

# Sexual Violence and Misconduct Policy

## **Introduction**

All University of East London students are expected to adhere to the standards of behaviour required of them as a member of the University community. The University recognises that students are responsible for their own behaviour and that in any community of adults' disputes between individuals will arise. The University has a range of policies and procedures in place to manage breaches of student codes of conduct, student contracts or other codes of practice.

The University recognises the significant impact of all experiences of Sexual Violence and Misconduct, and acknowledge the potential detriment to studies and employment, regardless of when the experience occurred. Sexual violence and misconduct can be experienced by any individual, but females, members of the LGBT+ community and individuals with disabilities are disproportionately affected by experiences of sexual violence. The University is committed to promoting a culture in which any incidents of sexual violence or sexual misconduct will not be tolerated and will be thoroughly addressed to ensure the preservation of a safe work and study environment. All members of the University of East London have a responsibility for creating a community that is based on dignity and respect.

The University takes seriously reports of sexual violence and misconduct and recognise the specific emotional impact of these offences upon victims. Therefore, a distinct sexual violence and misconduct policy and procedure has been created. This Sexual Violence and Misconduct policy is to be used when the University receives a written allegation that a student may have perpetrated sexual violence or sexual misconduct.

The University will usually appoint an Investigating Officer to investigate the allegation. As allegations of sexual violence and misconduct are serious, possibly criminal, offences they will be investigated at a Category 2 Formal Level and the investigation will be organised centrally by the Student Conduct Team. As the possible sanctions include suspension, exclusion or expulsion the case will be heard by a Sexual Violence and Misconduct Panel.

The Director of Student and Academic Services, or nominee, will decide if the allegation is to be investigated via the Sexual Violence and Misconduct Policy or the Non-Academic Misconduct Policy.

There are specific differences in the sexual violence and misconduct process as compared to the non-academic misconduct process. The main ones are;

- The Responding Student and the Reporting Student (together the Supported Students) will both be signposted to appropriate support
- The University will keep the Supported Students informed of the progress of the investigation and any material changes, e.g. changes to precautionary measures, police proceedings (if known).
- The Supported Students will both receive details of the outcome and any sanctions imposed
- The Supported Students both have the right of appeal.
- The Supported Students will both receive Completion of Proceeding letter.

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## 1. Principles

1.1 The core principles of this policy and procedure are that the process is accessible, clear, proportional, timely, fair, and of benefit to the wider student experience

1.2 The University of East London's sexual violence and misconduct disciplinary process will operate in a fair and transparent manner in accordance with the principles of natural justice. It does not seek to reproduce elements of the criminal law and is not a formal legal process. In determining an outcome to the disciplinary process, the panel hearing the case will be assessing whether the incident(s), on the balance of probabilities, contravened the University of East London Code of Conduct.

1.3 Individuals raising allegations of sexual violence and misconduct will normally be asked to report their allegations in writing and identify themselves and provide contact details. The University will not normally act in response to anonymous allegations of sexual violence or sexual misconduct, but these will be considered on a case by case basis.

1.4 The student who has made a report to the University that they have been a victim of sexual violence or sexual misconduct (the Reporting Student) will be provided with information about their options in taking forward their case e.g. progress under this procedure, report to the Police, seek informal resolution. The University will respect the Reporting Student's wishes and support them whether they wish to report to the Police or not.

1.5 A student who is alleged to have perpetrated an act of sexual violence or sexual misconduct (the Responding Student) will be informed of the nature of the allegation and will be given an opportunity to respond to the allegation. They will also be informed of the disciplinary process and made aware of support options available (see Appendix C).

1.6 Once the University receives the report it will conduct the Sexual Violence and Misconduct disciplinary process in a timely manner, aiming to complete the process within 90 working days from the start of the investigation. This timescale will depend upon the unique circumstances of each case e.g. the process may be paused if a criminal investigation is ongoing.

1.7 The University will conduct its investigation into alleged misconduct in a fair and impartial way.

1.8 A student who is being investigated under this policy is entitled to be accompanied at any disciplinary meeting by a friend, relative or representative of the Students' Union. The accompanying person cannot be a professional legal representative who has been employed to act on the student's behalf nor can they act in the capacity of a legal advisor.

Students are encouraged to seek advice and representation from the UEL Students' Union Advice Service.

