

**SEXUAL HARASSMENT, MISCONDUCT AND
VIOLENCE GUIDANCE**



UNIVERSITY OF
WINCHESTER

SEXUAL HARASSMENT, MISCONDUCT AND VIOLENCE GUIDANCE

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1. Purpose of this Guidance

1.1. This guidance is provided to clearly outline the behaviours considered to be sexual misconduct and harassment under the University of Winchester's Student Disciplinary Procedures, Staff Disciplinary Policy, Grievance Policy, Equality, Diversity and Inclusion Policy and Dignity at Work Policy. The process that will be followed in investigating these issues can be found in those documents.

1.2. This guidance seeks to outline the situations where those policies and procedures apply, and breaches by staff or students will be investigated under those policies and may, additionally, be referred to the police. Breaches by the public will be reported to the police and may also result in removal or refusal of license to enter University land or property.

1.3. Issues of harassment and sexual, violence and misconduct can be reported through [Report and Support](#) or to HR or Student Support and Success.

2. What is sexual misconduct and harassment?

- 2.1. Sexual misconduct and harassment are forms of sexual violence and unacceptable behaviour of a sexual nature. This can include: sexual harassment; physical sexual violence and assault; sexual abuse; non-consensual sharing, publishing or making of sexual videos or images, or online content without consent; stealthing; intimate partner violence; grooming; stalking; coercion or bullying with sexual elements; sexual invitations and demands; sexual comments; sexual non-verbal communication; creation of atmospheres of discomfort; promised resources or advancement in exchange for sexual access; and a vast range of other behaviours.
- 2.2. While sexual misconduct often is a criminal offence, these behaviours do not need to amount to a criminal offence to constitute sexual misconduct under the University's policies.
- 2.3. Sexual harassment is a form of sexual violence and is unwanted behaviour of a sexual nature which violates your dignity; or makes you feel intimidated, degraded or humiliated or creates a hostile or offensive environment. It does not need to be repeated behaviour; a one-off act can be sufficiently serious, and the unwanted conduct can be physical, verbal or non-verbal. Sexual harassment does not need to be directed at a person. It can be witnessed or overheard.
- 2.4. Harassment includes the illegitimate outing or publication of staff or students involved in sex work.
- 2.5. Sexual misconduct also occurs if an individual treats a person less favourably because that person has rejected or submitted to unwanted conduct of a sexual nature. The person who treats someone less favourably than the person engaging in the unwanted conduct.
- 2.6. Some behaviour may also constitute a criminal offence under the [Protection from Harassment Act 1997](#).
- 2.7. Sexual misconduct and harassment may constitute gross misconduct and could result in dismissal (for staff) or withdrawal from studies (for students)

3. Who and Where does this Guidance Cover?

- 3.1. This guidance covers all staff and students (undergraduate and postgraduate) at the University of Winchester, including Governors, visitors, Emeritus Professors, contractors, students with visiting status, students while on placements, distance learners and those undertaking Degree Apprenticeships.
- 3.2. A student is considered to be any individual registered to study on any programme of study at the University.
- 3.3. Staff are considered to be any individual employed or engaged by the University on a paid or unpaid basis to carry out work for the University under any type of employment contract. This includes:
 - 3.3.1. Students undertaking paid or unpaid work
 - 3.3.2. People designated as workers for the University including Visiting and Associate Lecturers
 - 3.3.3. Agency workers and Honorary appointments
- 3.4. Students and staff on placements or visiting other universities or similar may also, and additionally, be subject to the policies and processes of those establishments.

4. Scope

- 4.1. This guidance applies in all of the following situations to sexual misconduct which:
 - 4.1.1. occurs on or, where investigation is possible, off University property and/or land;
 - 4.1.2. occurs whilst a student is engaged in any University or Student Union related activity (including placements and trips);
 - 4.1.3. occurs via electronic means including, but not limited to: internet, email, social media sites, chat rooms, text messages and instant messaging;
 - 4.1.4. results in a legal or police investigation, charge or conviction of an offence;

- 4.1.5. raises questions about the fitness of the student on a fitness to practice programme; or
- 4.1.6. in the view of the University poses a serious risk or disruption to the University or members of its community.
- 4.1.7. This guidance applies to situations where misconduct is allegedly perpetrated by-
 - 4.1.7.1. A student against a student or member of staff
 - 4.1.7.2. A member of staff against a student or member of staff
 - 4.1.7.3. A student or member of staff against a third party

