



EQUAL EDUCATION CASE STUDY

1. The organisation

Equal Education is a prominent and well-respected community and membership association, founded in 2008 and based in Cape Town with several regional offices. It employs 71 staff members, and works with many volunteers. It is governed by a National Council which is elected by members at national congresses. Its founders are well known social activists and the movement is recognised as an example of effective social activism.

2. The situation

In 2011, Ms Charlotte Fischer, an EE employee, approached Mr Zackie Achmat, Chair of the Board of EE, about rumours she had heard of sexual harassment on some staff and volunteers by Mr Doron Isaacs, a co-founder of EE, saying "I said I haven't been harassed, but I've been in touch with a number of women and they had stories that were all very similar about sexual harassment in the workplace". He referred the issue to the HR subcommittee of the National Council, which was composed of non-employees who were people of stature in the volunteer sector. The chair of this subcommittee later stated: "The fact is that unequivocal evidence was provided that the supposed complainants did not wish to lodge a complaint, and had no complaint to make. Some expressed dismay that people were complaining on their behalf. Had any complaint been made we would have constituted a disciplinary investigation chaired by someone outside the organisation, but it's not possible to run a disciplinary investigation of this nature without a complainant or evidence of wrongdoing. We found no evidence of sexual harassment, and no complainants came forward".

Mr Isaacs, by his own admission, did form romantic and sometimes sexual relationships with several people over the years, sometimes with people who were involved with EE.

A new leadership of EE was introduced some years later and the idea was to create a new culture within the organisation. A Disciplinary Code was introduced in 2013 and a Harassment Policy in 2016. However, in 2018, two cases of sexual harassment misconduct by senior managers in the organisation were formally investigated and processed. In one case, an independent enquiry was set up, the senior manager resigned, but agreed to cooperate with the enquiry. Some difficulties were experienced in processing the case because the complaint was against the General Secretary, who served on the National Council, the Chair of the National Council was a member of staff, other members of staff were on the National Council and there was an apparent conflict

of interest.¹ The independent enquiry did not hear evidence from one of the two complainants because she insisted on anonymity and would not give evidence. The other complainant gave evidence in written statements and oral evidence. No cross examination was carried out. The panel found that the events outlined by the second complainant had taken place. As a leader of the organisation, Motsepe should have known that his behaviour was inappropriate. Nevertheless, the Panel “did not find that his behaviour, albeit inappropriate, was sufficiently persistent in these circumstances to fall within the definition of sexual harassment.” EE in a statement said: “The distinction drawn by the Panel between inappropriate conduct and sexual harassment is not fully explained in the Report. This may be distressing and even counter-intuitive to understand and we will consult with the panel as they have offered, to seek clarity. The Panel made observations about Motsepe’s leadership style which staff experienced as sexist, harsh and intimidating. We accept that the way the leaders and senior staff members of our movement behave on a daily basis, in their ordinary interactions with staff and with each other, has a direct impact on the organisational culture and the experiences of staff. We commit to reviewing the current structures and policies of EE and to holding all of our leaders, across the movement, men and women, accountable for their conduct.”

In the other case, the senior manager resigned, admitting to “partial wrongdoing” after being suspended, and the organisation proceeded to a full investigation to establish the facts of the matter.²

The leadership of EE was disturbed and said in their statement: “These events have forced us to reflect deeply on how power, patriarchy and consent operate within our movement. We are confronting these difficult truths, and we are committed to understanding and changing the organisational practices that have led to silencing women and marginalised people in our organisation.

We recognise that power dynamics in society are skewed against women, among others, and that these dynamics, at times, play out in enquiries such as these, making them imperfect tools.

In our own lessons on these processes, we are grappling with what a fair procedure means for complainants who want to remain anonymous or who do not want their experiences to be put to the accused. In these circumstances formal enquiries are limited in their ability to make findings and to hold those accused of wrongdoing accountable for their behaviour.”

