in a just and impartial manner to ensure that the complainant and the alleged harasser are fairly treated and both parties have chances to present their case.
- 5.2 **Confidentiality:** Assurance should be given to persons concerned that all information and records related to a sexual harassment complaint will be kept confidential and only be disclosed to relevant persons on a need-to-know basis. Under the principle of natural justice, the alleged harasser should be informed about the details of the allegation.
- 5.3 **Avoiding delay:** Complaints should be handled promptly because both the complainant and the alleged harasser are under pressure from the sexual harassment complaint case.
- 5.4 **Transparent procedures:** The Agency should incorporate the handling procedures related to sexual harassment complaints in its complaint policy/anti-sexual harassment policy and make them known to the management, staff, volunteers, members, service users and other related persons in the Agency. If a complaint involves a minor or a person with cognitive difficulties arising from disability (e.g., a person with intellectual disability or a person with dementia), the relevant rules and disciplinary actions should also be made known to the person and his/her parents.
- 5.5 **Protection for complainants and witnesses:** Complainants and witnesses should be protected against victimisation, i.e., being treated less favourably, including being retaliated (which in itself is an unlawful act of discrimination under section 9 of the SDO) because of the complaint case.
- 5.6 **Avoid conflict of interest:** If the person who handles the enquiry/complaint case is closely related to the complainant or the alleged harasser (for instance, being relatives), or the alleged harasser is the person-in-charge of handling sexual harassment complaints, the case should be handled by another person.
- 5.7 **Anonymous complaint:** Whether a complaint is anonymous or not, the Agency may need to make further inquiries or to conduct investigation. If the anonymous complaint involves a minor or a person with disability, the decision to follow up with the complaint or not should be made more carefully.
- 5.8 **Avoid further distressing the complainant:** Showing empathy to the feelings of the complainant, for instance, documenting information in a complete manner to avoid asking the complainant to keep telling the unpleasant experience again and again, respecting the complainant's preference in appointing investigators of the same sex to conduct the interview, etc. in order to ensure that the complainant would not be unnecessarily further distressed or humiliated. Complaint cases should be handled discreetly so that the other related parties would not be unnecessarily distressed.

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6. Mechanism for Handling Sexual Harassment Complaints

6.1 The Agency has set up a “Panel on Preventing and Handling Sexual Harassment Complaints” (the Panel), which is appointed by the Agency Director for a term of three years. The Panel is composed of 5 members of both genders at the position of Social Work Supervisor or above, with a certain degree of knowledge of gender equality and sexual harassment. To be specific, the Panel consists of a Chief Administrative Officer (CAO), two Social Services Coordinators (SSCs) and two Social Work Supervisors (SWS).

6.2 In case of any suspected sexual harassment, a complaint can be lodged directly with the CAO or an SSC, or reported to the SWS of the related unit. If primary inquiries show that sexual harassment is involved, the case will be referred to the Panel for follow-up. The contact details of the CAO and the SSCs are as follows:

Chief Administrative Officer	Tel: 2366 7271	Email: cao@hkcs.org.hk
Social Services Coordinator 1	Tel: 2366 7271	Email: ssca@hkcs.org.hk
Social Services Coordinator 2	Tel: 2366 7271	Email: sscb@hkcs.org.hk

6.3 If the complaint concerns the CAO or an SSC, it can be lodged directly with the Agency Director with the contact details as follows:

Tel: 2366 7271 Email: dir@hkcs.org.hk

6.4 Both informal and formal complaint handling mechanisms for sexual harassment complaints have been established. The complainant may request using the formal handling mechanism if he/she finds the informal mechanism has failed to effectively resolve the issue.

6.5 Informal handling mechanism:

6.5.1 Generally speaking, the informal complaint handling mechanism is suitable for handling relatively minor or single incidents of sexual harassment. This complaint handling mechanism focuses on resolving the conflict and stopping the act of alleged sexual harassment. It does not involve an investigation. Sometimes, the alleged harasser admits to his/her conduct but may not realise the concerned acts amount to sexual harassment, then an investigation is not needed to prove the alleged act has been done. Sometimes, the complainant’s primary concern is to stop the acts of sexual harassment as soon as possible rather than conducting an investigation to prove something inappropriate happened and penalise the alleged harasser. The complaint may then be handled informally, subject to the consent of the complainant.

