



## Sexual Misconduct Employee Procedures

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## 1. Introduction

Dublin City University (DCU) is committed to providing an equal, inclusive and diverse environment in which all members of the University community can expect to feel safe while being respected and valued for their unique perspectives and contributions.

The Sexual Misconduct Policy sets out DCU's commitment to tackling all forms of sexual misconduct. Sexual misconduct is a serious and unacceptable experience for any person, of any age, gender, sexual orientation, race/ethnicity or religious community. DCU has a zero tolerance policy towards sexual misconduct. Please read the Policy as a partner to this Employee Procedures Document.

All members of the University community should be aware that all forms of sexual misconduct are unacceptable and that everyone has a duty to take responsibility for their own behaviour and to actively support a university culture of equality, diversity and inclusion. Each person has a duty not to place the safety, health and welfare of DCU community members at risk.

Dealing with issues relating to sexual misconduct can be stressful and distressing for all parties concerned. Support for DCU staff is available through the DCU HR Department, DCU EDI Unit and/or DCU Employee Assistance Programme for staff. Staff who are members of a trade union may also wish to speak to their trade union representatives.

The Policy and these Staff Procedures have been developed in accordance with the national framework, Safe, Respectful, Supportive and Positive: Ending Sexual Violence and Harassment in Irish Higher Education Institutions, as well as the IUA's Guidance for Universities "How to respond to Alleged Staff or Student or University Related Sexual Misconduct and THEA's Promoting Consent & Preventing Sexual Violence (PROPEL) best practice guide. The Policy and Procedures have also been informed by the Irish Human Rights and Equality Commission (IHREC) new Code of Practice on Sexual Harassment and Harassment at Work (2022).

## 2. Purpose

This document should be read with the *Sexual Misconduct Policy*. The Policy sets out the University's commitment to the promotion of a culture that rejects any form of sexual misconduct and includes detailed information on definitions, roles and responsibilities, and policy objectives .

The purpose of this Staff Procedures Document is to:

- provide clear information regarding the steps that individuals may take if they believe they have experienced sexual misconduct
- clearly explain the supports available for anyone who feels they have been subjected to sexual misconduct and outline the steps involved for both initially disclosing and/or formally reporting the experience
- help to ensure that all members of the University community are aware of their roles and responsibilities within the procedures for staff related to sexual misconduct;
- have adequate and accessible mechanisms in place for handling sexual misconduct effectively.

### 3. Scope

This Staff Procedures Document applies to all areas of the University's operations and programmes. The Document applies to all staff of the University including its wholly owned campus companies and its research centres. It also applies to voluntary workers, contractors, sub-contractors and visitors. A separate Student Procedures Document is available from DCU Student Support and Development.

For the purposes of these procedures, the University defines sexual misconduct<sup>1</sup> as any form of unwelcome behaviour of a sexual nature that may be subject to disciplinary proceedings. This includes but is not limited to crimes of sexual violence, sexual cyberbullying, image based sexual abuse including non-consensual taking and/or sharing of intimate images, creating, accessing, viewing or distributing images of child sexual abuse material online or offline, stalking behaviours whether online or offline in a sexual context, and any verbal or physical harassment in a sexual context.<sup>2</sup> For full details of the definition of sexual misconduct as well as related concepts see Section 6 of the *Sexual Misconduct Policy*.

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<sup>1</sup> [Safe, Respectful, Supportive and Positive: Ending Sexual Violence and Harassment in Irish Higher Education Institutions](#)

<sup>2</sup> [Safe, Respectful, Supportive and Positive: Ending Sexual Violence and Harassment in Irish Higher Education Institutions](#)

## 4. Staff Procedures Principles

Through these Staff Procedures, DCU will:

- make transparent the procedures for reporting experiences of sexual misconduct
- act in a timely manner when dealing with reports of sexual misconduct, to reflect the impact of the stress of the process on all those involved
- provide information and clarity around the supports that are in place for those who feel that they have experienced sexual misconduct.
- endeavour to ensure that there are trained support staff available to provide appropriate guidance and support to both the reporting and responding parties
- respect the right of the individual making a disclosure to choose how to proceed and provide clear and consistent advice as to support and formal reporting options
- be mindful of the sensitive nature of processes which involve reports of sexual misconduct and take steps to ensure that all those impacted are fully supported and the dignity of all parties is maintained
- uphold the principles of natural justice recognising that both parties have a right to a good name and therefore their right to confidentiality and anonymity is respected with the constraints of the law.<sup>3</sup>

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<sup>3</sup> Where a complaint concerns a minor, the university should in the first instance report the matter in line with the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012 and the Children First Act 2015 to ensure that the University complies with its statutory obligations.

