中國香港劍道協會有限公司
THE KENDO ASSOCIATION OF HONG KONG, CHINA LIMITED

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GUIDELINES AND PROCEDURES ON PREVENTION OF SEXUAL HARASSMENT, BULLYING AND ABUSE

Objective: *To establish a sport, competition and working environment that demonstrates respect and "zero tolerance" towards sexual harassment, bullying and abuse, consistent with article 78 of Part B of the Articles of Association ("AOA") and the Sex Discrimination Ordinance (Cap. 480) ("SDO").*

This document applies to all Executive Committee Members, Senate Members, members of any committee or sub-committee of the Executive Committee, and to staff, coaches, referees, athletes and members of the Kendo Association of Hong Kong, China Limited ("HKKA"), irrespective of the terms on which they are engaged (including short-term, part-time or voluntary capacities), and to every other person taking part in HKKA's business, activities, competitions, matches or events.

Note on legitimate kendo practice: Nothing in this document restricts physical contact, strikes, or rigorous training conducted in good faith in accordance with the rules and etiquette of kendo, applicable safety standards and accepted instructional practice. This document addresses conduct that goes beyond what is reasonably incidental to the proper teaching, practice and competition of kendo as a martial art.

1. Definitions

1.1 Sexual harassment

Sexual harassment is discriminatory and unlawful. Section 2(5) of the SDO provides that sexual harassment occurs where a person:

(a) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to another person, or 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 the other person would be offended, humiliated or intimidated; or

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

1.2 Sexual harassment covers a wide range of situations:

(a) Regardless of gender: sexual harassment may occur to any person, regardless of gender, and applies equally to harassment between persons of the same sex.

(b) Intention is irrelevant: even if an act is not intended as harassment, or is of a playful nature, it may still amount to sexual harassment if it falls within the definition.

(c) Single incident: a single incident may amount to sexual harassment.

(d) Power relationship: although sexual harassment often involves a more powerful person harassing a less powerful person, it is also possible for the reverse to occur (e.g. an employee harassing an employer, or a junior member harassing a senior member).

1.3 Examples of sexual harassment include (without limitation): unwelcome physical contact (e.g. hugging, kissing or touching); comments with sexual innuendo, or suggestive or insulting sounds; and displaying sexually obscene or suggestive photographs or literature.

1.4 Bullying, intimidation, violence and abuse

Consistent with article 78(1) of the AOA, this document also addresses bullying, intimidation, verbal abuse and any form of violence or physical abuse, including the application of force which is excessive, dangerous, or intended to injure, humiliate or intimidate, or which otherwise goes beyond what is reasonably incidental to the proper teaching, practice and competition of kendo, and any abuse of a position of authority, seniority or trust (whether as instructor, coach, examiner, official or senior grade) against any other person.

1.5 Examples of bullying, intimidation or abuse include (without limitation):

(a) repeated humiliation, intimidation, or degrading remarks directed at a trainee, athlete or junior member, whether in person, in writing, or by electronic means;

(b) the use of physical force in training or correction that is excessive, dangerous, or intended to injure, humiliate or intimidate, going beyond what is reasonably incidental to the proper teaching, practice and competition of kendo, its rules, etiquette and accepted instructional practice;

(c) punishing a genuine mistake, or a failure to perform to a particular standard, with disproportionate physical or verbal punishment;

(d) using a position of authority, seniority (including dan grade) or trust as an instructor, coach, examiner, official, or senior grade to coerce, intimidate, or demand compliance from another person through fear rather than legitimate instruction;

(e) persistent, unreasonable criticism, exclusion, or undermining of a person's standing within the HKKA that is not a legitimate exercise of instructional or organisational authority; and

(f) cyberbullying, being the use of social media, messaging platforms or other electronic means to publicly humiliate, ridicule or demean a person, to repeatedly send hostile or demeaning messages, or to organise, incite or apply peer pressure on others to exclude, intimidate or bully a person.

2. Principles for Handling Concerns

2.1 A concern relating to sexual harassment, bullying or abuse should be handled in accordance with the HKKA Guidelines and Procedures on Handling of Complaints and the following principles:

(a) Fairness: enquiries should be handled in a just and impartial manner, giving both parties a chance to present their case.

(b) Confidentiality: information relating to a complaint should be kept confidential and disclosed only to those who need to know it to handle the case, consistent with the confidentiality provisions of the HKKA Guidelines and Procedures on Handling of Complaints.