1.9 Both Supported Students have the right to appeal against any disciplinary finding or sanction.

1.10 All staff involved in the process will act with impartiality and discretion.

1.11 Confidentiality will be maintained, where possible, throughout the process in recognition of the sensitive nature of Sexual Violence and Misconduct matters. As such, information will usually only be shared with relevant individuals/entities (who may be internal or external to the University, e.g. internal counsellors, witnesses, external experts from specialist agencies like Rape Crisis, Sexual Assault Referral Centres or the Police) with the agreement of the Reporting Party.

1.12 All individuals involved in any process under this Policy must keep information that is disclosed to them as part of the process confidential. Any unauthorised disclosure of confidential information will be considered a Policy violation and will be addressed accordingly.

1.13 The University reserves the right, and may be under an obligation, to share information in exceptional circumstances where such disclosure is necessary to protect any individual or the wider University community from harm or to prevent a crime from taking place.

1.14 Both Supported Students will be offered support throughout the process and kept informed of the progress of the investigation

1.15 The University believes that the purpose of a disciplinary process is to help raise the standard of behaviour in its community which is for the benefit of the wider student experience.

## **2. Terminology**

2.1 **Disclosure** involves an individual choosing to tell anyone who is part of the University community about their experience of Sexual Violence and Misconduct. A disclosure to a staff member is not a report under this policy.

2.2 **Report** is a written sharing of information with a staff member of the University regarding an incident of sexual violence or sexual misconduct experienced by that individual for the purposes of initiating the investigation process by the University.

2.3 **Reporting Party** is the person(s) reporting themselves to be a victim of sexual violence or sexual misconduct

2.4 **Responding Party** is the person(s) who has been reported to have perpetrated sexual violence or sexual misconduct.

2.5 Collectively the reporting and responding party are referred to as the **Supported Parties**

2.6 **Consent** is the agreement by choice where the individual has both the freedom and capacity to make that choice. Consent cannot be assumed based on 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 before or during a sexual act.

**2.7 Freedom to consent:** For consent to be present, the individuals have 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 coercion, force, threat, intimidation or the exploitation of power.

**2.8 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 is compelled to engage in a sexual act.

**2.9 Capacity to consent:** Free consent cannot be given if the individual does not have the capacity to give consent. An individual is incapacitated when asleep, unconscious, semiconscious, or in a state of intermittent consciousness, or any other state of unawareness that a sexual act may be occurring, this includes being drunk or under the influence of drugs.

### **3. Scope of the Policy**

3.1 This policy applies to all students registered on any University module, programme or course.

3.2 A student may disclose an incident(s) of sexual violence or sexual misconduct to any staff member. The University will not assume a disclosure means a student wishes to initiate a disciplinary investigation. This policy only applies when the University receives a written report from a University of East London student or staff member against a University of East London student which they believe contravenes the Sexual Misconduct section of the University's Code of Conduct.

3.4 This policy is not limited to University premises or the immediate geography of the University.

3.5 This policy applies equally to online sexual misconduct

3.6 This policy applies regardless of whether the Reporting Student has notified the Police.

3.7 Sexual Violence and Misconduct is defined as any unwanted conduct of a sexual nature. The University Code of Conduct cites the following as examples of sexual misconduct;

- Verbal harassment such as whistling, catcalling, or sexual innuendo
- Making unwanted remarks of a sexual nature
- Spreading rumours about a person's sex life
- Nonverbal harassment, such as looking someone up and down or displaying pictures of a sexual nature
- Sending emails or messages containing sexual content and/or asking for sexual favours
- Inappropriately showing sexual organs to another person
- Sexual intercourse or engaging in a sexual act (including kissing) without consent
- Attempting to engage in a sexual act without consent
- Creating, disclosing or threatening to disclose nude, sexual or sexually explicit photos, films or messages without consent and with intent to cause distress
- Touching inappropriately through clothes without consent

The University recognises that sexual violence and misconduct refers to a broad spectrum of behaviours that often cannot be divorced from other types of gender-based violence including intimate partner violence or domestic abuse, coercive and/or controlling behaviour, and stalking.

- Domestic abuse and coercive or controlling behaviour is defined as any pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those who are, or have been, intimate partners regardless of gender or sexuality. This can include, but is not limited to, psychological, physical, sexual, financial and/or emotional abuse.
- Stalking is defined as a pattern of fixated and obsessive behaviour which is repeated, persistent, intrusive and causes fear of violence or engenders alarm and distress in the victim.