## 5. If you have experienced sexual misconduct

If you have experienced any behaviour that is in violation of the *Sexual Misconduct Policy*, **it is important to know that it was not your fault. Victims of sexual misconduct are never to blame.** You have a right to dignity and respect. You have a right to decide what to do next. The University will support you in any decision you make.

The following are some key options that you may wish to consider:

- Do you wish to make an initial disclosure of the experience to a trained member of university staff?
  - See Section 6.1
  - Contact [DCU's Equality, Diversity and Inclusion Unit](#)
- Do you wish to make a report to An Garda Síochána?
  - See Section 6.5
  - DCU Garda Liaison Officer
- Do you wish to seek to resolve the issue informally?
  - See Section 6.2
- Do you wish to attend a sexual assault treatment unit (SATU)? A SATU will ensure your immediate health needs are met and have an important role in enabling forensic evidence to be collected whilst a decision is being made about whether or not to make a report to An Garda Síochána. Forensic samples should be collected as soon as possible, but can be collected within up to seven days, and can be stored by the SATU for up to one year. You do not have to make a report to the An Garda Síochána if you attend a SATU.
  - Visit the [HSE's information page](#)
- Do you wish to access professional emotional support?
  - See Section 10
  - Contact [DCU's Employee Assistance Programme \(EAP\)](#). You can access the EAP through the 24/7 freephone number 1800 814 243, or by texting (SMS) or WhatsApp by sending 'Hi' to 087 369 0010.
  - Contact the [Dublin Rape Crisis Centre](#). You can access free, confidential, non-judgemental support through the 24/7 helpline on 1800 77 8888 or visit the webpage to access live chat.
- Do you wish to formally report the experience to the University but not to An Garda Síochána?
  - See Section 6.3
  - See Section 7
  - Contact [DCU's Equality, Diversity and Inclusion Unit](#)
- Do you wish to formally report the matter to the University and An Garda Síochána?

- See Section 6.3
- See Section 6.5
- See Section 7
- Do you wish to take no further action at this time and to spend some more time considering your options.
  - See Section 10

## 6. Reporting a policy violation

This section explains the DCU procedures for reporting experiences of sexual misconduct at DCU.

This section clearly sets out what you can expect if you decide to:

- 6.1** Make an initial disclosure
- 6.2** Resolve informally
- 6.3** Report formally
- 6.4** Report anonymously / reluctantly / as a third party
- 6.5** Report to An Garda Síochána

A person who has experienced sexual misconduct at work has the right to make a report at a time that is right for them. However, it is important to note that a delay in reporting may affect the University's ability to thoroughly investigate.

DCU acknowledges and understands that preventing a person who has experienced sexual misconduct from controlling the reporting process could cause them further distress. The University acknowledges and understands the importance for those who are victims of sexual misconduct to feel that they are in control of the reporting process.

### 6.1 Initial Disclosure

If you believe you have experienced sexual misconduct, you may wish to make an initial disclosure to a trained member of DCU staff. If you decide to do so, you can expect to be treated sensitively and with dignity and respect. You can also expect to be offered information about the options available to you, including where to access professional support as well as how to make both a formal report and/or a report to An Garda Síochána if that is what you would like to do.

In making an initial disclosure, the information you share will be completely confidential between you and the trained staff member. No further action will be taken unless you choose to progress to an informal resolution of formal reporting.

To find out more, or to make an initial disclosure please contact a member of the [DCU EDI Team](#) at [edi@dcu.ie](mailto:edi@dcu.ie).

