



Leeds Trinity
University

Sexual Misconduct Policy

January 2023

Sexual Misconduct Policy

1. Introduction

- 1.1 This document sets out the University's policy for dealing with student cases of sexual misconduct which may constitute criminal activity. It does not replace the Conduct and Discipline Code. It amplifies and explains the steps and decisions that the University should take between disclosure and any referral to the Student Disciplinary Panel for the understanding of anyone involved in cases: students and staff, family members, police and lawyers.
- 1.2 The term sexual misconduct encompasses any unwanted sexual activity including: rape, sexual assault, sexual abuse, sexual exploitation, sexual harassment, voyeurism and unauthorised use of sexual images (sexting and revenge porn). Outside of a university situation, these are typically termed 'sexual harassment and violence'.
- 1.3 The University's disciplinary procedures are subject to civil contract law only and cannot determine criminal guilt. In the absence of criminal process, making such declarations is potentially defamatory. Despite reservations about its lesser significance, it is therefore more appropriate to use the term misconduct in relation to University policy and process. The expression sexual misconduct which may constitute criminal activity is used in the sectoral guidance.
- 1.4 This policy is aligned with the sectoral guidance drawn up in 2016 by Pinsent Masons and issued by Universities UK following the work of a sector taskforce: How to Handle Alleged Student Misconduct Which May Also Constitute A Criminal Offence. This policy also draws on training delivered by Support After Rape and Sexual Violence Leeds [SARSVL] to key welfare staff at Leeds Trinity in 2019. Annex A lists other guidance and relevant policies.

2. Language and Other Preliminaries

- 2.1 In all situations, the basic legal right to be considered innocent until found guilty must apply. Investigators need to be careful in this regard and university professionals have an impartial duty of care to all students, including perpetrators. However, to be believed is a fundamental need and anxiety of victims and disclosers and it is usually the case that supporter-advocates, witnesses, flat-mates or others can demand action well before any judgments have been made. Managing this tension is enormously difficult.
- 2.2 In such a climate, careful reference to "alleged victim" and "alleged perpetrator" might be regarded as insensitive. Sectoral guidance recommends use of terms such as "discloser" and "responder" (the person responding to allegations made against them). However, "responder" feels more natural as the term for the person responding supportively to a first disclosure as set out in section 4 below. Victim is a natural term without legal significance. Perpetrator is hereafter used with the assumption that alleged is implied in all usage.

3. Scope and Scenarios

- 3.1 This policy covers all allegations involving registered students and apprentices (hereafter student(s)). Allegations which involve staff only or staff but not current

students should be directed to Human Resources. Allegations or disclosures which involve pupils or summer school residents should be regarded as safeguarding incidents requiring separate procedure.

- 3.2 The University notes that the vast majority of cases of sexual violence involve people who already know each other, including partners in a relationship, whether sexual or not. Accordingly, staff will not prejudge situations or context to allegations.
- 3.3 The following scenarios are likely and not exhaustive. Incidents may be recent or historic:
 - 3.3.1 Social event off campus (nightclub, street)
 - 3.3.2 Private accommodation (housemate or guest)
 - 3.3.3 Resident student victim, perpetrator not our student
 - 3.3.4 On campus incident, student on student
 - 3.3.5 On or off campus incident, staff on student or student on staff
 - 3.3.6 Off campus workplace
 - 3.3.7 Franchise partner site
- 3.4 The University will not pursue allegations against people who are not student or staff members of the University nor will it inform or request assistance from third party organisations such as other universities or employers. All such matters or information should be referred to the police.

4. Disclosure: Immediate Response and Professional Support

- 4.1 Disclosure does not require an investigative response and University staff should respond appropriately (as set out in separate guidance).
- 4.2 Responders should listen actively and protect their own wellbeing by remaining calm. They should refrain from anger as demonstration of serious intent.
- 4.3 Responders should only make brief factually accurate notes at the end of the disclosure conversation (see Section 5.2.1 below about use in court).
- 4.4 Responders should signpost students to trained professional services, typically Student Support or Student Mental Health and Wellbeing, for specialist advice about external services and options.
- 4.5 Responders must never seek to deter students from reporting to the police either immediately or later.
- 4.6 The University will ensure that victim and perpetrator have separate, fair and equal guidance about steps and constraints in all further stages of the process.
- 4.7 Professional support staff will encourage victims who are still reluctant to report an incident to the police to avail themselves of physical/medical evidence collection facilities in the city.
- 4.8 Professional support staff will advise disclosers that their engagement with psychotherapeutic services may be tested in court: support for trauma and after-effects is not questionable but analysis of the incident itself may be open to cross-examination of possible interpretation and a false recollection.

