

Document Details

Document Reference	Student Discipline Regulations and Associated Policies 2020/21
Document status	Approved for publication
Document owner	Alison Mullan
Review period	2023
Date of first approval	Approved by Council 10 July 2020
Date of next review	January 2023
Version number	1 (for 2020/21)

Version control

Version	Date	Description of changes and name and job title of person responsible for making changes

Referenced policies and documents

Student Sexual Misconduct Policy

1. Policy Statement

1.1 Lancaster University is committed to:

- Providing an environment in which all members are treated with dignity, equity and respect;
- Reiterating and demonstrating that Sexual Misconduct will not be tolerated;
- Handling appropriately any allegations of Sexual Misconduct to preserve a safe environment for all members of the University community.

1.2 The University acknowledges that Sexual Misconduct can be experienced by any individual, regardless of sex, gender identity/expression, sexual orientation, relationship status, age, disability, faith, ethnicity, nationality and economic status.

1.3 The University recognises the impact of any experience of Sexual Misconduct, and acknowledges the potential detriment to all aspects of the student experience.

1.4 Sexual Misconduct will not be tolerated and is a breach of the University's Student Discipline Regulations, Section 4.2.1. The University will always take seriously any reported incidents of sexual misconduct.

1.5 The University values its partnership with the Students' Union. This partnership is crucial to preventing, tackling and responding appropriately and supportively to student-related incidents of Sexual Misconduct.

1.6 The Students' Union has a [Code of Conduct](#) for its student members, along with a procedure that is followed when there is an allegation of an alleged breach of the Code. As students are members of both the Students' Union and the University, there may be cases where it is appropriate for information to be shared between the University and the Students' Union e.g. in order that an alleged incident can be considered under both the Student Discipline Regulations and the Student Union's Code of Conduct.

2. Principles

2.1 The following set of principles underpin Lancaster University's commitment to a culture of support and respect. All members of Lancaster University have a responsibility to uphold the following principles:

- We will treat all members of our community with dignity and respect at all times. It is expected that all members of our community will share in this responsibility for creating and sustaining an environment which upholds the dignity of all.
- We will encourage a culture in which all members of our community feel empowered and confident to challenge and/or report unacceptable behaviour.
- We will work to sustain an equal and safe environment in which a culture of prevention will be promoted through close collaboration between the University and the Students' Union, including but not limited to raising awareness of the University's policy on Sexual Misconduct.

- Wherever possible, we will respect the right of the individual disclosing an experience to choose whether and how to take forward a Disclosure.
- Where an individual chooses to report an incident to the Police, the University will assist in criminal processes as required by the authorities, and will provide pastoral support to the student(s) involved. Where an individual chooses to formally Report an experience of sexual misconduct to the University, we will follow a process that is transparent and clearly communicated to the individuals involved, in a timely manner, and paying due regard to the sensitivity of the incident. We will also make every effort to minimize the number of times the student has to detail the incident(s).
- The University will alert all staff and students to this Policy, and will strive to provide training as appropriate. All staff involved in the process will be trained as appropriate to their roles and will strive to act with impartiality and sensitivity at all times.
- We believe that no student should have to deal with the impact of Sexual Misconduct alone, and will ensure that dedicated support is available, including free and accessible counselling, for all individuals who wish to make use of that support. Wellbeing and advocacy support can also be sought from the [Students' Union](#).
- We will work with relevant internal and external partners to forge positive relationships in support of our work in this area, from prevention to post-incident care.
- In addressing experiences and working with internal and external experts, the University will :
 - Learn from experience, and review and refine this Policy and the procedure set out in the Student Discipline Regulations as necessary; and
 - Undertake regular assurance activities to ensure that the University is acting in compliance with this Policy and the procedure set out in the Student Discipline Regulations; and
 - Keep up to date with national developments and sector best practice.

3. Scope

3.1 This Policy relates to any incident of Sexual Misconduct in which the Reported Party¹ is a current student of the University and an allegation of Sexual Misconduct has been made by:

- another current student of the University; or
- a member of staff²/external affiliate/associate³ of the University; or
- a person entirely external to the University, with no association or affiliation.