The DCU Sexual Misconduct Policy and these accompanying procedures respect your right to choose how to take forward the initial disclosure. Your decision regarding whether to report to An Garda Síochána (if applicable) will be respected within the constraints of the law.<sup>4</sup>

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<sup>4</sup> Where a complaint concerns a minor, the University should in the first instance report the matter in line with the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012 and the Children First Act 2015 to ensure that the University complies with its statutory obligations.

- 6.1.1** Making an initial disclosure may help you to access support and to learn more about what other reporting options are available.
- 6.1.2** It is important to understand that making an initial disclosure is not the same as making a formal complaint (see Section 6.2) and that no action will be taken by the University unless you decide to take the matter further.
- 6.1.3** It is important to understand that making an initial disclosure is not the same as initiating an informal resolution process. No action will be taken by the University regarding informal resolution unless you clearly express a wish to engage with this process.
- 6.1.4** If you decide to make an initial disclosure/ a formal report or an informal report to a trained member of DCU staff, you can expect:
- to be treated with dignity and respect at all times
  - to be listened to with sensitivity and empathy
  - that no pressure will be put on you to take any particular course of action
  - that the person receiving the initial disclosure will endeavour to provide a safe space for you to speak about your experience.
  - to receive information about how to access both internal and external professional support services (see Section 10).
  - to receive information about how to make a formal report within the University. (You do not have to make a formal report and you can come back to this option at a later date, if you wish)
  - The initial disclosure is only between you and the person you have disclosed to. That person will take no action unless you choose to instigate a formal process.
- 6.1.5** In exceptional circumstances, the University reserves the right to instigate a formal investigation against the wishes of the complainant. This exceptional situation arises only where a sufficient concern exists, having regard to the University's broader obligation for the safety and welfare of others or where there is a requirement to report the incident to An Garda Síochána. Appropriate internal and external supports will be made available to you and any precautionary measures required will be taken. See section 6.4 for more information.

## 6.2 Informal resolution

If the person who believes they have experienced sexual misconduct wishes to do so, they may attempt to resolve the issue informally. This process is entirely the choice of the individual who believes they have experienced sexual misconduct. The University will not attempt an informal resolution unless the individual who believes they have experienced sexual misconduct clearly states that they wish to engage with this process.

### 6.2.1 Informal resolution

As part of an informal resolution process, the person who has experienced sexual misconduct may decide to initially discuss the matter with the person/people concerned and request that the unwanted behaviour stop. If choosing to engage in this process, it is recommended that individuals should talk about the impact that the behaviour has had on them and ask the person responsible to stop the unwanted behaviour.

The meeting should be held in a private but safe space.

If the person who feels they have experienced sexual misconduct is uncomfortable with asking for the behaviour to stop themselves, but they still wish to attempt to resolve the matter informally, they may ask another appropriate person, such as a line manager, to raise the issue with the person(s) engaging in the unwanted behaviour instead.

If this experience of the informal process is unsuccessful or deemed inappropriate, the person who believes they have experienced sexual misconduct may instead wish to try Facilitated Resolution.

### **6.2.2 Facilitated resolution**

If the person who believes they have experienced sexual misconduct wishes to try to resolve the issue informally but through a facilitated process, they may raise the matter with either their line manager or the line manager of the person engaging in the unwanted behaviour. In the event that the person who is allegedly engaging in unwanted behaviour is the line manager, another person in a position of authority within the faculty or unit should be contacted. The line manager may locally facilitate a solution, or where appropriate/necessary, a head of department, or a representative from the Equality, Inclusion and Diversity Unit, or a human resources representative may facilitate the meeting. Staff who are members of a recognised trade union may also wish to speak to their trade union representatives.

As part of a facilitated informal resolution, agreed outcomes and dates will be noted by the relevant person responsible for managing the resolution. Both parties should be offered support and/or periodical reviews, insofar as is reasonable.