5. Anonymity

- 5.1. Reports that are made anonymously, whether through reporting platforms, student representatives, third parties or otherwise will not normally lead to a formal investigation. **However, data gathered from this reporting that indicates trends or patterns of behaviour** will inform campaign and preventative actions.
- 5.2. Where there are a number of reports concerning unacceptable behaviour, the University may conduct an environmental investigation with staff and/or students within a department or faculty to understand the behaviours in more detail and identify and target appropriate support and interventions.
- 5.3. An environmental investigation will involve an agreed terms of reference with the department, and interviews and/or focus groups with students and/or staff to ascertain the key concerns and possible solutions.
- 5.4. Any issues and evidence gained within an environmental investigation may inform and be used within a formal disciplinary case.

6. Definitions

- 6.1. Consent: Consent is agreeing by choice and having the freedom and capacity to make that choice. It cannot be assumed on the basis of previous sexual experience or consent and may be withdrawn at any time. The person seeking consent should always take steps to ensure

that consent is freely given, that it is informed and recognises that it can be withdrawn at any time.

6.2. Freedom to consent: A person is free to make a choice if nothing negative would happen to them if they said no. For example, a person may not feel free to make a choice if:

6.2.1. they are being threatened with physical or emotional harm (by the perpetrator and/or by someone else) which would reasonably place an individual in fear of immediate or future harm, with the result that the individual feels compelled to engage in the sexual act;

6.2.2. they are being threatened with humiliation;

6.2.3. they believe that the continuation or assessment of their studies, or progression or advancement of their career, will be at risk if they refused;

6.2.4. they are being blackmailed;

6.2.5. there is a significant power imbalance and the party without power feels pressured to continue in the relationship or actions against their will.

6.3. Capacity to consent: Capacity is about whether someone is physically and/or mentally able to make a choice and to understand the consequences of that choice. For example, a person does not have the capacity to give consent if:

6.3.1. they are drunk or under the influence of drugs, so as to be incapacitated, even if physically able or seemingly willing to engage in sexual activity.

6.3.2. they are asleep, unconscious, semi-conscious, or intermittently unconscious,

6.3.3. a person may also not have capacity to give consent if they have, for example, a cognitive or learning difficulty, a disability which impairs their speech, or are experiencing a mental health crisis.

6.4. Grooming: Grooming can be defined as a gradual process that someone in a position of power uses to manipulate someone to do things that they may not be comfortable with and to make them less likely to reject or report abusive behaviour. Grooming will initially start as befriending

someone and making them feel special and may result in sexual abuse and/or exploitation. Power relationship imbalances will be considered as an indicator of, but not a necessary element of grooming.

- 6.5. Disclosure: Disclosure, for the purposes of this guidance and related procedures, involves an individual choosing to tell anyone who is part of the University, about their experience of bullying, harassment or sexual misconduct. Unlike Reporting, disclosure does not trigger an investigation or action. However, in some circumstances it may do if the University has a Duty of Care as outlined in our **Consent to Investigation or Reporting Externally Statement**, even despite the victim/survivor's wishes. Disclosure will always lead to support being offered.
- 6.6. Formal Reporting: Formal Reporting is the sharing of information with a staff member of the University regarding an incident of bullying, harassment or sexual misconduct experienced by that individual for the purposes of initiating the investigation process set out in this guidance and the related procedures (different from *Disclosure*).
- 6.7. Reported party: The Reported Party is the person(s) whose behaviour it is alleged amounted to an incident of harassment or sexual misconduct.
- 6.8. Reporting party: The Reporting Party is the person(s) who witnessed, supplies evidence of, or was subject to the alleged incident of harassment or sexual misconduct.

7. General Principles

- 7.1. 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 1 of the Guidance. Taking disciplinary action is at the discretion of the University.
- 7.2. The investigative ability of the University is not the same as the police or courts e.g. forensic analysis and medical examinations are not available to the University. The reporting party should strongly consider reporting to the police in addition to the University.
- 7.3. Our Disciplinary Policies require the University to reach conclusions on the 'balance of probabilities' and not the criminal standard of 'beyond reasonable doubt'. This means that the University will decide on the

evidence available, whether it is *more likely than not* that the allegations are proven.

