

Harassment and Sexual Misconduct policy

1. Introduction:

This policy sets out UCB's approach to preventing harassment and sexual misconduct. It covers behaviour by all members of the university community (FE and HE students, apprentices, permanent and temporary staff, and visitors). We are committed to preventing and eliminating harassment and sexual misconduct. This policy has been created in consultation with the Guild of Students.

We are committed to providing a supportive and confidential environment where individuals feel confident and empowered to disclose, will be listened to and understand the options available to them.

2. Definitions ([taken from Office for Students statement of expectations](#)):

- a. **Harassment** (as defined by Section 26 of the Equality Act 2010) includes unwanted behaviour or conduct which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment because of, or connected to, one or more of the following protected characteristics:

- age
- disability
- gender reassignment
- race
- religion or belief
- sex
- sexual orientation

Under our definition, we understand harassment to include domestic violence and abuse (which can also involve control, coercion and threats) and stalking.

We would also consider harassment to include any incidents of physical violence towards another person(s) on the basis of a protected characteristic and hate crimes, such as those criminal offences, which are perceived by the victim or any other person to be motivated by hostility or prejudice, based on a person's disability or perceived disability; race or perceived race; or religion or perceived religion; or sexual orientation or perceived sexual orientation or transgender identity or perceived transgender identity.

- b. **Sexual misconduct** relates to all unwanted conduct of a sexual nature. This includes, but is not limited to:

- Sexual harassment (as defined by Section 26 (2) of the Equality Act 2010)
- Unwanted conduct which creates an intimidating, hostile, degrading, humiliating or offensive environment (as defined by the Equality Act 2010)
- Assault (as defined by the Sexual Offences Act 2003)
- Rape (as defined by the Sexual Offences Act 2003)
- [Physical unwanted sexual advances](#) (as set out by the Equality and Human Rights Commission: Sexual harassment and the law, 2017)

- [Intimidation, or promising resources or benefits in return for sexual favours](#) (as set out by the Equality and Human Rights Commission: Sexual harassment and the law, 2017)
- Distributing private and personal explicit images or video footage of an individual without their consent (as defined by the Criminal Justice and Courts Act 2015).

Our definitions include harassment and sexual misconduct through any medium, including, for example, online.

3. Consent

Consent is the agreement to participate in a sexual act where the individual has both the freedom and capacity to make that decision. Consent cannot be assumed on the basis of a previous sexual experience or previously given consent, and consent may be withdrawn at any time.

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

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, with the result that the individual feels 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 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 Violence and 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.

4. Who is covered by this policy:

This policy covers all students of University College Birmingham including students with visiting student status, distance learners and those undertaking Degree Apprenticeships. It also applies to staff, including agency, temporary, casual, and students employed by the university or through Unitemps. It also applies to visitors attending the campus.

- It will apply to sexual misconduct which:
- occurs on University property and/or land;
- occurs whilst a student is engaged in any University or Students' Union related activity (including placements and trips);
- occurs via electronic means including, but not limited to: internet, email, social media sites, chat rooms, text messages and instant messaging;
- results in a legal or police investigation, charge or conviction of an offence;

- raises questions about the fitness of the student on a fitness to practice programme; or
- in the view of the University poses a serious risk or disruption to the University or members of its community.

5. University policies to deal with harassment and sexual misconduct:

Allegations of harassment and/or sexual misconduct against a student will be dealt under the General Student Regulations and codes of professional conduct where relevant. Allegations against members of staff and visitors will be dealt with through the Staff Disciplinary Policy. Allegations against visitors will be dealt with through the policy outlined in appendix 1 below. These policies outline the processes to be followed and the rights of the accused regarding representation and appeal. Appropriate support will also be given to the victim throughout these processes.

6. Confidentiality and data sharing:

The University recognises the importance of privacy for disclosures and formal complaints of cases of harassment and/or sexual misconduct and will only share information on a confidential, need-to-know basis.

Confidentiality is not absolute secrecy. There may be circumstances where it is necessary or appropriate to share information either within the University or with external organisations/bodies, for example to:

- Allow a case to be appropriately considered and investigated;
- Ensure those who disclose an experience or are alleged to have committed misconduct receive appropriate academic and pastoral support;
- Safeguard members of the University community and fulfil the University's duty of care;
- Discharge the University's duties or as required by law.