## **6.3 Formal reporting**

A formal report occurs when a person makes a formal statement about sexual misconduct to a staff member in the institution who has the authority to initiate a formal investigation process - for staff at DCU, this person is the Director of HR. The formal report will be managed in accordance with DCU Sexual Misconduct Policy and these accompanying procedures. The decision of the individual making a formal report regarding whether to report to An Garda Síochána (if applicable) will be respected within the constraints of the law.<sup>5</sup>

As part of making a decision to proceed with a formal report, it is important to understand that time delays between an incident(s) and a formal report may impact on the findings of any investigation as, for example, witness memory and evidence preservation may be compromised.

Where a formal report of sexual misconduct is made against a member of staff of the University by another member of the University community, the Director of HR will be informed immediately.

See Section 7 for an outline of the full DCU Staff Procedures for making a formal report of sexual misconduct.

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<sup>5</sup> Where a complaint concerns a minor, the University should in the first instance report the matter in line with the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012 and the Children First Act 2015 to ensure that the University complies with its statutory obligations.

## 6.4 Anonymous reporting/ Reluctant Reporting Party / Third party reports

- 6.4.1** It would be exceptional for the University to pursue a formal investigation where the reporting party is a third-party, where the reporting party is reluctant to pursue a formal report, or where the reporting party has chosen to remain anonymous.
- 6.4.2** There are inherent limitations in responding to these types of reports, particularly with regard to the rights of respondents pursuant to the rules of natural justice and Article 6 of the European Convention on Human Rights. These limitations may be exacerbated, or mitigated, by issues such as the level of detail provided, the number of such complaints etc. The approach to be adopted by the University in such instances will be determined on a case by case basis.
- 6.4.3** **Speak Out Tool**

Speak Out, is an anonymous-reporting tool for DCU staff and students. The tool allows any staff or student to submit a report of sexual misconduct in a way that protects their identity and the identity of the alleged perpetrator. The tool is completely confidential and no identifying information is collected.

The anonymous reporting tool will assist the University to monitor data related to experiences of sexual misconduct within the University in order to identify trends and patterns. The University will then use these findings to inform future work: for example, to identify training and information needs and any gaps in current policies and procedures or to address areas of risk which had not previously been identified. Where possible, the University will address any issues arising as a matter of urgency.

## 6.5 Report to An Garda Síochána

Some instances of sexual misconduct may also constitute a criminal offence. You are under no obligation to report your experience to An Garda Síochána and you will not be pressured to pursue this course of action.\*

\*(Only in the most exceptional circumstances and with the benefit of specific legal advice, will the University refer a report of sexual misconduct to An Garda Síochána contrary to the wishes of the reporting party. The circumstance in which a report by the University may be justified is if the affected party is legally a minor<sup>6</sup> or, where there is clear evidence of wrongdoing available to the University separate from the complainant itself or, where there is considered to be a clear and imminent risk to the safety of the complainant or of third parties. In deciding whether to make such a report, and what information to disclose, the University will take into account any potential harm that the unauthorised disclosure may cause to the person who has experienced sexual misconduct. This assessment will be undertaken on a case-by-case basis taking on board the knowledge that disclosing information to An Garda Síochána without the consent of the person who has experienced sexual misconduct could cause significant harm and could undermine the relationship of trust and confidence between the University and the person who has experienced sexual misconduct. If universities decide that it is necessary for them to report the sexual misconduct to An Garda Síochána, then the reasons for taking that action should be explained to the complainant so that they understand what is happening and are prepared if/when An Garda Síochána contact them.)

If you do decide to make a report to An Garda Síochána, the University will be available to help facilitate this if you wish. You may wish to make both a formal report to the University as well as to An Garda Síochána.

### 6.5.1 Differences between a University Investigation and a Garda Investigation

An internal DCU investigation is a civil matter and is based upon a report that a member of the University community breached the University's rules and regulations. The allegation must be proven on the **balance of probabilities**. The most serious sanction that can be applied is permanent expulsion from the University or termination of employment. In contrast, the criminal process is an external process, and involves the accusation of a criminal act. The allegation has to be proven **beyond reasonable doubt** and the most serious sanction that can be applied is imprisonment.