6.5.2 The informal mechanism may include the complainant seeking the advice of the designated persons for handling sexual harassment complaints and then dealing with the situation himself or herself. The complainant may also ask the designated persons for handling sexual harassment complaints to speak to the other party for

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them. The person-in-charge of complaint handling may talk to the other party about the matter, ask the other party to stop doing the act, and reaffirm the Agency's policy on zero-tolerance of sexual harassment.

6.5.3 If the complainant or alleged harasser is underage, having intellectual or other disability, or experiencing communication difficulties (for example, because of the language or dialect used by the relevant person), the informal mechanism should not be used unless with the consent of a parent/guardian/family member/carer of the person concerned, so as to safeguard his/her rights.

6.5.4 The informal complaint handling mechanism focuses on resolving the conflict and stopping possible conduct of sexual harassment, instead of carrying out an investigation. Under this mechanism:

- (1) The complainant may seek the advice of Panel members as soon as possible to decide whether to proceed with the informal mechanism.
- (2) Upon receipt of a complaint, the CAO or the SSC concerned will notify the Agency Director, who will then assign a member of the Panel to handle the complaint.
- (3) Within three working days of receipt of the complaint, the CAO or the SSC concerned will acknowledge receipt in writing or by email to the complainant and notifies him/her of the contact details of the Panel member.
- (4) The complainant may also ask the Panel member concerned to speak to the other party for him/her, including to conduct mediation.
- (5) Subject to the consent of both the complainant and the respondent, the Panel member concerned may meet both parties individually to understand their concerns and assist in resolving the matter by means of mediation.
 - (i) Neither the complainant nor the respondent will forfeit any legal rights by participating in mediation. The complainant may continue to exercise his/her rights if no settlement is not reached.
 - (ii) If a settlement is reached, both parties may enter into a mutually agreed and signed agreement of mediation with the terms of the settlement.
 - (iii) Either party may terminate the mediation at any time during the process.
- (6) All follow-up work under the informal resolution mechanism should be completed within 45 working days of receipt of the complaint. A report will then be submitted to the Agency Director for review and signing, before it is filed with the Administration Department. The time limit may be extended by the Panel member for good cause, subject to mutual consent of both parties.
- (7) The complainant may at any time make a request in writing to the CAO, an SSC or the Panel member concerned to initiate an official investigation of the incident through the formal complaint handling mechanism.

6.6 Formal handling mechanism:

6.6.1 The formal handling mechanism is followed for more serious or repetitive sexual harassment complaints, or when sexual harassment continues or the dispute between the two parties cannot be resolved using the informal mechanism.

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6.6.2 The formal mechanism involves investigation. The complainant will be formally interviewed. The alleged harasser will be informed about the complaint and be given the opportunity to respond to the allegation. Witnesses, if any, may also be interviewed. It also involves making a finding on the balance of probabilities, i.e., whether it is more likely than not that sexual harassment has occurred.