- 7.4. The University can only take the actions available to it under the Student Disciplinary Procedures, Staff Grievance Policy and Staff Disciplinary Policy. Where misconduct has occurred, the University can only impose the penalties it has available and which it considers proportionate. The Student Disciplinary Procedures advises that the University's student disciplinary processes apply to students registered as studying at the University and does not apply to the conduct of former students. However, allegations made against former staff or staff who are leaving will be investigated to the extent possible and their co-operation will be invited.
- 7.5. The University's disciplinary processes are conducted on a confidential, need-to-know basis.
- 7.6. 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. Anonymity is not normally possible in that situation.
- 7.7. 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 staff and students are offered support and provided with this where desired. 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 all appropriate adjustments to the University's processes to support affected students and staff (for example, by ensuring that any direct contact or questioning during a hearing is, where possible, limited or eliminated).
- 7.8. The University's ability to disclose details relating to the outcome of another party's disciplinary hearing may be limited as a result of the data protection rights owed to that person. Therefore, whilst the Reporting Party may be informed of any finding reached against the Reported Party, the University may not be able to provide further information in connection with the disciplinary process.

- 7.9. Where appropriate, following an allegation of sexual harassment and/or sexual violence, the University may be required, or decide, to take steps in relation to the alleged perpetrator, in order to prevent contact between the two parties pending the conclusion of the ongoing investigation(s). Actions taken will be proportionate and will constitute a neutral act. Such actions may include a change in accommodation or working location or suspension. Where it is considered that it may be reasonable and proportionate, suspension will be carried out in line with the relevant disciplinary procedure.
- 7.10. The University and the Student Union may also use their own separate procedures to investigate and take appropriate action to resolve the same allegation of sexual harassment or sexual violence (i.e. the University considering a student's status, the Student Union considering a student's membership of its organisation). In appropriate cases and in cases of staff/student incidents, the University and the Student Union will keep each other informed of relevant action where appropriate.
- 7.11. All investigations into behaviours alleged to be perpetrated by staff will be carried out under the Disciplinary Procedures for Staff. All members of the University are required to cooperate fully with an investigative process.
- 7.12. Investigations into behaviours alleged to be perpetrated by students will be carried out under the Student Disciplinary Procedures. Students who are also staff may be investigated under the Disciplinary Procedures in an appropriate case. This might be where a potential sanction would involve their employment status or where the behaviour was related to their employment status. In very serious cases sanctions under both procedures may be invoked.

8. How to report

- 8.1. Issues relating to behaviours or conduct of staff can be raised with Human Resources, Student Services, through *Report and Support* or with any member of staff.

- 8.2. Issues relating to behaviours or conduct of students can be raised through Report and Support through Student Services, or with any member of staff.

9. If you are a member of staff and a report is made to you

- 9.1. A member of staff that receives notice of an issue will need to either signpost the reporting party to HR, Student Services (for support) or Report and Support as relevant – or further report the matter to HR if the offending behaviour relates to a member of staff, or to Report and Support if the offending behaviour relates to a student.
- 9.2. Behaviours that are of a serious nature (which will always be the case if the offending behaviour is alleged to be committed by a staff member) **MUST** be reported, even in cases where the report is in confidence. If unsure whether the behaviour is sufficiently serious to breach confidence – the behaviours can be anonymised and advice sought from HR or the Director of Equalities and Staff Development (carol.kilgannon@winchester.ac.uk).
- 9.3. If you have signposted the reporting party to HR, Student Support and Success or Report and Support - you will need to check that the student has actually made that report if the nature of the incident is sufficiently serious to invoke our duty of care.

10. Monitoring

- 10.1. Reporting of types of incidents under this policy whether formal or informal, staff or student will be gathered centrally and reported annually to the: Equality and Diversity Committee and the Student Experience Excellence Strategy Group and up to the relevant Boards at Governor level.

11. Support Available

The following support is available for students to access:

[Report and Support Winchester.ac.uk/](https://www.winchester.ac.uk/report-and-support)

Student Support and Success student.advice@winchester.ac.uk

Human Resources Advisors

Student Union

Trades Unions – UCU and UNISON

Survivors UK offer information, support and counselling for men and boys who have been raped or sexually abused.

Treetops Sexual Assault Referral Centre (SARC) - for forensic advice and offer medical care, emotional support and practical help to anyone who has been raped or sexually assaulted

Yellowdoor - offer independent advice to victims of sexual misconduct and domestic abuse.

Reporting to the police – in an emergency phone 999 or in non-emergency situations report online [here](#).

Residential Support - If you are a student in Halls, there are live-in wardens, residential assistants and 24-hour first-aid trained security as well as police liaison The team can be an important source of guidance and support for students.

If you have concerns and are on campus call University security on 01962 827666 (King Alfred Quarter) or 01962 827667 (West Downs Quarter).