These examples are intended to be illustrative and are not exhaustive.

#### **4. Precautionary Measures prior to disciplinary action**

4.1 At times it may be necessary to mitigate risk and protect the University community by applying precautionary measures prior to the commencement of the Sexual Violence and Misconduct disciplinary process. Any such action is a precautionary measure only; it is neither a penalty nor sanction and does not indicate that the University has decided that the Responding student has committed any misconduct. Its aim is to protect all members of the University community. Precautionary measures can be imposed prior to an investigation starting.

4.2 The Director of Student and Academic Services, or nominee, makes the decision on whether to apply precautionary measures. The Director of Student and Academic Services, or nominee, will undertake a risk assessment and complete the Precautionary Measures Risk Assessment form (Appendix B) before a decision is made. If the Director of Student and Academic Services, or nominee, reasonably believes that a student against whom an allegation of Sexual Violence or Misconduct has been made does pose a risk, s/he may, acting under delegated authority from the Vice-Chancellor and President:

- Restrict a students' access to certain parts of campus, e.g. particular buildings or residential halls
- Restrict a students' participation to certain academic and/or non-curricula activities
- Restrict who a student can contact (e.g. a non-contact order may be issued)
- Suspend the student. Suspension means that the student is prohibited from participating in the academic activity of the University and the student's registration on their programme of study is put on hold. A qualified or partial suspension may be put in place where appropriate.
- Exclude the student. Exclusion means that the student is prohibited from taking part in University activities, using University facilities and/or entering University grounds or premises. A qualified or partial exclusion may be put in place where appropriate

4.3 As part of their determination the Director of Student and Academic Services will consider whether specific arrangements can reasonably be put in place for any student subject to precautionary action in order to minimise the impact on their studies and will liaise with the student's Academic School as appropriate.

4.4 The University may impose a requirement on all parties (including a student reporting a disciplinary concern) not to have contact with each other and with named others. This is called a non-contact order.

4.5 Both the Responding Student(s) and the Reporting Student(s) will be informed in writing when a precautionary measure has been applied in their case and the reasons for this, normally within two working days of the decision.

4.6 A student has the right to appeal the precautionary measures applied to them. The student can appeal against the precautionary measures at any point during their application by writing to the Director of Student and Academic Services expressing their reasons for the appeal.

4.7 Any precautionary measures will be reviewed at regular intervals (and a minimum of every three months) to consider whether they should be revoked, extended or the terms amended. In the case of the University awaiting the outcome of any criminal proceedings or investigations the precautionary measures are likely to remain in place for the duration.

4.8 If a student breaches the precautionary measures applied to them then they may be subject to further disciplinary action.

## **5. Category 2 Formal Process**

5.1 Sexual Violence and Misconduct is a very serious allegation and all allegations will be investigated through a Formal Process. A student found to have committed Sexual Violence and Misconduct is faced with the possibility of suspension or exclusion so their case will be heard by a Sexual Violence and Misconduct disciplinary panel.

5.2 In the Category 2 Formal process an Investigating Officer will be appointed centrally by the Student Conduct Team.

5.3 The Investigating Officer will review the allegation and the evidence and/or witness statements provided. The Investigating Officer will contact the Reporting Student and invite them to discuss the case. The role of the Investigating Officer is to gather the facts of the incident(s). The Investigating Officer will contact the Responding Student inviting them to discuss the case, so they have the opportunity to respond to the allegation. The Investigating Officer will collect further evidence from relevant parties e.g. witnesses and make any further enquiries that they deem necessary for the investigation.

5.4 If the Responding Student does not take up the opportunity to speak to the Investigating Officer the disciplinary process will still proceed, and a Sexual Violence and Misconduct panel will still sit to hear the evidence collected. It is strongly recommended that the student engages with the Investigating Officer and the disciplinary hearing.

5.5 A Sexual Violence and Misconduct panel will be arranged for the case to be heard. This panel will be convened with administrative support provided by the Student Conduct Team. The Sexual Violence and Misconduct panel members will be appointed by the Director of Student and Academic Services, or nominee. The Chair of a Sexual Violence and Misconduct panel will usually be a senior member of staff, such as a Dean of School or Director of a Professional Service. Panel members will be impartial and have had no prior involvement with either Supported Student. Where possible we will seek to ensure the composition of the panel reflects the diversity of our institution.