To be investigated, the alleged incident must have occurred during the Reported Party's time as a student of the University. Disclosures and Reports made under this Policy are not limited to University premises or the immediate geography of the University.

The University's definition of 'student' can be found within section 2 of the Student Discipline Regulations.

There may be incidents where there are multiple Reporting and/or Reported Parties. This Policy applies in such cases.

¹ As defined in section 4, the **Reported Party** is the person(s) whose behaviour it is alleged amounted to an incident of Sexual Misconduct. The **Reporting Party** is the person(s) who has been the subject of the alleged incident of Sexual Misconduct.

² Includes honorary staff and staff from other organisations on placement or visiting the University, as well as staff holding contracts of employment.

³ Any person working on campus on behalf of the University

3.2 This Policy recognises the organisational interface between Student and Education Services and Human Resources and the necessary co-operation between these two divisions for the proper support and implementation of this policy where cases involve both staff and students.

3.2.1 Where a Report of Sexual Misconduct is received in which the Reported Party is a *member of staff or external affiliate or associate of the University*, an investigation will be carried out under the 'Bullying, Harassment and Sexual Misconduct Policy – Staff Procedure'. In such cases, Human Resources is responsible for the communication of appropriate information to the Reporting Party.

3.2.2 Where an allegation of Sexual Misconduct is received in which the Reported Party is both a student and a member of staff (e.g. the Reported Party is a postgraduate student with teaching responsibilities or a Student Ambassador), the Director of Students, Education and Academic Services (or nominee) and the Director of Human Resources and Organisational Development (or nominee) will make a decision on which procedure will be used, based on factors including (but not limited to):

- the nature of the alleged offence;
- the capacity in which the Reported Party was acting when the alleged offence took place;
- whether the Reported Party's primary relationship with the University is as a member of staff or student.

In some circumstances, it may be necessary for both staff and student procedures to be followed, either in full or in part, and the University will, as appropriate, share information between Student and Education Services and Human Resources in such cases.

3.3 This Policy should be read in conjunction with other relevant policies e.g. the Lancaster University 'Safeguarding Vulnerable Groups and Individuals Policy', the 'Student Discipline Regulations', the 'Fitness to Practise Procedures' and the 'Fitness to Study Procedure'. Other policies which may be relevant are listed in the Student Discipline Regulations.

3.4 This Policy does not cover incidents of harassment which are not of a sexual nature between students, as the University has a separate policy ('Dignity in Student Life') relating to such matters.

3.5 'Sexual Misconduct' can refer to a broad spectrum of sexual behaviour. Examples of the types of behaviour that will constitute a breach of the Student Discipline Regulations are set out in section 4.1 below. Reports of such behaviour will be considered by the University under its internal disciplinary procedures, as set out in the [Student Discipline Regulations](#). Some incidents of Sexual Misconduct may also constitute a criminal offence under English law.

3.6 A list of definitions is provided below to further clarify the scope of the Policy.

4. Definitions

The definitions below have been separated into explanations of the types of behaviour captured under this Policy, clarification of the terminology used within the Policy, and associated breaches of the University's Student Discipline Regulations.

4.1 Type of Behaviour

For the purposes of this Policy, '**Sexual Misconduct**' is defined as any unwanted conduct of a sexual nature which occurred in person or in communication through any media, including online. It includes, but is not limited to, the following behaviours:

- Engaging, or attempting to engage in a sexual act with another individual without consent;
- Sexually touching another person (including through clothes) without their consent. 'Sexually touching' includes any intentional physical contact that was sexual or sexually motivated and in which the other person did not consent to being touched in this way;
- Conduct or behaviour of a sexual nature which creates (or could reasonably be considered to create) an intimidating, hostile, degrading, undermining, humiliating, or offensive environment for others including making unwanted remarks of a sexual nature;
- Indecent exposure;
- Repeatedly following another person without good reason, or repeatedly harassing them e.g. by sending unwanted communications of a sexual nature or watching/spying on a person/forcing contact through any means including social media;
- Kissing, or other acts of a sexual nature, without consent, or a change in previously agreed contraception arrangements;
- Recording and/or sharing intimate images or recordings of another person without their consent;
- Showing or sending unsolicited sexual images to another person;
- Arranging or participating in events, communications or conversations aimed at degrading or humiliating those who have experienced Sexual Misconduct, including but not limited to themed social events or initiations, or remarks about these e.g. on social media groups.
- Filming or photographing under a person's clothes without their consent to capture images of their body or underwear ("upskirting").