3. A follow-up caused further controversy

The aftermath of these cases prompted senior managers of EE to approach the National Council to re-open the 2011 case against Mr Isaacs because they felt that the HR subcommittee was not independent. The National Council established an independent enquiry with terms of reference as: “To investigate any allegations of sexual harassment and similar misconduct under the Constitution, Disciplinary Code, the Manual, and any other applicable policy or instrument of EE, against Isaacs during his tenure as a member and officer bearer of EE during the period from 1 January 2008 until his resignation on 18 May 2018, including:

¹ <https://equaleducation.org.za/2018/12/20/4955/>

² <https://mg.co.za/article/2018-05-22-close-friends-of-accused-ran-equal-educations-sexual-harassment-investigation/>

12.1.1. the allegations regarding an incident in 2009 as reported in the Mail & Guardian on 18 May 2018;

12.1.2. any other specific complaints of sexual harassment or related misconduct, including in respect of otherwise consensual relationships, within this period received by the Panel in terms of these Terms of Reference;

12.1.3. whether Isaacs or any other member, employee, or office bearer, including Zackie Achmat, silenced or intimidated any potential complainants against Isaacs;

12.2. To review the process and findings of the 2011 investigation into Isaacs' conduct by the then EE Board and the Human Resources Subcommittee. The Panel shall evaluate the merits of its findings and the process that it followed, including considering whether any of the members of the Subcommittee was subject to a conflict of interests.

At the conclusion of its inquiry, the Panel must compile a detailed written report, and a summary of its report. The detailed written report, should amongst other things, contain:

20.1. its findings arising from the investigation;

20.2. its recommendations in relation to action to be taken, if any, in respect of Isaacs and any other member, employee or office bearer of EE;

20.3. its recommendations, if any, regarding EE's policies, governance systems and practices in relation to the matters covered by these Terms of Reference;

20.4. its recommendations that EE take further action in respect of any other issue that falls outside these Terms of Reference."

4. The findings

The independent enquiry of 3 people, chaired by retired judge Kathleen Satchwell, issued its report in December 2018, but only 2 of the 3 panellists signed the report, the third member, Professor Rashida Manjoo, issued her own report a bit later. The main report found that:

- there had been no wrong-doing on the part of Mr Isaacs in relation to the original 2011 issue,
- there were no complaints or evidence submitted in relation to any other wrong-doing by Mr Isaacs,
- the 2011 enquiry had been properly conducted and its findings were fair;
- "this Panel makes no specific recommendations to Equal Education as an organization on the manner in which it should attempt to ensure a culture in which the dignity of all employees and persons associated with Equal Education receive proper acknowledgment and respect".³

The majority report became contentious, because, although 19 women had, through the Women's Legal Centre, approached the enquiry to make complaints, the panel had not found a suitable means to admit their evidence as they insisted on complete anonymity from Mr Isaacs. In the absence of any evidence, therefore, the panel found as above.

³ <https://equaleducation.org.za/2018/11/28/update-on-independent-satchwell-inquiry/>

The minority report of Professor Manjoo lamented this inability to admit the evidence of the 19 women and she felt that this had prevented the panel from assisting EE with formulating a way forward to deal with the various organisational issues that were raised in the complaints. She felt that the terms of reference should be criticised “for not ‘being explicitly reflective of an awareness of the nature of sexual harassment proceedings and the need to be victim-centred.’ An appropriate approach would include addressing issues of access, responsiveness, fear, stereotyping of victims, the stigma attached to complainants and the need for confidentiality and anonymity. As noted in Satchwell/Langa Report, the Panel used its discretionary powers in an attempt to make provisions to address some of these issues.”⁴ However, she felt that during the enquiry, the approach shifted “due to ‘subsequent overly legalistic processes’”. The WLC “conveyed to the Panel that none of the complainants expected the Panel to provide justice for them within the formal legal understanding of accountability findings, penalties etc. Instead the need was for a larger transformative justice process that allowed one to be seen and heard in a safe and responsive space. This could then possibly lead to substantive discussions on the issues raised.” Professor Manjoo felt that the complaints submitted “highlight the organisational culture that allowed for certain patterns of conduct linked to sexual harassment, intimidation, bullying, impunity and the silencing of women” and she “lamented that the Panel fell into the trap of adopting an approach that is expected in an adversarial process. An inquisitorial process could have led to the eliciting of prima facie evidence of wrongdoing by individuals and allowed for the investigation of broader systemic issues around power, privilege and the patriarchy”. She also noted “that the changes in the procedures of the Panel, as they related to what could be admitted as evidence, raised concerns about the uncertainty the complainants faced after they had involved themselves in the investigative process. This uncertainty resulted in the complainants not knowing the exact nature of the process they were participating in or the procedures that formed part of it. Professor Manjoo found that this ultimately impacted their ability to make informed decision with regard to their level of participation.”

Professor Manjoo finds that despite the laudable policy documents developed by EE to deal with sexual offences, concerns still remain on a number of issues. Including, amongst others, allegations of sexual offences, cover-up, silencing, intimidations and importantly the need for the organisation to review its practices.