5.6 The Responding Student will be notified in writing that they are requested to attend a Sexual Violence and Misconduct panel where their case will be heard. The Responding Student will be provided with at least seven working days' notice of the hearing date.

5.7 The Reporting Student will be notified in writing that a Sexual Violence and Misconduct panel has been convened to hear their case. The Reporting Student will be provided with at least seven working days' notice of the hearing date. The Reporting Student has the right to choose whether they would like to attend the hearing.

5.8 All relevant documentation available from the Investigating Officers report to the Sexual Violence and Misconduct panel will be shared with both Supported Students at least 3 days before the hearing. The Investigating Officer will also verbally present the evidence collected through their investigation to the Sexual Violence and Misconduct panel

5.9 Both Supported Students can call witnesses to the alleged incident(s) to the hearing. The names of any witnesses must be provided to the Student Conduct Team in writing at least 5 days before the hearing date so logistical arrangements can be put in place. If any of the witnesses are new to the case, i.e. they were not called as witnesses during the investigation, the Chair of the Sexual Violence and Misconduct panel will decide whether to admit them.

5.10 The University may also invite witnesses to the hearing. If it does so, the Supported Students will be informed of this in advance of the hearing. If any of the witnesses are new to the case, i.e. they were not called as witnesses during the investigation, the Chair of the Sexual Violence and Misconduct panel will decide whether to admit them.

5.11 Both Supported Students have the right to be accompanied at the hearing (as per section 1.8 above) but that this persons' name needs to be submitted in writing to the Student Conduct Team at least five working days before the date of the hearing. If details of the accompanying person are not provided by then the Chair of the Sexual Violence and Misconduct panel can reserve the right to refuse admission to the accompanying person. If the accompanying person's behaviour at the hearing is deemed inappropriate, the Chair has the right to remove the accompanying person.

5.12 It is in the best interest of the Responding Student to attend the Sexual Violence and Misconduct panel hearing. If the student chooses not to appear before the panel, the panel has the right to hear the case in their absence.

5.13 The University strongly advises that a student attending a disciplinary panel seeks the advice and support of the Student Union Advice Team <https://www.uelunion.org/advice/>

5.14 At the Sexual Violence and Misconduct panel hearing the Investigating Officer will present their findings. The Responding Student will be invited to respond to the allegations of misconduct made. The panel will ask questions of the Investigating Officer, Responding Student and any witnesses. including if appropriate the Reporting Student.

5.15 At the conclusion of the hearing, the Sexual Violence and Misconduct panel will discuss the case in private and will reach a decision based on the available evidence. The Panel will endeavour to make a decision on the same day as the hearing, but this may not always be possible. The Sexual Violence and Misconduct panel may make one of the following decisions:

- Dismiss the allegation as on the balance of probability misconduct was not found

- Find the allegation not proven but recommend the continuation of precautionary measures
- Conclude that on the balance of probability the Sexual Violence and Misconduct took place but take no further action
- Conclude that on the balance of probability the Sexual Violence and Misconduct took place and apply a proportionate sanction
- Conclude that on the balance of probability the Sexual Violence and Misconduct took place and recommend the student be suspended, excluded or expelled

5.16 Should the Sexual Violence and Misconduct panel be unable to reach a consensus the Chair will have the determining voice.

5.17 The Chair of the Panel, through the Student Conduct Team, will write to the Responding Student and the Reporting Student conveying the Panel's decision, together with reasons and any associated conditions, in writing and normally within two working days of the date of the decision.

5.18 In the event that the decision involves the suspension or exclusion of the student then the relevant Dean of School will work with the Department of Student and Academic Services to devise and implement a plan to support the student's study where that is possible and appropriate.

## **6. Appeal against a sanction not involving expulsion**

6.1 Both Supported Student can appeal the decision within ten working days of the date of the letter detailing the Sexual Violence and Misconduct panel's decision

6.2 The student can appeal by contacting the Complaints and Appeals Team [complaints@uel.ac.uk](mailto:complaints@uel.ac.uk) detailing the reasons for their appeal. An appeal can only be made because of one or more of the following grounds:

- the University has failed to follow the procedure set out in this Procedure
- the decision was unreasonable and/or a disproportionate outcome has been imposed
- the student has material new information/evidence which was not reasonably available before.