- 4.9 The University will assess whether to take precautionary measures to protect safety, reduce anxiety and allow for continuation of studies as far as possible.

5. Investigation: Basic University Protocols

- 5.1 The sectoral guidance prepared for Universities UK, prepared by Pinsent Masons, sets out two fundamental recommendations, namely that:

- 5.1.1 The criminal process must take priority; there must be no duplication of or concurrent process; internal investigation should be suspended for the duration of the criminal process.

Not only could an internal disciplinary process jeopardise a criminal trial but a defendant has the right not to cooperate, on legal advice, with an internal disciplinary process in advance of a trial. This is likely to compromise the fairness of the internal process and would likely render it void on appeal (to the OIA, for example). This could be extremely harmful to the victim.

- 5.1.2 If there is no criminal process or when that process has concluded, a university must decide whether to open an internal investigation and disciplinary process.

It is not acceptable to rule out disciplinary process on the grounds that an allegation is too serious for internal process. The disciplinary process is not a criminal process and cannot, in law, determine whether or not, for example, a student has committed rape or sexual assault. It can only determine whether misconduct or unacceptable behaviour contrary to the University's regulations has taken place.

- 5.2 In addition, it is recommended to the sector that:

- 5.2.1 All involved realise that any and all notes and records may be used in a criminal trial and must be clear, accurate and appropriate.
- 5.2.2 The main parties involved should have a different trained single point of contact [SPOC] in support staff. The SPOC should be able to advise a student about the options available to them, the limitations of a university process in terms of outcomes (penalties) and related confidentiality. The SPOC is not a therapeutic role.
- 5.2.3 University staff should not put any pressure on someone either to report or not report a matter to the police. The University should respect the student's wishes and only exceptionally report a matter contrary to the victim's wishes. If a student wishes not to report a matter to the police but wishes the University to investigate, the University should accede to this wish.
- 5.2.4 An accused student should have the right to test evidence against themselves but the University should ensure, for welfare reasons, that arrangements are made so that accuser and accused are not physically present in one room at the same time.
- 5.2.5 The University has the right to pursue a related disciplinary matter concurrently with a criminal investigation provided that it is not the subject of the criminal investigation. An example given would be abusive behaviour to another student while under the influence of drugs; the drugs issue might be dealt with by the police and the abusive behaviour by the University.

- 5.3 The University will be mindful that police investigation, prosecution, trial and appeal will take months and quite possibly extend through and beyond the remaining years of study of those involved.

6. Police Investigation

- 6.1 In cases where the matter has been referred to the police or the discloser has been encouraged to report it to the police, the University will need only to note the identities of those directly involved and any witnesses, pending the outcome of the police investigation.
- 6.2 The University will inform these people that the University is aware of the case but is not at this stage seeking further detail in order not to contaminate any police investigation and prejudice a future trial.
- 6.3 The University will impress on these people that there should not be any public discussion in person or on social media which might lead to an escalation of tension or otherwise jeopardise both external or internal processes. This does not include personal or professional support.