The outcome of an investigation, Discipline Committee hearing or Appeal will be shared with both parties and this will include setting out the rationale for the decision.

All personal data is recorded and held in accordance with the Data Protection Act 2018 and cases of sexual misconduct will be retained in line with the University's Record Retention Schedule.

The University will retain anonymised data to understand patterns of behaviour and to inform future policy.

7. Making a disclosure:

A disclosure is made when someone tells a member of University staff that they have experienced sexual misconduct. A disclosure can be made in person, online or via other means such as phone or email.

The person who has chosen to disclose does not need to provide the full details of their experience if they do not wish to. Although they will be advised of the options open to them, and supported to make a formal complaint if they choose to, they will not be pressured to make a formal complaint.

If the incident is historical, the person who has experienced it can still disclose it to the University and receive support. They can access Wellbeing Support Services for advice.

Disclosure does not create a formal complaint, and is not an instruction for the University to take action. The person who has disclosed will have the opportunity to be heard and to consider their options before proceeding with any further steps. No action will be taken immediately by the University unless there is a concern about immediate safety or if the University has a duty under safeguarding.

Where a person chooses to disclose anonymously no action will usually be taken on basis of their disclosure. Anonymised data will help the University to understand patterns in behaviour and inform future policy.

8. Next steps after disclosure:

After disclosure there are several options available to the person who has disclosed their experience. They can choose the level and types of support that are right for them. After discussion with a harassment and safeguarding advisor, the person who has disclosed may choose to:

- a) Take no further action at this time: In this case advice will be provided regarding the preservation of evidence which may be needed if they subsequently decide to make a report to the Police or to submit a formal complaint to the University. They will also be informed of the ongoing support available to them via the Wellbeing service.
- b) Make a formal complaint to the University: If the person who has disclosed chooses this option they will be asked to confirm that they wish the University to proceed with a formal investigation. Support will be available from the Wellbeing service.
- c) Make a report to the Police: In this case no disciplinary action will normally be taken by the University whilst a Police investigation and legal proceedings are taking place. Support will however still be available from the Wellbeing service.

9. Police Investigation and Legal Proceedings

If the person who has disclosed has made an independent report to the police they may still make a formal complaint to the University.

The University does not have the legal investigatory powers of the Police, and is not able to make a determination of criminal guilt. Any disciplinary action is undertaken as a breach of the University's Sexual Misconduct Policy and is not a substitute for a Police investigation or a criminal prosecution.

The fact that criminal proceedings have been instituted or have concluded does not preclude the University from taking its own disciplinary action, if it is thought fitting or necessary to do so. The fact that the Police are unable or unwilling to proceed does not preclude the University from taking its own disciplinary action.

A case which does not progress through legal channels, where a decision to take no further action has been made, and/or a 'not guilty' verdict has been returned, does not mean that the person has made a malicious or vexatious report. The fact that criminal proceedings have returned a 'not guilty' verdict does not preclude the University from taking its own disciplinary action.

If a student has been convicted of a criminal offence or accepts a Police caution in relation to behaviour that falls within the scope of the University's Sexual Misconduct Policy, then the University will accept this as conclusive evidence that the behaviour took place. It may not be necessary for a further full investigation to take place and the complaint will be deemed proven and proceed directly to a disciplinary hearing.

10. Immediate threats to safety

If after reviewing a disclosure, the harassment and safeguarding officer thinks that there may be an immediate threat to safety, they will refer the case for immediate action to a suitable member of the Executive Management Team.

If the EMT member decides that it is necessary to take precautionary action, they will use the Fitness to Attend or Disciplinary Code to restrict access to campus facilities or suspend the accused student, pending a disciplinary hearing.

If a suspension of rights is issued, the person alleged to have committed the misconduct will be informed in writing and, wherever possible, in person. They will be told what they need to do in order to comply with the suspension of rights.

If no suspension of rights is required, the person alleged to have committed the misconduct will not be informed of the disclosure unless the person who has disclosed chooses to submit a formal complaint to the University.