4.2 Terminology

Reporting Party is, for the purposes of this Policy, the person(s) who has been the subject of the alleged incident of Sexual Misconduct.

Reported Party is, for the purposes of this Policy, the person(s) whose behaviour it is alleged amounted to an incident of Sexual Misconduct.

Consent is the agreement to participate in a sexual act where the individual has both the **freedom** and **capacity** to make that decision. The age of consent in the UK is 16. Consent cannot be assumed on the basis of a previous sexual experience or previously given consent, or from the absence of complaint, and each new sexual act requires a re-confirmation of consent as the foundation of a healthy and respectful sexual relationship. Consent may be withdrawn at any time, including during a sexual act.

Freedom to consent: For consent to be present, the individual has to freely engage in a sexual act. Consent cannot be inferred from a lack of verbal or physical resistance. Consent is not present when submission by an unwilling participant results from the exploitation of power, or **coercion or force**.

- **Coercion or Force** includes any physical or emotional harm or threat of physical or emotional harm which would reasonably place an individual in fear of immediate or future harm (either to the individual themselves or to their family/friendship group), with the result that the individual is compelled to engage in a sexual act.

- **Capacity to consent:** Free consent cannot be given if the individual does not have the capacity to give consent. Incapacitation may occur when an individual is asleep, unconscious, semi-conscious, or in a state of intermittent or altered consciousness, or any other state of unawareness that a sexual act may be occurring. Incapacitation may also occur on account of a mental or developmental disability, or as the result of alcohol or drug use.
- **Alcohol and/or Drug Use:** Incapacitation arising from alcohol or drug consumption should be evaluated on the basis of how the alcohol/drugs have affected the individual; signs of incapacitation may include, but are not limited to, one or more of the following: slurred speech, unsteady gait, bloodshot eyes, dilated pupils, unusual behaviour, blacking out, a lack of full control over physical movements, a lack of awareness of circumstances or surroundings, and/or an inability to communicate effectively. Intoxication is never a defence for committing an act of Sexual Misconduct, or for failing to obtain consent. If there is any doubt as to the level or extent of one's own or the other individual's incapacitation, the safest approach is to not engage in a sexual act.

Disclosure, for the purposes of this Policy, involves an individual telling anyone who is part of the University about an experience of Sexual Misconduct (different from *Report*).

Report, for the purposes of this Policy, is the sharing of information with a staff member of the University regarding an incident of Sexual Misconduct, usually experienced by that individual, for the purposes of initiating an investigation under the Student Discipline Regulations (different from *Disclosure*).

4.3 Associated Breaches of Student Discipline Regulations

The University recognizes that there are potentially additional types of associated behaviour that may constitute a breach of the University's Student Discipline Regulations and which will therefore need to be acted upon, although the frequency and likelihood of such offences are likely to be low. These include:

- **Retaliation** which may constitute any words or actions, including intimidation, threats, or coercion, made in response to disclosures or reports of Sexual Misconduct, by any individual including both the Reported Party and the Reporting Party, as well as witnesses, friends, or relatives.
- **Complicity** which is any act that knowingly helps, promotes, encourages or covers-up any form of Sexual Misconduct by another individual.
- **Vexatious reporting** which involves the creation of persistent, unwarranted reports of Sexual Misconduct, or a refusal to accept any reasonable decisions arising from the application of the Student Discipline Regulations.
- **Malicious reporting** which occurs when an individual makes an allegation of Sexual Misconduct that they know lacks a basis in fact.
- **Condoning behaviour** which involves excusing or 'looking the other way' when observing sexual misconduct, rather than challenging the perpetrator or reporting the incident.