6.3 Pending the outcome of any appeal the decision and sanction of the Sexual Violence and Misconduct panel will remain in force.

6.4 The Complaints and Appeals Team will consider the appeal submission and determine whether there are valid grounds to proceed. The student will be notified by the Complaints and Appeals Team within seven working days of their appeal being received whether there are valid grounds to proceed, or not.

6.5 Where valid grounds have been determined for an appeal, a nominated Head of School/ Director of Professional Service not previously involved in the case will determine the appeal solely by review of the documentary evidence available and will either:

- dismiss the appeal (in whole or part), and/or
- uphold the appeal (in whole or part) and:
- refer the matter back to an earlier Stage of this Procedure for reconsideration, e.g. if procedure had not been followed
- refer the matter back to an earlier Stage of this Procedure for fresh consideration, e.g. if material new information or evidence was made available, or
- impose an alternative sanction.

6.6 The student will be notified of the appeal outcome by the Complaints and Appeals Team within ten working days of the date of the letter informing the student that the appeal was being considered.

6.7 The decision of the Head of School/Director of Professional Service will be final and will conclude this Procedure

## **7. Appeal against expulsion**

7.1 Where a Sexual Violence and Misconduct Panel decides that a student should be expelled, a full report on the matter should be submitted to the Vice-Chancellor by the Student Conduct Team, with the recommendation that any student concerned be expelled under the general disciplinary powers of the Vice-Chancellor

7.2 Students can appeal the decision within ten working days of the date of the letter detailing the Disciplinary Panels decision

7.1 The University Secretary will consider the appeal submission and determine whether there are valid grounds to proceed. The student will be notified by the University Secretary within seven working days of their appeal being received whether there are valid grounds to proceed, or not.

7.2 Where valid grounds have been determined, the University Secretary will invite the student to submit additional evidence for further consideration and may also invite the student to attend a meeting, if this is deemed appropriate based on the evidence presented. A student may make a request in writing to the University Secretary to attend a meeting with the Vice-Chancellor, or senior nominee, to discuss the appeal.

7.3 The Vice-Chancellor, or their nominated senior alternate, will determine the appeal, and will make one of the following decisions:

- dismiss the appeal (in whole or part) and/or
- uphold the appeal (in whole or part) and:
- refer the matter back to an earlier Stage or section of this Procedure for reconsideration, e.g. if procedure had not been followed
- refer the matter back to an earlier Stage or section of this Procedure for fresh consideration, e.g. if material new information or evidence was made available, or
- impose an alternative sanction.

7.4 The student will be notified in writing of the appeal outcome by the Vice-Chancellor's Office within fourteen working days of the date of the letter informing the student that the appeal was being considered

7.5 The decision of the Vice-Chancellor will be final and will conclude this Procedure.

## **8. Completion of the University Student Disciplinary Procedure**

8.1 At the conclusion of the University's Student Disciplinary Procedure a Completions of Procedures letter will be issued to the Responding Student within 28 days. The conclusion of the University's Student Disciplinary Procedure occurs when;

- The student's opportunity to appeal elapses;
- Or when the student receives notification that their appeal will not proceed;
- Or when the student receives notification that their appeal has not been upheld;
- Or when the student receives notification that their appeal has been wholly upheld, and no further action is required

8.2 UEL will provide the Responding Student with a Completion of Procedures letter which confirms that the University's internal procedures have been completed.

8.3 If either the Responding Student or Reporting Student are dissatisfied with the way the University have handled the disciplinary process they can raise a complaint through the Student Complaints Procedure <https://www.uel.ac.uk/about/about-uel/governance/policies-regulations-corporate-documents/student-policies/student-complaint-procedure> The University recommends any student wishing to raise a complaint receives support from the Student Union Advice Team <https://www.uelunion.org/advice/>

8.4 If a student is not satisfied with the way the University have handled their complaint, they can raise a complaint to the Office of the Independent Adjudicator (OIA). Complaints must normally be received by the OIA within twelve months of the date of the Completion of Procedures Letter; otherwise the OIA may consider the complaint to be out of time. Further information is available from the Students' Union Advice Centre and at: <http://www.oiahe.org.uk/>.

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#### **Appendix A – Code of Conduct**

Links to all codes of conduct here

#### **Appendix B – Precautionary Measures Risk Assessment**

Template to be inserted

#### **Appendix C – Support information**

Links to support options