11. Making a formal complaint to the University

The person who has experienced sexual misconduct may choose to make a formal complaint to the University under the Sexual Misconduct Policy, and thereby seek a resolution via the University Disciplinary Procedure. A formal complaint is different to disclosure; it is a document informing the University that something has happened and that the person who has made the complaint wishes the University to take action. From this stage onwards, the person who has submitted the complaint is referred to as the Reporting Party, and the person who is alleged to have committed the misconduct is referred to as the Responding Party.

The complaint must be submitted in writing, by following links on the student Portal to 'MyConcern' and filling in the form. The form may be completed by the Reporting Party, or if they prefer, someone can complete it on their behalf, with their consent. Registry, student services, wellbeing, a Harassment and Safeguarding Advisor or the Guild of Students can all provide help in completing the form.

The complaints form does not need to include in-depth detail about the experience. There does however need to be enough information so that the University can take the complaint forward and understand what has happened.

The complaints form will be referred to the Safeguarding Lead, or an appropriate deputy. The University will not take any action without the involvement of the Reporting Party unless there is an immediate threat to safety.

The Reporting Party has the right to withdraw their complaint and to stop the formal Sexual Misconduct Disciplinary Process at any time.

The disciplinary process is available in the General Student Regulations, and can also be found in appendix 2 below.

Appendix 1: process for dealing with accusations of harassment and sexual misconduct against visitors

- i. Short term visitors to site should always be accompanied by a member of staff. Visitors who engage with UCB students online should similarly always do so in the presence of a member of staff. If a visitor is likely to access UCB over several occasions, or needs unaccompanied access, then they should be subject to the same checks as a staff member (e.g. DBS) as indicated in the safeguarding policy. In this case they may be allowed unaccompanied access to site.
- ii. Accusations should be made in the same way as detailed above.
- iii. As far as practicable, an investigation will be undertaken as above (if the complainant wishes).
- iv. Outcomes can include the visitor being banned from UCB's site, either temporarily or permanently, and reports being made to the visitor's employer, if relevant. UCB will support police investigations of visitor conduct on site.

Appendix 2: disciplinary process

Rules Governing Student Disciplinary Procedures Students registering on a programme at UCB are subject to UCB's Disciplinary Code (see section General Student Regulations).

- i. The majority of behavioural, academic or matters of a general disciplinary nature will be dealt with by teaching staff at School level.

Normally matters such as Cautions, Performance Agreements, and First Written Warnings will be investigated at School level with appropriate sanctions agreed at School level between staff and the student. However, incidents which are of a more serious nature, or an accumulation of disciplinary proceedings, will be formally referred to the Executive Director for External Engagement.

In the majority of cases such incidents would be expected to be at a level with the possibility of attracting a Final Written Warning or expulsion from the University. At any time teaching staff can refer to the Executive Director for External Engagement for appropriate guidance on applying any disciplinary process or sanction.

- ii. Where a breach of this code is of a nature below that likely to attract a Final Written Warning or expulsion, it will be dealt with by the Executive Dean, Head of Department or relevant manager within the School. The Executive Dean, Head of Department or relevant manager will investigate the matter General Student Regulations Issue and, if it is concluded that the Disciplinary Code has been breached, may decide to
 - a. issue a formal caution (this may be issued by the tutor or year manager) or
 - b. enter into a 'Performance Agreement' with a student (this will be approved and issued by a Head of Department), setting out conditions to which the student would be expected to adhere. In the case of a student under 18 years of age the parent/guardian/representative will be informed. or
 - c. in the event that the student fails to adhere to the Performance Agreement, the matter may become a formal disciplinary matter to be dealt with in a disciplinary hearing, possibly resulting in a written warning. A written warning will be issued by the Executive Dean of

School. In the case of a student under 18 years of age the parent/guardian/representative will be invited to attend.

If of a more serious or continuous nature, it may be escalated to the Executive Director for External Engagement.

- iii. Where a breach of this code is considered to be of a nature attracting more than a First Written Warning, or where the breach is minor but part of a series of persistent breaches, it would likely be referred directly to the Executive Director for External Engagement who will take action as outlined below.
- iv. **The Disciplinary Hearing for the Consideration of a Final Written Warning or Allegations of Gross Misconduct**

The Executive Director for External Engagement may instigate an investigation prior to a possible disciplinary hearing and may nominate an investigating officer to assist in the gathering of evidence. This may include the questioning of the complainant, witnesses, students or other personnel as he/she deems necessary. If still appropriate 'within time' previous disciplinary records will be sought and considered by the Executive Director for External Engagement.