7. University Investigation

- 7.1 The University will normally wait for the outcome of police investigation and a decision to refer, or not, to the Crown Prosecution Service and the decision of the CPS as to whether to prosecute before deciding whether to launch its own investigation.
- 7.2 The University will take account of the police and CPS decisions in framing that investigation. However, it will be mindful that (a) student registration is governed by contract law only and (b) the burden of proof in a criminal prosecution – beyond reasonable doubt - is higher than would be expected of a University investigation - on the balance of probabilities.
- 7.3 Cases without referral to the police:
- 7.3.1 In cases where the discloser does not want to refer the matter to the police, the University will take a decision on whether to proceed to a full internal investigation.
- 7.3.2 Specialist guidance recommends that such investigations are not handled by a single person within the organisation, synthesising information in a process vulnerable to filtering and accusations of bias or conflict of interest.
- 7.3.3 Accordingly, the University will seek to appoint an independent experienced investigator to interview those involved and prepare a report for the appropriate panel (e.g., the Student Conduct Panel).
- 7.4 Cases in which external investigations have been concluded:
- 7.4.1 The University will need to take a decision about internal disciplinary procedures at the point when:
- a) A police investigation has been dropped without charges and without referral to the CPS;
 - b) The CPS has concluded that a prosecution is not viable;

- c) A trial has resulted in acquittal or has collapsed;
 - d) A trial has resulted in a guilty verdict.
- 7.4.2 The University will be mindful that the burden of proof expected in an internal investigation is lower than in criminal proceedings.
- 7.4.3 If the University decides not to proceed with an internal investigation it should write to those involved to give its reasons.
- 7.4.4 If it decides to proceed, the University will appoint an independent person to conduct the investigation and submit a report to the Student Conduct Panel.
- 7.4.5 The University is fully entitled to use the outcomes of the external investigation in reaching its own conclusions about misconduct.

8. Records and Freedom of Information

- 8.1 The University will maintain, in granular but anonymised manner, a register of all cases relating to sexual violence in order to respond efficiently to Freedom of Information requests. It should be noted that sexual violence is second only to mental health in terms of student-centred Freedom of Information requests to this University and thus to all almost certainly. However, requests can vary in terms of definitions, locations, outcomes and time-periods (calendar years instead of academic years for example). In order to respond time-effectively to these requests, it is necessary to record definitive information according to the prevalent external demand rather than internal categories. However, in the absence of convictions, low numbers and possible identification remain problematic.

Annex A – Guidance on Responding to Disclosures

1. The most important thing the first responder must do is **be present** for the discloser – in other words, to be patient and sensitive and to listen attentively.
2. Responders should mirror the language adopted by the discloser, even if casual or slang.
3. Responders should monitor their own emotional responses and keep calm and safe.
4. Responders should be realistic about their professional boundaries and should make clear that not all support can come from them.
5. Responders should refrain from any kind of judgmental response. Sudden attacks by strangers constitute the minority. Accordingly, victims often feel compromised by an initial scenario of normality or agreement to normal social interaction. This might include being “alone” with the perpetrator in a room, a vehicle or a bed.
6. Responders will not be judged on their emotional response and should not be tempted to declare actions that must be taken in order to prove they are taking the matter seriously. Neither will they be judged on what the truth is.
7. Responders should not assume an immediate investigative approach but should record factual accurate notes before the end of any meeting or conversation. These may be used in court.
8. Responders should suggest, if possible, that disclosers do not immediately identify or name perpetrators. Responders should explain that names can be disclosed in an investigative stage in order to allow the discloser time to consider whether they want the police involved. Once names have been identified, it may not be possible **not** to involve the police.
9. The staff of the University need to maintain open minds and ensure that equitable confidential support is provided without judgment and without cross-contamination of information. If the disclosure occurs in Student Support, it will be important to keep a discreet separation between initial interviews for the purpose of support and subsequent interviews for the purposes of preliminary investigation.
10. A key support moment – and for all subsequent institutional actions – will be exploring whether the discloser wishes to report matters to the police. The institution has a policy position that it will never seek to dissuade anyone from taking matters to the police and it follows that staff will support a student who wishes to do so.
11. However, there are steps which can be taken by the victim-discloser without or before deciding to report formally to the police. Forensic evidence is not necessary in order to secure a conviction. However, there is a window, varying according to the bodily site of assault, in which it is possible to obtain such evidence. It does not have to be the police who conduct the examination and the evidence can be retained for seven years in case of a later prosecution. Accordingly, should they wish, victims can be given contact details of the Sexual Assault Referral Centre (SARC) in Dewsbury where the examination can take place and victims can be given additional medical checks and ongoing support, such as the Independent Sexual Violence Advocates [ISVA] and Victim Support.