It is important to understand the full details of the differences between the two reporting processes:

- Under the criminal process, the report will be treated as a potential criminal offence. Under the disciplinary process, the report will be treated as a potential breach of discipline.
- A disciplinary process will generally be completed in a much shorter timeframe than a criminal process

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<sup>6</sup>Where a complaint concerns a minor, the University should in the first instance report the matter in line with the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012 and the Children First Act 2015 to ensure that the University complies with its statutory obligations.

- In a criminal trial, the Court (judge/jury) will consider the criminal charge, the evidence called by the State prosecutor, the challenges to that evidence made by or on behalf of the accused person, and any evidence given by or on behalf of the accused person. The Court will ultimately decide whether the prosecution has proved the case beyond reasonable doubt, in which case a conviction will be recorded and a penalty (fine/imprisonment) will be imposed.
- In the University process, if a formal report of Sexual Misconduct is received, precautionary action will be considered, the formal report will be investigated and, if it is upheld on the balance of probability, a sanction (warning/suspension/expulsion/dismissal) will be imposed on the responding party.
- A disciplinary investigation will be more limited than a criminal investigation because forensic analysis and medical examinations may not be available to the University and the University has no general power to compel witnesses to give evidence.
- Under the criminal process, a judge can impose a wide range of sanctions on an individual who is found to have committed a criminal offence (including imprisonment) and can put conditions/restrictions on that individual which apply nationwide for significant periods of time.
- Under the disciplinary process, the most severe sanction that can be imposed on a staff member is dismissal.
- The reporting party should understand that following a disciplinary process, there will be very limited circumstances in which the University can disclose any information about the misconduct to the reporting party or any other person. The University has a general obligation to keep the information confidential and, subject to certain exemptions, specific obligations not to disclose the information to third parties under Data Protection obligations.
- The criminal process may take a significant length of time whereas the University disciplinary process may be resolved within a shorter timeframe.

If the Reporting Party chooses to report an experience of sexual misconduct through internal University procedures as well as through criminal proceedings, the University will reserve the right to suspend its internal investigation until that of An Garda Síochána has concluded so as not to prejudice the criminal investigation. If the University process is paused, the institution will take any necessary precautionary measures to protect all parties in the interim.

#### 6.5.2 Outcome of a Criminal Process

- If the responding party is convicted of a criminal offence then the conduct or behaviour that they have been found to have committed can be relied upon to establish a disciplinary offence within the University and the focus of any disciplinary process by the University should be to consider the impact and effect of the conviction in order to determine the sanction/s (if any) to be applied by the university.
- If the responding party is acquitted of a criminal offence, then the University can still take disciplinary action against the person concerned if there is sufficient evidence that unacceptable behaviour, which constitutes a breach of discipline under the University's policies, occurred. This is because in a disciplinary process, the alleged "offence" will be different, the evidence that can be taken into account may be different, the burden of proof will be lower and the sanctions available will be different. The fact that the

responding party has been acquitted of a criminal offence after a full trial is a relevant consideration and the weight to be attached to it will depend upon the circumstances of the case.

- Where the responding party is acquitted of a criminal offence and no disciplinary action is taken against them, the University will acknowledge that both the reporting and responding parties are likely to continue to require support. The measures that are necessary will be assessed on a case-by-case basis, but could include changes being made to academic, living or pastoral arrangements, consideration of steps that could be put in place to seek to ensure that both parties do not come into contact with each other, as well as access to the relevant support services such as Employee Assistance Programme, etc.

## 7. DCU Staff Procedures for making a formal report of sexual misconduct

Any member of the University community who is subjected to sexual misconduct has the right to submit a formal report. Due to the seriousness of these types of reports, a formal investigation procedure is usually considered the most appropriate procedure as compared to informal options which are outlined in the *Dignity and Respect at Work Procedure*.

