

## Sexual Misconduct Procedure (“Procedure”)<sup>1</sup>

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### 1. Introduction and definitions

- 1.1. Sexual misconduct is a disciplinary offence under paragraph 2(j) of [Regulation XVII \(Conduct and Discipline of Students\)](#) (the “Regulation”).
- 1.2. For the purposes of this Procedure, the University views sexual misconduct as sexual violence and harassment, which can include a range of unwanted physical and non-physical sexual behaviours affecting members of the University community. Sexual misconduct can be perpetrated by anyone. Non-consensual sexual activity which may amount to a prosecutable criminal offence is included in this definition. Appendix One of this Procedure provides a non-exhaustive list of what the University may view as sexual misconduct.
- 1.3. Reporting Party – the person who discloses and then formally reports an allegation of sexual misconduct against another student.
- 1.4. Respondent – the person who is the subject of a formal report alleging they have committed sexual misconduct.

### 2. General principles

- 2.1. The University does not act as the police or a court of law. The University’s disciplinary processes are designed to act in response to the types of misconduct outlined under section 2 of the Regulation. Taking disciplinary action is at the sole discretion of the University.
- 2.2. The investigative ability of the University is not the same as through criminal proceedings e.g. forensic analysis and medical examinations are not available to the University.
- 2.3. The Regulation requires the University to reach conclusions on the ‘balance of probabilities’ and not the criminal standard of ‘beyond reasonable doubt’.
- 2.4. The University can only take the actions available to it under the Regulation and associated procedures; where misconduct has occurred, the University can only impose the penalties it has available and which it considers proportionate. Paragraph 1.2 of the Regulation advises that the University’s student disciplinary processes apply to students

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<sup>1</sup> Any reference under this Procedure to a named person shall also be read as a reference to their delegated nominee.

registered or studying at the University, including if on a period of leave. The Regulation does not apply to the conduct of former students (except in instances of academic malpractice or research misconduct) or staff.

- 2.5. The University's disciplinary processes are conducted on a confidential, need-to-know basis.
- 2.6. A Reporting Party's disclosure or complaint will normally be considered as evidence should disciplinary action be taken and the Reporting Party may be asked to co-operate with requests for information and assistance.
- 2.7. The University is mindful of the sensitive nature of processes which involve the consideration of allegations of sexual misconduct and will take steps to ensure that all affected students are supported. If a disciplinary hearing takes place, the Reporting Party may be asked to attend or participate in the hearing as a witness. The University will, where possible, make appropriate adjustments to the University's processes to support affected students (for example, by ensuring that any direct contact during a hearing is limited where possible).
- 2.8. The University's ability to disclose details relating to the outcome of another student's disciplinary hearing is limited as a result of the duties owed to that student. Therefore, whilst the Reporting Party may be informed of any finding reached against the Respondent and of any penalties that may concern them (e.g. for there to be no contact from the Respondent), the University is unlikely to be able to provide detailed information in connection with the disciplinary process.
- 2.9. As per paragraph 3.7 of the Regulation, a student may be prevented from graduating or obtaining an award or certification whilst a case is proceeding through the disciplinary process. A request can be made to the appropriate Authorised University Officer, through whom action is being taken, for this principle to be waived. This principle does not prevent the withdrawal of an individual from the University.
- 2.10. The University will not consider Formal Reports, or counter-allegations, that are assessed of being of a vexatious nature. Vexatious may mean allegations that are malicious, made in bad faith, frivolous or deliberately false. However, the making of a Formal Report (or counter-allegation), which does not later lead to a finding against an individual, does not automatically mean the original notification was vexatious. Where vexatiousness is considered to be applicable in a case, the making of a vexatious complaint can be a disciplinary issue under the Regulation.

### **3. Initial disclosure and support**

- 3.1. At any point during their studies, a student may contact the University to disclose an experience of sexual misconduct. Disclosures can be to support services, through the mitigating circumstances processes and the Report and Support platform amongst others.
- 3.2. [Report and Support](#) is the encouraged route for a report as this will lead to a student being contacted by a specially trained Advice and Response Caseworker for practical, emotional and confidential support delivered in a trauma-informed way. A Caseworker will advise the student of internal and external reporting options, safety planning and can make referrals to other specialist services. The Reporting Party will have access to a Caseworker throughout the process set out in this Procedure.
- 3.3. A disclosure will be treated as a support matter and will not normally extend to a Formal Report against another person without the Reporting Party's agreement. However, in exceptional circumstances, Advice and Response may identify the need to take further action under this Procedure (for example, on the basis of risks to the wider University

community). Any decision such as this are guided by safeguarding and trauma-informed principles.