6.6.3 Investigation:

- (1) If a person suspects sexual harassment, he/she may lodge a complaint in writing with the CAO or an SSC. If the complaint is made verbally, the Administration Department may assist in making a written record, which must be signed and acknowledged by the complainant. Where necessary, a trusted third party may be authorised to lodge such a complaint with the CAO or an SSC.
- (2) Upon formal receipt of a complaint, the CAO or the SSC concerned will notify the Agency Director, who will then carry out a comprehensive and neutral investigation. Within three working days of receipt of the complaint, the CAO or the SSC concerned will acknowledge receipt in writing to the complainant. The Agency Director will select three members from the Panel who are not from the related unit to form an investigation panel (IP) to investigate the complaint. The IP will consist of members of both genders, with one member as the convenor (the IP Convenor).
- (3) In exceptional circumstances, the IP Convenor may, through the Agency Director, invite another SWS from outside the Panel to participate in the investigation, so as to ensure the process is fair and impartial. If the complaint involves the Agency Director, the CAO or an SSC, then the Agency Executive Committee should appoint other investigators as appropriate.
- (4) The investigation arrangements are as follows:
 - (i) The IP meets with the complainant to learn about the details of the incident.
 - (ii) The IP meets with the respondent and informs him/her of the complaint and gives him/her an opportunity to respond to the allegation.
 - (iii) The IP meets with any persons concerned on an individual and confidential basis. A person concerned should attend in person and the interviews will be recorded and kept confidential.
 - (iv) A person attending an interview may be accompanied by his/her support person if necessary. As an interview is not a legal proceeding, the accompanying person should not be the interviewee's legal representative. If accompaniment is required, the interviewee should make an oral or written request in advance and provide the reasons, the name of the accompanying person and relevant information for consideration by the IP, which may make a final decision on the request.
 - (v) If the interviewee is underage, having intellectual or other disability, or experiencing communication difficulties (for example, because of the language or dialect used by the relevant person), he/she must be accompanied by a parent/guardian/family member/carer to attend the

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relevant interview so as to safeguard his/her rights.

- (vi) The parties involved may submit relevant documents and/or any relevant information for consideration by the IP, which will interview the parties for clarification as necessary.
 - (vii) All oral statements or other forms of information provided to the IP will be recorded upon confirmation by the data providers.
 - (viii) The IP may request an interview with the persons involved during working hours, whether or not they are staff members of the Agency. Any refusal to attend an interview with the IP will also be recorded.
 - (ix) If the IP identifies any criminal elements upon receiving a complaint or during an investigation, the complainant should be informed of his/her right to report the matter to the police. Once the complaint has been referred to the police, the investigation should be suspended and the IP Convenor should notify the Agency Director immediately. If the proceedings cannot continue, are discontinued or are concluded, the IP may resume the investigation process.
 - (x) If the complainant opts for mediation in the process and a settlement is eventually reached, both parties may enter into a mutually agreed and signed agreement of mediation with the terms of the settlement.
- (5) Investigation report and findings
- (i) The IP should complete the investigation within 60 working days. The IP Convenor will then submit an investigation report to the Agency Director for review and confirmation as to whether the complaint is substantiated. The investigation report should include the followings:
 - (a) The issues involved in the complaint and the complainant's allegation.
 - (b) The investigation process;
 - (c) The evidence cited in support of the allegation and the responses of the persons concerned.
 - (d) The investigation results;
 - (e) A recommendation as to whether the complaint is substantiated; and
 - (f) A proposed action plan.
 - (ii) After the IP Convenor has submitted the investigation report and findings to the Agency Director and obtained the confirmation signature, the IP will meet with both parties to explain the findings and to conduct mediation, together with follow-up actions as necessary (e.g., immediate/prompt follow-up in some cases of sexual harassment). Within 15 working days of receipt of the signed investigation report, the IP Convenor will notify the complainant and the respondent in writing of the investigation result and the relevant follow-up actions.

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(6) Appeal

- (i) If the matter is not resolved or if either party is dissatisfied with the investigation results, then an appeal may be filed with the Agency Director within 15 working days, together with the grounds of appeal and new evidence (if any).
- (ii) The Agency Director will decide within 15 working days whether to accept the appeal upon the receipt thereof.
- (iii) If the appeal is accepted, the Agency Director will set up an appeal panel (AP) consisting of three members at the level of SWS or above or else appointed by the Agency Director, and the AP members should never have been involved in the case. The AP should review the investigation report and consider the appellant's written arguments and may conduct an interview to hear the appellant's views. If necessary, the AP may also interview relevant persons and examine new evidence.
- (iv) In exceptional circumstances, the AP Convenor may, through the Agency Director, invite a member of the Agency Executive Committee to participate in the investigation, so as to ensure the process is fair and impartial. If the appeal involves the Agency Director, the CAO or an SSC, then the Agency Executive Committee should appoint other investigators as appropriate.
- (v) The AP should complete the investigation and prepare an appeal investigation report within 60 working days, together with necessary follow-up actions (e.g., immediate/prompt follow-up in some cases of sexual harassment). The report will be submitted to the Agency Director for review and confirmation as to whether the complaint is substantiated. The decision of the Agency Director on the appeal is final. Within 15 working days of receipt of the appeal investigation report, the appellant and the respondent will be notified in writing of the Agency Director's decision on the appeal.
- (vi) They will also be notified if the appeal is rejected. In such a case, related follow-up actions will be taken in accordance with the original decision.