5. Support

5.1 The University is committed to providing support for students affected by Sexual Misconduct. Support is available to any student who discloses an incident regardless of whether or not they choose to make a Report to the University or Police. The University will provide information on support resources available and will offer support as appropriate to the Reporting Party, Reported

Party, and witnesses involved in alleged incidents of Sexual Misconduct. Wellbeing-related support will always be made available to the Reporting Party and Reported Party. Those providing wellbeing support will not normally be involved in the investigation, and support will be given without making any judgement on the allegations.

5.2 Upon request, the Students' Union will endeavour to provide wellbeing and/or advocacy support to any students involved in alleged incidents of Sexual Misconduct.

5.3 The Student Conduct Officer within Student and Education Services can provide advice and guidance on this Policy and on the associated procedures within the Student Discipline Regulations.

5.4 Support information on Sexual Misconduct for students and staff is available at:

<https://www.lancaster.ac.uk/student-and-education-services/counselling-and-mental-health-service/services/bullying-harassment-and-sexual-misconduct/>

6. Disclosures and Reporting

6.1 Disclosure and reporting are separate actions that the Reporting Party may choose to take. As defined above, disclosure occurs when a student tells anyone who is part of the University about an incident of Sexual Misconduct, and reporting is the sharing of information to request that the University initiates an investigation under the Student Discipline Regulations.

6.2 If at any stage a student feels they need support, the University will always endeavour to provide appropriate support.

Disclosures of Sexual Misconduct

6.2 A Disclosure may be received in a variety of ways (e.g. in person or by telephone, or via the UniSafe app) and from a variety of sources i.e. it may not necessarily be brought forward by the Reporting Party. Students are encouraged to approach the Student Wellbeing Services team to disclose an incident of Sexual Misconduct. Out of hours, students who wish to make a Disclosure are advised to contact the Security team.

6.3 Whilst students are encouraged to contact the Student Wellbeing Services team to disclose an incident of Sexual Misconduct, a Disclosure may be made to any member of the University's staff. Members of staff who receive a Disclosure and need advice and guidance, or support, should contact the Student Wellbeing Services team at the earliest opportunity. Basic information for staff can also be found within the 'Referral Guide' which is accessible via the staff intranet or at <http://www.lancaster.ac.uk/current-staff/current-staff/student-support-referral-guide/>

6.4 With the exception of the University's Counselling Service – who will be available to counsel those who make a Disclosure - staff who receive a Disclosure must not attempt to counsel the Reporting Party. No staff who receive a Disclosure should attempt to investigate the incident or inform the Reported Party or any other student of the Disclosure.

6.5 Unless the Reporting Party requests otherwise, staff who receive a Disclosure must contact the Student Wellbeing Services team on behalf of the Reporting Party as soon as possible, in order that the Reporting Party can receive support. The Student Wellbeing Services team will also provide the Reporting Party with their reporting options, along with information on resources for specialist support. The Reporting Party can choose to do one or more of the following, and will be supported by the University whatever their decision⁴:

⁴ In exceptional circumstances, the University may need to take action against the wishes of the Reporting Party. This will only be done (a) after careful assessment and (b) where it is believed that disclosure of the information is necessary to protect someone from harm or to prevent a further crime taking place.

- Make a Report to the Police;
- Make a Report to the University under the University's 'Student Sexual Misconduct Policy';
- Make no Report of the incident; and/or
- Take some time to consider the options, receiving advice on the support that is available both within and outside the University.

6.6 When referring the Reporting Party to Student Wellbeing Services, staff may, if the Reporting Party requests, omit the name of the Reported Party.

6.7 Staff who receive a Disclosure must record the information provided during the Disclosure at the earliest opportunity, using where possible, the specific wording used by the Reporting Party. Staff should also record any information they provided to the Reporting Party. Unless the Reporting Party requests otherwise, this record of the Disclosure must be passed as soon as possible to the Student Wellbeing Services team. Porters and members of Security must do this through their incident reporting system; other staff must use [Unisafe](#). The sending of information about the Disclosure to the Student Wellbeing Team will be used for the purposes of providing support; it will not automatically result in a Report to the University being made under the Student Sexual Misconduct Policy. The University respects the right of the Reporting Party to choose whether to take any action following a Disclosure.