#### 4. Formal Report and Precautionary Measures

- 4.1. Following their disclosure, a Reporting Party will be advised of their option to make an internal Formal Report if they wish to pursue an allegation against a Respondent.
- 4.2. Where a Reporting Party indicates that they do not wish to make a Formal Report but want the University to consider less formal actions in relation to the Respondent, Advice and Response will identify what is appropriate in the circumstances (e.g. to alert them to the disclosure, look into restorative justice, discuss voluntary undertakings etc). The Respondent can, but will not be expected to, make admissions to any misconduct where this action is pursued. Records of steps taken under this paragraph will be maintained and can be relied upon if the case proceeds more formally or if similar alleged misconduct arises.
- 4.3. For Formal Reports, timely submission will be encouraged. Where there are significant delays, and reasons for them will be considered, the University may be unable to take the Formal Report through the disciplinary process.
- 4.4. A Formal Report should include a statement and any supporting materials which contain:
  - 4.4.1. The identity of the Respondent and the Reporting Party's association to them;
  - 4.4.2. The details of the allegations, such as what happened, where and when;
  - 4.4.3. Contact details of any potential witnesses (which includes individuals the Reporting Party may have already informed of the allegations) and bodies involved (e.g. the police);
  - 4.4.4. An impact statement which, where possible, is supported by evidence.
- 4.5. Formal Reports will be sent to the Director of Campus Life (or nominee) as the applicable Authorised University Officer ("**AUO**"). The Director will conduct a risk assessment of the case, noting the need to safeguard individuals, the wider community and the integrity of the case. The Director may make preliminary enquiries with other areas of University, such as the Reporting Party and Respondent's academic School, support services and Residential Life, to inform the next stages of the process.
- 4.6. It will first be considered if precautionary recommendations would be sufficient to mitigate any risk around a case. Recommendations may relate to study arrangements, facility access, accommodation arrangements, support, contact between parties and limiting disclosure of the case (e.g. online posts). If recommendations are not sufficient, or are not adhered to, consideration will be given to more formal conditions through suspension under the [Procedure for Suspending a Student](#).
- 4.7. Where there are active criminal proceedings relating to the case, the University will normally be limited to taking precautionary steps only, rather than being able to conduct its own investigation or take a case to a disciplinary panel. The University will liaise closely with the relevant police force where applicable. In such circumstances precautionary measures are likely to be arrived at through the [Procedure for Student Criminal Offences](#) and/or the [Procedure for Suspending a Student](#). Respondents will at least be expected to comply with any bail conditions and to keep the University informed of their case.
- 4.8. Where a Respondent is on a programme of study leading to professional membership, acceptance or ability to practise in a profession, they will also be subject to the [Fitness to Practise Procedure](#) (or equivalent local procedure). Where a Formal Report has been made about a Respondent, the Respondent's local academic School will be notified and may need to consider the implications of this through the Fitness to Practise Procedure; this may include notifying the School's Concern Review Panel and considering

precautionary measures or temporary suspension of studies (if not already implemented through the paragraphs above). It will normally be the case that Formal Reports of alleged sexual misconduct will continue through the Sexual Misconduct Procedure to a point of conclusion, with the end conclusion reported back to the relevant School.

- 4.9. In keeping with paragraph 4.6, the Director may identify reciprocal recommendations to be made to the Reporting Party and the Reporting Party will be notified accordingly.
- 4.10. Following a risk assessment, the Respondent will be advised in writing by the Director of the Formal Report and of any recommendations made or formal conditions set through the linked procedures above. Where appropriate, either before or after the written communication, a meeting may be arranged to deliver the notification verbally to support the Respondent and answer any immediate procedural questions they might have. It is likely that any recommendations or conditions will remain in place unless there are developments in the case or an individual's circumstances which lead to the conditions being reviewed, or until the conclusion of an investigation and/or disciplinary hearing.
- 4.11. During the consideration of the case, the Respondent will be allocated an independent Advice and Response Caseworker for the same level of support as the Reporting Party. The Advice and Response Caseworker will be able to discuss with them a variety of matters around the case, such as the allegations raised, procedural matters and how to access further support. A Caseworker will be available to the Respondent throughout the process outlined in this Procedure. The Respondent may opt for alternative support, such as from the [Students' Union Advice Service](#).