### 7.1 Principles of the Formal Procedure

- Reporting and considering a report of sexual misconduct can be a stressful experience for all parties involved. All parties are entitled to be treated with sensitivity, dignity and respect.
- Formally reporting an experience of sexual misconduct is always the choice of the affected individual and they should not feel under pressure to proceed with a formal process unless they choose to.
- At all times, the reporting party will be supported by the University to make a formal report if that is what they wish to do.
- Confidentiality<sup>7</sup> is an integral element of any report made under the Sexual Misconduct Policy and Procedures. All parties, including the reporting party, responding party, witnesses and those managing the process, must ensure that they maintain confidentiality at all times. This does not preclude parties to the complaint from accessing confidential support services.
  - Confidentiality will be maintained throughout the investigation to the greatest extent possible, consistent with the requirements of a fair investigation.
  - All individuals involved in the initial disclosure and/or formal report procedures are expected to maintain the utmost confidentiality on the subject. However, DCU will be obliged to disclose the details of any formal complaint to such persons and to such extent as is necessary to properly and fairly investigate the complaint.
  - All individuals are required to give due regard for GDPR legislation in the collection and storage of any personal information.
  - Both the Reporting and Responding Parties have a right to privacy and protection, and information should only be shared on a need-to-know basis.
  - The requirement for confidentiality extends to all who are party to a Formal Report, including witnesses and to those managing the complaint.
- The Reporting Party and the Responding Party will each be offered appropriate supports. This support will be separate: the same person will not provide support to both parties.
- To avoid re-traumatisation, the number of times that the Reporting Party is required to recount their experience will be minimised.
- The principles of natural justice and fair procedure will always be afforded to both the reporting party and responding party.

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<sup>7</sup> Where a complaint concerns a minor, the University should in the first instance report the matter in line with the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012 and the Children First Act 2015 to ensure that the University complies with its statutory obligations.

- If precautionary measures are required, every effort will be made to ensure such measures are reasonable and support will be provided to the individuals involved.
- During formal investigation meetings, all parties may be accompanied by a colleague, trade union representative or friend.
- Where allegations of sexual misconduct are concerned, Reporting and Responding Parties will not be asked to attend the same meeting, at the same time.
- All parties are obliged to co-operate and make themselves available as a matter of priority to ensure that the investigation can be completed within a reasonable timeframe.
- The nature of the allegations may mean that it is necessary to notify legal or regulatory authorities which, consequently, might require the University to comply with an investigation led by a legal or regulatory body, which may take precedence over the internal procedure. This procedure may continue in parallel or may have to be suspended and continued later.
- The individual who received the initial disclosure should not be included in any element of the formal investigation process to avoid conflict of interest.

## 7.2 Formal report

A formal report occurs when a person makes a formal statement about sexual misconduct to a staff member in the institution who has the authority to initiate a formal investigation process - for staff at DCU, this person is the Director of HR. The formal report will be managed in accordance with DCU Sexual Misconduct Policy and these accompanying procedures.

The decision of the individual making a formal report regarding whether to report to An Garda Síochána (if applicable) will be respected within the constraints of the law.<sup>8</sup>

If an individual decides to make a formal report, this should take place as soon as they are ready to do so.

### 7.2.1. Making a formal report

- To lodge a formal report as a DCU staff member, the Reporting Party must make a formal written submission to the Director of HR.
- The Reporting Party will be asked to indicate whether a report has been or will be made to An Garda Síochána.
- Where this has occurred, the University will reserve the right to suspend its internal investigation until that of An Garda Síochána has concluded so as not to prejudice the criminal investigation. If the University process is paused, the institution will take any necessary precautionary measures to protect all parties in the interim.
- The Reporting Party should be advised of all available internal and external supports
- If the University procedures are suspended, the preliminary-review panel (see Section 7.3) may implement Precautionary Measures (see Section 7.4) in the meantime.
- The Reporting Party will receive a written response from the Director of HR as soon as possible following submission of allegations.

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<sup>8</sup> Where a complaint concerns a minor, the University should in the first instance report the matter in line with the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012 and the Children First Act 2015 to ensure that the University complies with its statutory obligations.