Reports of Sexual Misconduct

6.8 The Reporting Party may choose to make a Report to the University under the Student Sexual Misconduct Policy in order that the University can launch an investigation into the alleged incident through the procedure set out in the Student Discipline Regulations. University investigations rely on a civil, 'balance of probability' level of evidence, rather than a criminal justice 'beyond reasonable doubt' level of evidence. To make a Report to the University, the Reporting Party may take one of the following actions:

(a) If the Reporting Party has already disclosed the incident to a member of staff, the Reporting Party may request that the member of staff sends the Disclosure notes to the Student Conduct Officer. The member of staff must be clear that the Reporting Party has provided their consent before this action is taken.

(b) The Reporting Party may report the incident verbally to the Student Wellbeing Coordinator or the Student Conduct Officer (or, in their absence, others acting on behalf of these staff members), who will write a Report on behalf of the Reporting Party. Where the Report is written by the Student Wellbeing Coordinator, it cannot be sent to the Student Conduct Officer without the specific consent of the Reporting Party.

(c) The Reporting Party may submit a written statement of the allegation to the Student Conduct Officer, indicating the Reported Party and any witnesses.

6.9 If the Reporting Party is unwilling for the Reported Party to be informed of the allegation against them, the University will not normally launch an investigation.

6.10 If the Reporting Party does not feel able to be named, the University encourages the submission of an anonymous report in writing to the Student Conduct Officer. The University will endeavour to consider and investigate the reports if at all feasible, but action may be limited without independent witnesses/evidence, and there may be insufficient evidence to proceed. In reviewing anonymous reports, the University will identify any individual, community or University risks and take appropriate action as necessary.

6.11 If a third party makes a Report about an incident that has not also been reported by the Reporting Party, the University will approach the Reporting Party to ascertain whether they wish to

make a Report. Whilst the University would not normally investigate without consent from the Reporting Party, there may be situations in which the University proceeds without consent. In such cases, the availability of evidence may be limited, which may inhibit the ability of the University to proceed and/or take action.

6.12 The University understands that in cases of alleged sexual misconduct a student may choose to report the incident(s) a considerable period of time after the incident(s) took place. The University will consider any Report of Sexual Misconduct, regardless of the elapse of time, as long as the Reported Party is still registered as a current student at the University. The University may, however, be more limited in its ability to investigate a Report if a considerable period of time has passed, and students who wish to submit a Report are therefore encouraged to do so as soon as they feel able.

6.13 Following receipt of a Report the Student Conduct Officer will refer to section 5 of the Student Discipline Regulations, and will liaise with the Director of Students, Education and Academic Services (or nominee with delegated authority) to determine whether a risk assessment is required.

6.14 Section 7 of the [Student Discipline Regulations](#) sets out the disciplinary procedures that will be applied following receipt of a Report to the University. Any questions on these procedures should be directed to the Student Conduct Officer.

7. Police Referrals and Criminal Proceedings

7.1 The Reporting Party may choose to report an incident to the Police directly. If requested by the Reporting Party, the University will refer a case to the Police on their behalf. If the Reporting Party does not wish the University to refer a case to the Police, the University will normally act in accordance with the wishes of the Reporting Party. However, in exceptional circumstances, the University may determine it is necessary to refer a case to the Police despite the wishes of the Reporting Party.

7.2 Where criminal proceedings have been initiated, with or without the University's input, the University will at all times cooperate with any criminal investigation, and will provide pastoral support to all student(s) involved.

7.3 Where criminal proceedings are taking place, and the Reporting Party also wishes the University to consider the allegation, it is likely that the University will need to delay its internal disciplinary proceedings until the conclusion of the criminal proceedings. Any decision to delay will be taken on a case by case basis and delays will be avoided where at all possible. The UUK/Pinsent Masons Guidance for HEIs on ['How to Handle Alleged Student Misconduct Which May Also Constitute A Criminal Offence'](#) states:

“The criminal process must take priority. There should be no duplication of that process and no other process should operate at the same time. Consequently, if the matter is being dealt with under the criminal process, then save for taking any necessary precautionary action... the internal disciplinary process should be suspended until the criminal process is at an end.”