## **5. Investigation**

- 5.1. An independent Investigator (or Investigators) will be appointed to consider the case. This may be an internal Investigator or an externally appointed Investigator.
- 5.2. Where there are multiple Reporting Parties and/or linked counter-concerns raised by the Respondent, these can proceed through the same investigation process.
- 5.3. The Investigator will conduct an initial review of the case to determine whether the information available indicates further investigation is required or whether it is unlikely a finding could be reached against the Respondent on the balance of probabilities. In relation to the former, the case will proceed as set out below. In relation to the latter, the Investigator will confirm the outcome to the parties and advise that no further formal action will be taken; less formal action (see paragraph 4.2) may still be recommended.
- 5.4. At the commencement of the investigation, the Investigator will write to introduce themselves to the Reporting Party and Respondent, confirming the process that will be followed.
- 5.5. The Investigator will be responsible for determining the key lines of enquiry for the investigation. This will likely include an investigation meeting with both the Reporting Party and Respondent to gather their accounts. It will be for the Investigator to identify who they need to speak to, in what order and on how many occasions. Where there are clear admissions made by a Respondent, the Investigator may accept these and this may in turn reduce the level of depth needed to conclude the investigation.
- 5.6. Interviewees will normally receive 5 working days' notice of an investigation meeting. The meeting will be held online, or in person where this is necessary and can be facilitated. An interviewee is encouraged to be accompanied (normally by member of staff, fellow student, or member of the Students' Union) for the purpose of support (not representation). Notes of meetings will be taken and shared with the interviewee afterwards.

- 5.7. The primary purpose of the meeting is to gather information around the case and allow a party a full and fair opportunity to explain and present their account. It will be for the Investigator to identify appropriate questions and explore the topics they consider necessary. Intensive and detailed questioning are to be expected, though asked in a way that recognises (such as applying trauma-informed methodology) the sensitive and personal subject matter under consideration. Questions will not normally be provided ahead of meetings. Meetings will routinely allow for breaks. Consideration will also be given to reasonable adjustments if these are requested by an interviewee.
- 5.8. Ahead of meeting with the Respondent, the Investigator may share with them the key information from the Formal Report which will allow them to respond appropriately. The Investigator may hold back information that is considered particularly sensitive (e.g. medical information) or that may give the Respondent an unfair advantage in the investigation.
- 5.9. The Respondent will be permitted to submit a written statement, and supporting material, in response to the allegations raised, normally in advance of the investigation meeting. The Investigator may invite additional written submissions from the Reporting Party and the Respondent if required.
- 5.10. The Investigator may need to contact Witnesses identified by either party. It will be for the Investigator to determine whether a Witness needs to be contacted (e.g. where they present, did they receive a disclosure), and if so, how their input is best sought (e.g. in writing, at a meeting). To do so, the Investigator will need to divulge, to a Witness, details of the case under consideration but will ask them to maintain confidentiality. Witnesses will usually need to agree to be identifiable (unless an exceptional allowance of anonymity is agreed) and provide their input to be relied upon and disclosed during the disciplinary process. It will be for a Witness to decide whether they input to an investigation.
- 5.11. Where a party does not engage with the investigation, the Investigator will consider the case on the information that they have available.
- 5.12. The Investigator will review the information collected and produce a report setting out their conclusions against the applicable definitions of misconduct from the Regulation and this Procedure. The report may need to consider issues such as consent (did the Respondent have a genuine belief in consent and, if so, was this a reasonable belief to hold), capacity, recollection and trauma. Conclusions will identify whether there is a likely case to answer, based upon the standard of the balance of probabilities, and if so, what the recommended action should be:
- 5.12.1. To take no further action where, based on the information available, it is unlikely there is a case to answer. This may include continued recommendations around non-contact and support for either party.
  - 5.12.2. To support the case being addressed through less formal actions (see paragraph 4.2) but to not refer the case further through the disciplinary process;
  - 5.12.3. For the case to be referred to a Summary or University Disciplinary Panel.
- 5.13. The Investigator's report will be shared with the Director of Campus Life for them to consider the recommended action. The Director may recommend further work be done around the case before it is concluded.
- 5.14. When the investigation report is finalised, the Investigator will arrange meetings with the Reporting Party and the Respondent to advise them of the overall outcome, the next steps in the process and to check on any support needs. The meeting is not an opportunity to challenge the outcome from the investigation. After the meeting (or if one is declined) the report will be provided in confidence to the Reporting Party and the Respondent. There is no route to appeal against the outcome from the investigation, but

where a referral to a panel is made, the Respondent will have a further opportunity to state their case before a decision is made.

5.15. As indicated by the steps set out in section 5, investigations into cases of sexual misconduct will tend to be of a sizeable duration, which will only become clear as the case progresses. Investigators will keep the Reporting Party and Respondent updated on the progress of the case.