A student will be informed of any allegations against him/her and will have the right to 10 working days' notice before any formal hearing takes place. However, the student may choose to waive this notice period following an initial meeting with the Executive Director for External Engagement.

During an investigation, or pending a disciplinary hearing, any member of the Executive Management Team may suspend a student from UCB. This suspension is not a disciplinary sanction; it merely allows for a cooling off period or to enable an investigation to be carried out free of any interference. It does however mean that during a period of suspension a student will not be able to participate in UCB activities, e.g. field trips etc. In the case of scheduled assessments/examinations, an EMT member may allow the student to attend UCB or an examination venue in order to complete an assessment/examination. During the course of a suspension, the student is excluded from any property owned or controlled by UCB. The student concerned may not enter these areas without the permission of an EMT member.

The Executive Director for External Engagement will notify the student, against whom a complaint has been made, of the time and date of the Disciplinary Hearing at which his/her case will be heard. The student may be accompanied at the Disciplinary Hearing by another UCB student or a representative of the UCB Guild of Students, who may speak on behalf of the student.

At the commencement of the hearing, the Executive Director for External Engagement will ensure that the student understands the nature of the complaint against him/her. The procedure for the hearing will be determined by the Executive Director for External Engagement. During the hearing the student will be given the opportunity to ask questions and to make a statement.

The outcome of a disciplinary hearing may, if determined by the Executive Director for External Engagement, be entered on the student's record. In determining the sanction to be applied, consideration will be given to:

- i. The seriousness of the misconduct

- ii. The student's previous disciplinary record
- iii. The conduct of the student subsequent to the act of misconduct
- iv. Any mitigating factors.

The following range of sanctions may be imposed by the Executive Director for External Engagement on students found to be guilty of more serious breaches of the disciplinary code

- i. Expulsion from UCB and/or student residencies.
- ii. Suspension from all UCB activities for a period of up to 12 months.
- iii. A monetary fine, up to a maximum of £500. Non-payment of such a fine may result in the student being suspended or expelled.
- iv. Where the incident involves damage to property, restitution or payment of all costs incurred, in addition to, or instead of imposing a penalty upon the student.
- v. Removal of student privileges.
- vi. A final written warning.
- vii. A requirement to carry out specified voluntary work at UCB or in the community.

Where a suspension or expulsion is imposed, UCB may be obliged to inform any appropriate external agency in line with its duties to that agency. The Executive Director for External Engagement may decide to suspend any penalty imposed on a student for a specific time period. During this period, General Student Regulations Issue the student may be required to fulfil certain conditions. Any contravention of these conditions, or if the student commits a further offence, would result in the original penalty being enforced and new sanctions being imposed.

v. **Gross Misconduct**

In certain circumstances where, on investigation, it has been found that a student has committed an offence deemed to be gross misconduct, the Executive Director for External Engagement may expel the student with immediate effect. This will not affect the student's right of appeal as detailed in section 6. 6. Students' Right of Appeal against a Disciplinary Decision

A student may only appeal against a disciplinary decision on one or both of the following grounds:

- i. That there is new and relevant evidence not previously taken into account.
- ii. That the correct procedure for determining the student's case has not been followed, resulting in an unfair decision having been made.

The student must appeal in writing to the University Secretary and Registrar within 10 working days of the disciplinary decision, stating the grounds for the appeal. The University Secretary and Registrar shall notify the Vice-Chancellor & Principal who will hear the appeal where there are grounds to do so. The student shall be given at least 10 days' notice in writing of the time, date and place of the meeting.

The procedure for the Appeal Hearing shall be as determined by the Vice-Chancellor & Principal. The student may be accompanied by another UCB student or representative of the UCB Guild of Students, who may speak on behalf of the student. The Appeal Hearing shall only hear and consider the specific grounds on which the appeal has been made. The Vice-Chancellor & Principal may decide that the evidence presented in the Appeal Hearing justifies a change in the original decision and/or penalty. If so, he will announce his own decision and/or penalty (if appropriate), which will then become the final and binding one.

In addition to the above, UCB recognises the role of the Office of the Independent Adjudicator (OIA) in respect of student complaints, grievances and appeals.