7. Disciplinary/ Follow-up Actions

- 7.1 The form of possible disciplinary/follow-up actions by the Agency for the sexual harassment will be recommended by the IP. The final decision will be made and actions will be taken after the Agency Director has substantiated the complaint.
- 7.2 If it is established that the sexual harasser is a current employee of the Agency, then the Agency may take disciplinary actions against him/her for misconduct, e.g., verbal warning, written warning, counselling/anti-sexual harassment training, suspension, summary dismissal, request for written apology to the victim, etc.
- 7.3 If it is established that the sexual harasser is a service user/volunteer, then the Agency will take appropriate actions to protect its staff and other service users, e.g., expulsion from membership, immediate cessation of access to services, and request for staying

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away from the service venue.

- 7.4 If it is established that the sexual harasser is a contract service provider or an agent thereof, then the Agency will take appropriate actions to protect its staff and other service users, e.g., immediate termination of contract, and no more cooperation with the service provider or person concerned.
- 7.5 If the incident may be criminally related, the Agency will consult the complainant and consider reporting the incident to the Police.

8. Measures to Prevent Sexual Harassment

- 8.1 Promulgation of policy: Unit heads will promulgate the anti-sexual harassment policy to all relevant persons of the Agency on a regular basis. The policy should be distributed and explained to all existing and new employees, members, volunteers, contract service providers, etc.
- 8.2 Accessible information: The Administration Department should upload the related policy to the Agency intranet and/or internet websites so that all persons can have access to the policy at any time. Unit heads should post notices at conspicuous places within their units to inform all relevant persons of the policy, the way to get a copy of it, and the channels to lodge a complaint. Unit heads should also inform contract service providers and the groups/persons they engaged that the Agency has zero-tolerance of any sexual harassment acts and provide them with the relevant information. If it is established that the sexual harasser is a contract service provider or an agent thereof, then the Agency will take appropriate actions to protect its staff and other service users, e.g., immediate termination of contract, and no more cooperation with the service provider or person concerned.
- 8.3 Regular review: This policy and the related measures will be reviewed from time to time or else every three years at the SWS meeting as necessary. On top of the regular reviews, the SSCs will review the policy and measures after the investigation of a complaint is completed to see if any revisions are needed to effectively prevent sexual harassment.
- 8.4 Regular training: Central working groups of the Agency (Staff Training and Development Working Group / Risk Management Working Group) organise training on anti-sexual harassment for staff members on a regular basis, together with training for unit heads on handling sexual harassment complaints. Units also organise meetings and lectures and distributes information on a regular basis, to educate employees, members, volunteers and other persons concerned on gender equality, respecting others and to enhance awareness on the prevention of sexual harassment. Arrangements are also made for relevant persons to receive training on how to handle sexual harassment complaints.
- 8.5 Elimination of offensive articles or information: Unit heads should make regular inspections and make sure all articles that may possibly lead to sexual harassment are cleared and should prevent any improper use of technology and social media in the agency, in order to prevent sexual harassment.
- 8.6 The Sexual Conviction Record Check mechanism: The Agency has required all prospective employees, regardless of the gender, who will engage in work relating to minors and/or mentally incapacitated persons to apply for the Sexual Conviction Record