### 7.2.2. The Responding party

- On receipt of the report, the Director of HR will provide the report to the person named by the reporting party who, for these purposes, will be called the responding party.
- The responding party should return a written response to the allegations within 10 working days.
- Both parties should be provided with the Sexual Misconduct Policy and these Procedures.
- Both parties should be offered the opportunity to discuss the Policy and Procedures and to ask questions they have about the same.
- When a formal investigation is initiated, the organisation should inform the Responding Party in confidence that allegations of sexual misconduct have been received which involve them. The Responding Party will be advised, in writing, of the precise nature of the matters concerned and will be given copies of any relevant documentation in advance of any meetings taking place. This detail will include the source and text of the formal report as received. The Responding Party should be advised of the internal and external supports available to them.
- The Reporting Party and the Responding Party will each be offered appropriate supports. This support will be separate: the same member of staff will not provide support to both parties.

## 7.3 Preliminary Review

The decision on whether or not the University should investigate will be made at the preliminary review stage. If the preliminary review concludes that the report(s) (if later proven on the balance of probabilities) may constitute sexual misconduct and cannot reliably be deemed to be mistaken, the institution should initiate a formal investigation under the relevant procedure.

### 7.3.1. The Preliminary-Review Panel

- The preliminary review will be administered by a preliminary-review panel.
- Where the Responding Party is a staff-member, the preliminary review will be conducted by a panel comprising a senior Human Resources representative, the University's legal advisor, a senior representative from the EDI Office, and a representative from an external specialist service/agency (e.g. Rape Crisis Centre)
- All individuals on the preliminary-review panel should have received training in trauma-informed approaches to sexual violence and harassment.
- Involvement in the preliminary-review process precludes individuals from involvement in the investigation.

### 7.3.2. Assessing reported behaviour

- The preliminary review will assess the reported behaviour in the context of the definitions in the Sexual Misconduct Policy.
- The review will be based on the written submission of the Reporting Party only.
- Reported behaviour that, upon examination at this stage, does not align with the definition as outlined in the Sexual Misconduct Policy may be addressed under another applicable institutional policy or procedure e.g. Dignity and Respect Policy.
- If the reported behaviours may reliably be considered not to constitute sexual misconduct, the formal report may be dismissed at this stage of the procedure.

- Those who make allegations in good faith should not be penalised and will be offered additional support.
- If the preliminary-review panel is unable to reach agreement in this regard, a formal investigation will ensue.

### 7.3.3. Findings of the Preliminary-Review Panel

- If an agreement is made to proceed to a formal investigation, the Responding Party will be notified and sent the formal report – that is, the written submission of the Reporting Party – and all relevant policies and procedures within 5 working days of the preliminary review.
- The preliminary-review panel may make a recommendation for precautionary measures (see Section 7.4) to be taken. If a lesser precautionary measure is available to mitigate risk, this should be used first. All precautionary measures should be reviewed regularly.

## 7.4 Precautionary Measures

In certain cases, it may be necessary to take precautionary measures related to an individual who is the responding party in a formal report of sexual misconduct pending the outcome of criminal/disciplinary proceedings. The grounds for taking any such action should be clearly established.

Precautionary measures may be put in place provided they are proportionate and necessary and could help to:

- ensure that a full and proper investigation can be carried out (either by the Garda Síochána or a University investigator); and/or
- protect the complainant or others whilst the report is being dealt with as part of a criminal process or disciplinary process.

**Precautionary measures are precautionary only, and do not represent a penalty or sanction.** They do not indicate that the University has concluded that the person concerned has committed a breach of discipline or a criminal offence.

Precautionary measures, including suspension, may be taken where there are legitimate concerns relating to a range of issues, such as, but not limited to:

- the employer's reputation;
- the safety, health and welfare of staff/students;
- the potential for intimidation or interference with witnesses or evidence, etc.

### 7.4.1. Principles of Precautionary Measures

- Precautionary measures can be taken at any stage of the policy violation procedures.
- Precautionary measures are not contingent on the making of a criminal complaint and can be instituted to facilitate an investigation or pending the outcome of a university's disciplinary process.
- Precautionary action must be reasonable and proportionate.
- The precautionary measures that are put in place should be those which will best protect the investigation and/or the reporting party /others from harm whilst having the minimum possible impact on the responding party.
- The Responding Party and the Reporting Party (and, if relevant, any witnesses) will be informed of any precautionary measures taken.