5.16. Where a Reporting Party or Respondent leaves the University during the investigation, or the Reporting Party withdraws their Formal Report, it will be at the Investigator's discretion as to whether they continue to reach their conclusions, factoring in stage of the investigation and interests of the parties. However, it may not be possible to refer case to a disciplinary Panel in these situations. The outcome will be suitably stored; the University may refer to outcomes in Respondent references or reserve the right to pursue disciplinary action if the Respondent resumes study at the University.

## **6. Referral to a disciplinary Panel**

6.1. A disciplinary Panel will be asked to consider a referral as soon as practicable based on the applicable procedure ([Procedure for Summary Disciplinary Panels](#) or the [Procedure for the University Disciplinary Panel](#)). To ensure an appropriate Panel composition, and that the hearing is of an appropriate length, allocation of cases to hearings may take some time to arrange. Parties will be kept updated through their Caseworkers.

6.2. Where a case has been referred to a disciplinary Panel, the Investigator's report and any materials collected (e.g. Formal Report) and/or generated (e.g. interview notes) through the investigation will be provided to the Panel with only essential redactions. The Respondent will receive the same materials as those available to the Panel and these will be provided with the invitation to the hearing.

6.3. The Panel will be independent of the case and will be tasked with reaching a final finding on the alleged misconduct. The Panel is not tied to the Investigator's conclusions. The Panel hearing will present the Respondent with an opportunity to respond to the Investigator's conclusions.

6.4. The Reporting Party can be asked whether they would be willing to attend a disciplinary hearing in the capacity of a Witness. This will be their choice, not a requirement. If so, the Secretary/Chair to the hearing will be informed to see if they consider the Reporting Party's attendance necessary or appropriate. A Witness is likely to be accepted for University Disciplinary Panels but may be less likely to be required at Summary Disciplinary Panels. A Reporting Party would need to be present for part of the same disciplinary hearing as the Respondent but contact between the parties would be carefully managed. Where there are external restrictions on contact, such as a Restraining Order or Non-Molestation Order, then this may prevent the involvement of the Reporting Party in the hearing.

6.5. At the conclusion of the hearing, subject to there being no objections from the Respondent or on guidance from the Information Governance Office, it is anticipated that the Reporting Party will receive a brief written letter advising them of the Panel's final decision and of any key information (e.g. penalties that affect them) that they may need to be aware. The Respondent will receive a more detailed outcome letter.

## **7. Non- student-on-student allegations**

- 7.1. The above processes will be followed in relation to student-on-student allegations. However, allegations may also involve staff and third parties, whether as the person making the allegation or the person subject to the allegation.
- 7.2. Where a Reporting Party makes an allegation against a member of staff, the report will be considered under the relevant staff procedure rather than be actioned through the Regulation. The Reporting Party will have access to specialist support from the Advice and Response Team throughout the process. Where the Reporting Party is a member of staff, then it is anticipated that the above Procedure would still be followed insofar as possible, with adaptations relevant to a staff context e.g. support from a staff Union, and consultation with People and Organisational Development.
- 7.3. A report about a Respondent could come from an individual outside the University. Individuals external to the University have no automatic right of complaint to the University and so allegations of sexual misconduct will be dealt with at the discretion of the University. The University will, however, look to treat such complaints seriously and will adopt the principles outlined in this Procedure and associated procedures, where considered reasonably necessary and practicable.

## 8. Information sharing

- 8.1. Information gathered and disclosed as part of this process will be handled sensitively and confidentially. For the University, this will mean that staff will likely receive information about the case that is proportionate to their role and involvement. The University will apply the principle of need-to-know when sharing information. It is not possible to identify everyone that may be involved in a case from the outset e.g. a disciplinary panel will only be arranged when a case has been referred, and those individuals may change as a case progresses and staff change roles.
- 8.2. To participate effectively in the process, it is expected that information of a sensitive nature will need to be shared across the student parties involved in the case e.g. to respond to an allegation. However, the same expectations of confidentiality will apply. This is not intended to restrict students from speaking to genuine supporters, such as counsellors or Student Union Advisors. Where disclosure is made inappropriately, this may be a disciplinary issue in its own right.
- 8.3. Where a student is on a programme leading to professional registration, there may be disclosure obligations on the University to the external body. Similarly, if the University is asked for a reference for a student, the University may be required to mention cases of this nature.