In such cases, the University reserves the right to take immediate and precautionary action to mitigate risk, as set out in section 5 of the Student Discipline Regulations, including, but not limited to, requiring the Reported Party to move to alternative accommodation, or temporarily excluding the Reported Party while the police investigation and any subsequent criminal processes are undertaken. Precautionary actions are to mitigate risk and should not be regarded as a penalty or an indication of a presumption of guilt.

8. Data handling

8.1 During all aspects of case handling, information will be kept securely and shared only in appropriate circumstances with appropriate people involved in the case. If the Reporting Party chooses to make a Report in order to initiate an investigation by the University, relevant information will need to be shared with the Reported Party in order that they can respond to the allegation(s). All students involved in a case must not share any personal data relating to the case with any individuals not directly involved in the case. Any inappropriate information sharing by any party may lead to disciplinary action. The University reserves the right, and may be under an obligation, to share information e.g. to prevent a crime from taking place, or to comply with statutory obligations. In such cases, the amount of information shared will be kept to a minimum. Throughout all proceedings, the University will act in compliance with the Data Protection Act 2018 and the General Data Protection Regulation.

9. Key Responsibilities

9.1 The University's Student Wellbeing Services team will provide support to any students affected by alleged Sexual Misconduct incidents who wish to receive such support. The Student Wellbeing Coordinator is the primary member of staff trained to sensitively and appropriately listen to and record Disclosures and provide support. The Student Wellbeing Coordinator will be impartial in setting out the options available to the Reporting Party. In the event that the Student Wellbeing Coordinator is unavailable, other members of the Student Wellbeing Services team can listen to and record Disclosures. The Student Wellbeing Coordinator will provide information on relevant colleagues who can provide support. Out of hours, students are advised to contact a Porter or a member of staff from Security Services.

9.2 The Student Conduct Officer within the Student and Education Services division is the primary point of contact relating to Reports of Sexual Misconduct. When a student chooses to make a Report of an incident of Sexual Misconduct, the Student Conduct Officer receives the Report and is then responsible for initiating and ensuring progression of the procedures set out in the Student Discipline Regulations. The Student Conduct Officer provides advice on procedural matters relating to the University's consideration of Reports of alleged sexual misconduct. The Student Conduct Officer is also responsible for communication with all relevant parties about the University's handling of an allegation, and will provide appropriate information relating to e.g. the stage of a case, next steps, expected timeframes and the reasons for any delays (should they occur).

9.3 The Director of Students, Education and Academic Services is accountable for the application, monitoring and regular review of this Policy. When necessary, the Director of Students, Education and Academic Services (or nominee) will propose revisions to this Policy for consideration by the relevant committee(s). The Director of Students, Education and Academic Services (or nominee) will seek the views of the Students' Union in advance of any revisions being proposed.

9.4 The Academic Registrar is responsible for operational matters relating to this Policy.

9.5 The Associate Director (Student Wellbeing and Inclusion) has responsibility for the University's Student Wellbeing Services team and is therefore responsible for the provision of pastoral and specialist support to the Reporting Party, Reported Party and witnesses.

10. Monitoring

10.1 The Student Conduct Officer will keep a record of all Reports of alleged Sexual Misconduct incidents in order that the University can effectively engage in prevention and response initiatives. The Student Wellbeing Services team will keep a record of all Disclosures made to any colleague within the team. The Student Wellbeing Services team will also keep a record of any Disclosures sent by members of staff or students from across the University via the Unisafe app or the Security incident reporting system.

10.2 The University will undertake regular assurance activities to ensure that the University is acting in compliance with this Policy and the procedure set out in the Student Discipline Regulations. This will include the provision of reports to Council, Senate, Audit Committee, the University Management Advisory Group, the Student Experience Committee and the wider University community. Any data provided will be anonymized.

Policy consideration and approval:

<u>Committee:</u>	<u>Date:</u>
Student Experience Committee	05 March 2020
Senate	22 April 2020
Council	10 July 2020

Policy Review Due: January 2023