(c) Promptness: complaints should be handled promptly, as both the complainant and the alleged harasser are under pressure.

(d) Transparency: the handling procedure is set out in the HKKA Guidelines and Procedures on Handling of Complaints and made known to all persons within the scope of this document.

(e) Protection for complainants and witnesses: complainants and witnesses should be protected against victimisation, including retaliation. Under section 9 of the SDO, victimisation (treating a person less favourably after they have made a complaint or acted as a witness) is itself unlawful.

(f) Avoiding conflict of interest: any person with an actual conflict of interest in a complaint shall declare it and shall not take part in handling that complaint.

(g) Discretion: empathy should be shown to the complainant, for example by avoiding requiring the complainant to repeat their account unnecessarily, and by appointing an investigator of the same sex to interview the complainant, where practicable and appropriate.

3. Raising a Concern

3.1 A person who believes they have been the victim of sexual harassment, bullying or abuse should take action promptly. Ignoring the conduct may allow the other person to believe it is condoned, and delay may make investigation more difficult. The HKKA will not tolerate any person being penalised for lodging a complaint in good faith.

3.2 A person who is sexually harassed, bullied or subjected to abuse may: speak up at the time and ask that the conduct stop; keep a written record of the incident(s), including dates, times, locations, witnesses and what was said or done; seek support from a trusted person; and lodge a complaint with the HKKA in accordance with the HKKA Guidelines and Procedures on Handling of Complaints.

3.3 Where conduct amounts to sexual harassment, a complainant may also lodge a complaint with the Equal Opportunities Commission ("EOC") and request investigation or conciliation (telephone: 2511-8211; website: http://www.eoc.org.hk/), within 12 months of the incident (save where the EOC accepts a justifiable reason for delay), or may consult a lawyer, report to the Police, or file a civil lawsuit (a decision to commence District Court proceedings should ordinarily be made within 2 years of the incident). The HKKA's internal mechanism does not affect a person's right to take any of these steps.

3.4 This document does not itself provide a complaint-handling, investigation or appeal mechanism. All complaints of sexual harassment, bullying or abuse are made, received, investigated and determined under the HKKA Guidelines and Procedures on Handling of Complaints, and any appeal is handled under the HKKA Guidelines and Procedures on Appeals.

4. Prevention Measures

4.1 The HKKA shall promulgate this document to all Executive Committee Members, Committee Members, staff, athletes, coaches and referees, and shall upload it to the HKKA's website for stakeholders' reference.

4.2 Stakeholders may refer to the International Olympic Committee's Consensus Statement on "Sexual Harassment and Abuse in Sport" and its Toolkit on "Safeguarding athletes from harassment and abuse in sport" for further guidance on prevention.

4.3 The HKKA should provide regular briefings or training to staff, in particular those who may need to handle a complaint of sexual harassment, bullying or abuse, and may collaborate

with the EOC or other relevant organisations to provide seminars or workshops on a need basis.

4.4 Before offering an appointment, the HKKA shall require a coach, and any other potential employee who will be in contact with children or mentally incapacitated persons, to provide proof of the absence of any relevant criminal conviction under the Sexual Conviction Record Check Scheme (or, for a person recruited from outside Hong Kong, equivalent proof from their previous country or region of residence). Upon appointment, such a person shall be required to sign an undertaking to comply with this document.

5. Relationship with Other Documents

Any complaint that a Relevant Person has breached this document shall be made, received, enquired into, determined and recorded in accordance with the HKKA Guidelines and Procedures on Handling of Complaints, which gives effect to article 81 of Part B of the Articles of Association. Any person who is dissatisfied with the outcome of such a complaint, or with any other decision made under this document that is capable of appeal under article 35D of Part B of the Articles of Association, may appeal in accordance with the HKKA Guidelines and Procedures on Appeals. This document does not create any separate or additional complaint-handling, investigation or appeal process.

Where conduct within the scope of this document also amounts to a criminal offence (e.g. indecent assault, or the distribution or display of indecent or obscene articles), the HKKA may refer the matter to the Police, in addition to (and without needing to await the outcome of) the process under the HKKA Guidelines and Procedures on Handling of Complaints.

Any personal data collected, used or retained in connection with this document shall be handled in accordance with the HKKA Guidelines and Procedures on Personal Data Privacy Protection. Where personal data is collected directly from an individual using a form referred to in this document, the individual shall be provided with a Personal Information Collection Statement consistent with Appendix II to the HKKA Guidelines and Procedures on Personal Data Privacy Protection.

6. Enquiries

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