## 9. Document control

| Document control box      |   |
|---------------------------|---|
| Policy / Procedure title: | Sexual Misconduct Procedure (nee Procedure for Handling Allegations of Sexual Misconduct) |
| Date approved:            | May 2023 (in effect September 2023)   |
| Approving body:           | Student Conduct and Discipline Committee  |
| Version:                  | 3   |
| Supersedes:               | September 2019, 2021  |
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|  |   |
|--|---|
| Related Statutes, Ordinances, General Regulations: | <ul style="list-style-type: none"> <li>• Statute XXI (Conduct, discipline and academic progress of students)</li> <li>• Regulation XVII (Conduct and Discipline of Students)</li> <li>• Regulation XVIII (Student Complaints Procedure)</li> </ul>  |
| Equality relevance outcome:                        | High / Medium (delete as applicable)  |
| Related policies/procedures/guidance:              | <ul style="list-style-type: none"> <li>• Procedure for Student Criminal Offences</li> <li>• Procedure for Suspending a Student</li> <li>• Procedure for Summary Disciplinary Action</li> <li>• Procedure for the University Disciplinary Panel</li> <li>• Dignity at Work and Study Policy</li> </ul> |
| Policy owner:                                      | Sarah Littlejohn (Head of Campus Life)<br>( <a href="mailto:Sarah.Littlejohn@manchester.ac.uk">Sarah.Littlejohn@manchester.ac.uk</a> )  |
| Lead contact:                                      | Matthew Valentine (Advice and Response Manager)<br>( <a href="mailto:Matthew.Valentine@manchester.ac.uk">Matthew.Valentine@manchester.ac.uk</a> )   |

### Amendment history

| Version | Date     | Reason for change   |
|---------|----------|---|
| 1       | 2021     | Insertion of delegated nominee statement  |
| 2       | Feb 2023 | Process first set out in a procedure developed in 2018/19. The process required fully updating to more accurately reflect current good practice around how cases are currently handled. |
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|         |          |   |

## Appendix One

### Types of sexual misconduct (please note that this is not intended to be an exhaustive list of examples)

#### 1. Contact Offences

- 1.1 Sexual intercourse or engaging in sexual acts without consent<sup>2</sup> (sexual acts are defined as including, but not limited to, cunnilingus, fellatio, digital penetration and masturbation).
- 1.2 Attempting to engage in sexual intercourse or a sexual act without consent.
- 1.3 Kissing without consent.
- 1.4 Touching without consent (e.g. touching a person's clothes, hair or body; standing too close to a person; rubbing or brushing up against them).

#### 2. Non-contact offences

- 2.1 Sharing or creating private sexual materials (i.e. those made of an individual with the understanding that such material would not be shared) such as videos and photographs without consent.
- 2.2 Sharing or creating public sexual materials (i.e. pornographic materials that made are widely available e.g. on social media media outlets) without consent.
- 2.3 Showing sexual organs to another person, or allowing sexual organs to be seen, without that person's consent.
- 2.4 Voyeurism i.e. watching others when they are getting undressed, naked or engaged in sexual activity without consent
- 2.5 Unwanted and unsolicited contact of a sexual nature with another person.
- 2.6 Making unwanted remarks that may reasonably be perceived to be of a sexual nature (e.g. asking personal questions about sexual matters; making sexual comments about a person's body; telling sexual jokes or stories; making sexual comments or innuendo).
- 2.7 Making unwarranted and unsolicited sex-based noises to another person (e.g. catcalling, wolf-whistling, sexual grunting or moaning).
- 2.8 Active complicity in any of the above contact or non-contact offences (n.b. active complicity implies active promotion of the offence and does not cover inaction or failing to prevent an offence).

#### 3. Online or digital offences

- 3.1 Sharing or creating private sexual materials (i.e. those made of an individual with the understanding that such material would not be shared) online or in digital spaces.
- 3.2 Sharing or creating public sexual materials (i.e. pornographic materials that are made widely available) online or in digital spaces without consent
- 3.3 Showing sexual organs to another person, or allowing sexual organs to be seen, online or in digital spaces, without the person's consent.
- 3.4 Unwanted and unsolicited contact of a sexual nature with another person by email, text message, social media or in any online or digital space
- 3.5 Storing or viewing inappropriate material on University IT equipment, as covered by the University IT Services Regulations.
- 3.6 Active complicity in any of the above online or digital offences (n.b. active complicity implies active promotion of the offence and does not cover inaction or failing to prevent an offence).

#### 4. Other linked offences

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<sup>2</sup> The University adopts the legal definition of sexual consent: a person consents if s/he agrees by choice, and has the freedom and capacity to make that choice.

4.1 Intentional or negligent transmission of a sexual infection.

4.2 Plying another person's drink, food or similar item, with drugs or alcohol, which they did not consent to (i.e. spiking).