Consequently, her recommendations were:

“52.1 The need remains for EE to engage in an internal transformative justice process that is about complainants being seen and heard in a safe and responsive space, which could possible lead to substantive discussions about organisational culture and practices.

52.2 As part of a reflective and educative process on victim-centred approaches in an enquiry, EE is encouraged to engage with the WLC submissions on this aspect.

52.3 EE needs to initiate a process of dialogue to engage with the 19 complainants and their legal representative, in order to fully understand the scope of the allegations made in the statements. This is in line with the transformative approach that the complainants seek, in their quest for justice, and also in line with EE’s commitment to treat all complainants with respect and dignity.

52.4 EE needs to undertake an audit to establish whether their policies are sufficient, whether there is substantive knowledge of such policies, whether implementation measures are in place and also to assess whether they work in practice.

⁴ <https://equaleducation.org.za/wp-content/uploads/2018/12/Summary-of-Rashida-Manjoo-Report.pdf>

52.5 EE may wish to review its existing policy in respect of the process for preliminary investigations, and also reflect on the composition of such panels as there must be certainty in respect of procedures in place prior to the commencement of an enquiry.

52.6 EE bears the responsibility to understand how the organisational culture contributed to allegations of sexual harassment, intimidation, bullying and silencing.

5. Media outrage

At various stages in this story, various media became involved, publishing various stories based on approaches to them from people (“insiders”) who gave various versions of stories, which often put a different light on what might or might not have been going on. In some cases, the stories published differed from evidence given to the enquiries. EE did not reflect well in most of the stories.

6. The outcome for the organisation

The National Council of EE, faced with these two reports, issued a lengthy reflection⁵ on learning points and their commitment to a way forward. Some of these included:

“One of the lessons is that even if there was no clear complainant before us in 2011, it should have been an opportunity to deepen the knowledge and understanding of all employees and members on issues of inequity, sexual harassment and the channels through which complaints can be made. Training on the issue and processes should have followed. Further, we agree that the lines between personal and political – especially in respect of our leadership - are blurred and that we expect greater scrutiny of our leaders and must hold them to a higher standard. Sensitive, kind and encouraging language should also be used when employees or members raise any concerns in relation to the conduct of our leaders, with zero tolerance for any reprisals. This is all highly relevant to EE in 2018, with the Satchwell/Langa Report even stating that “a spirit of organisational justice explored and established in 2011 may have assisted in avoiding this present 2018 organisational debacle”.

“We are committed to the following:

1. Engaging in an internal transformative justice process that includes substantive discussions about organisational culture and practices;
2. Engaging with the WLC (if they are willing) and the complainants (if possible) in line with their commitment to help us, and also in line with our commitment to treat all complainants with respect and dignity;
3. Undertaking an audit to establish whether our internal policies are sufficient, whether there is substantive knowledge of such policies, whether implementation measures are in place and also to assess whether they work in practice (including exploring external anonymous whistleblowing reporting structures);
4. Conducting regular cultural surveys that include issues pertaining to sexual harassment; and

⁵ https://equaleducation.org.za/wp-content/uploads/2018/12/EE-Response_-Conclusion-of-Satchwell-Enquiry-.pdf

5. Providing regular training to all members and staff on our policies and procedures in relation to sexual harassment, including the development of educational tools and resources.”

“The Equal Education of 2018 is not the same as the Equal Education of 2011. We accept being held accountable and in fact appreciate the tough conversations taking place in the sector, because so many lessons and progressive relationships have come from this experience.”

6. Key Learning Points

- a) Be careful with terms of reference of investigating bodies/persons. Allow them enough flexibility to adopt the victim centred approach while also protecting the rights of alleged perpetrators, witnesses and other stakeholders. Where issues of organisational culture (such as perceptions of misuse of power, favouritism etc) could arise, ensure that investigators are mandated to address these and present recommendations.
- b) Awareness campaigns should be held regularly, and include safe spaces where employees can raise questions and concerns.
- c) Awareness campaigns should address, amongst other matters, the issues of:
 - i. rumours
 - ii. the reality for leaders and employees that personal lives and professional lives do intertwine and can affect perceptions and, ultimately, organisational culture. For example, if a person is known to have multiple romantic/sexual relationships outside work, employees may be more willing to believe that workplace improprieties are occurring.
 - iii. Laying to rest misunderstandings about previous complaints/grievances/disciplinary actions/mutual separation agreements etc.
- d) It is important to engage with media reporters to always present the facts as the organisation knows them, otherwise the story will run with only one side of the story.

This case study was written by Dr Penny Abbott and Dr Angela du Plessis