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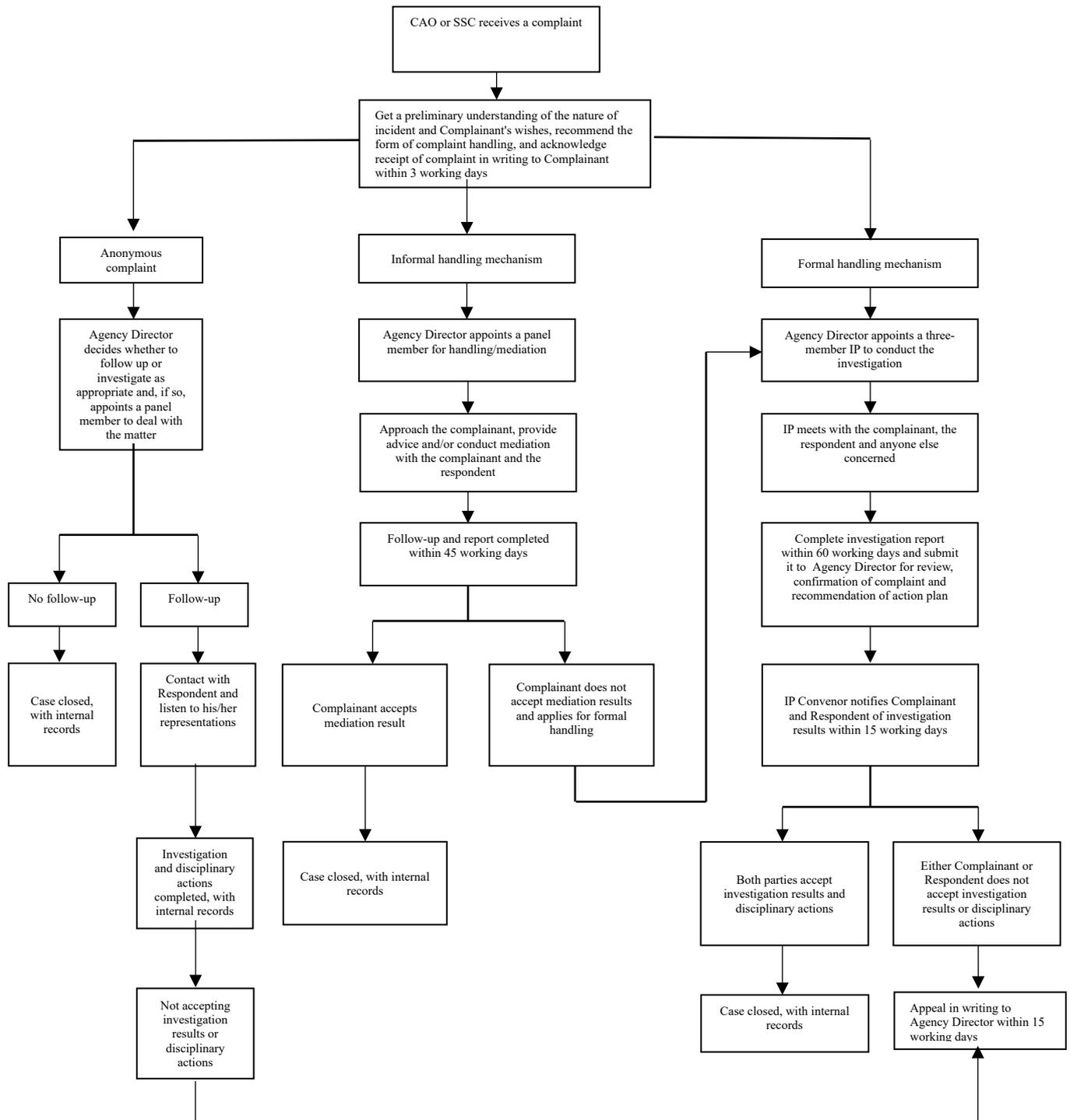
Check (SCRC) to make sure they do not have any criminal conviction records in the specified list of sexual offences. In case a worker is a self-employed person, if he/she provides services relating to minors and/or mentally incapacitated persons for the Agency, the unit head concerned may also require the worker to undergo SCRC.

Reference materials:

Equal Opportunities Commission - Anti-Sexual Harassment Resources

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Flowchart for Handling Sexual Harassment Complaints



Complainant may seek assistance from the following agencies at any time

- Report the case to the Police
- Lodge a complaint with the EOC