- Any precautionary measures should be kept under review during the investigation and should not be unnecessarily protracted.
- If there are any changes to these measures throughout the process, both parties will be informed.
- The Reporting Party will be given reasons/ information/updates at every stage of the process.
- Any suspension shall not infer any wrongdoing on the part of the suspended employee, nor shall it influence or infer any finding of the investigation.
- The decision to suspend an employee as a precautionary measure should depend on the seriousness of the situation.
- The employee should be given the opportunity, if the employee wishes, to respond to the precautionary measure and be afforded the right of representation by a colleague of their choice or an official of a recognised union.

#### 7.4.2. Risk Assessment

- The type of misconduct, the circumstances of the incident, the circumstances of the individuals involved, and the views of An Garda Síochána/prosecutor, if applicable, will all be relevant in assessing risk and in determining if, and what, precautionary action is required.
- If a criminal complaint has been made, any bail conditions that have been imposed on the respondent as part of the criminal process should be taken into account as part of this analysis as any such conditions will need to be accommodated by the University and may affect the decision about whether or not precautionary action is required.
- The risk assessment should include consideration of the support arrangements that need to be put in place, to protect and support the parties involved, and to protect any investigation that may be undertaken.
- As circumstances may change during the life of the matter, the risk assessment and any precautionary measures that are put in place should be reviewed at regular intervals and reconsidered as the case develops

#### 7.4.3. The Responding Party

- In relation to any precautionary measures recommended, the respondent should have an opportunity to:
  - consider the reasons why such a decision might be made
  - make representations to the decision-maker before the decision is made (or if that is not possible or appropriate due to the urgent or sensitive nature of the matter, as soon as possible thereafter)
  - request a review at any stage if there is a material change in the circumstances of the case.

#### 7.4.4. Possible Precautionary Measures

- imposing conditions on the respondent (for example, requiring the respondent not to contact the complainant and/or certain witnesses and/or requiring the respondent to remain out of certain libraries, restaurants, bars, clubs and societies, social spaces etc.)
- making appropriate accommodation arrangements to ensure separation between the respondent and complainant in workplace settings.

- placing the individual concerned off duty
- excluding/restricting the person concerned (for example, prohibiting the person concerned from going to certain accommodation blocks or using the sports facilities or from attending a placement). A qualified or partial exclusion may be put in place where appropriate.

#### 7.4.5. Suspension

- In certain cases, the University may have to consider suspending an employee with pay pending the conclusion of an investigation and/or a disciplinary process.
- The process for suspending an employee with pay will be in accordance with University's Statutes No. 5 of 2010: 'Suspension and Dismissal of Employees'.
- Any decision to impose suspension can have serious consequences. Therefore, such a step should only be taken where the risk level is high and where there are no alternative measures that could be put in place to mitigate that risk.
- The decision to impose suspension as a precautionary measure should be made at a senior executive level
- Any suspension or off duty decision should be fixed for a specified period of time and subject to review at regular intervals.
- Prior to deciding to suspend an employee, the employee should, where circumstances reasonably allow, be advised of the reasons why suspension is being considered.
- As an alternative to suspension, an employee may be given the option of taking voluntary leave.
- During any period of suspension, an employee shall not be permitted to attend at the University's premises and/or make contact with employees or students of the University regarding University business, or matters relating to their suspension, without the prior written consent of the University and should ordinarily not be permitted, unless the University consider it feasible, to have access to the University information technology systems.
- Any employee being placed on suspension must confirm their non-DCU email address prior to access to University IT systems being denied.

### 7.5 The investigation

The purpose of the investigation is to gather relevant and available evidence, and to provide each party with a full and fair opportunity to explain their version of events. All investigation meetings will be conducted sensitively, showing due respect for the rights of all concerned.

If the Preliminary-Review Panel agree that a formal investigation should proceed, the Director of HR will request that the DCU President set up an investigation panel so that an internal investigation can begin.

The aim of the investigation panel should be to complete this process in a timely manner.

#### 7.5.1. The Responding Party

- When a formal investigation is initiated, the Director of HR will inform the Responding Party in confidence that allegations of sexual misconduct have been received which involve them.

- The Responding Party will be advised, in writing, of the precise nature of the matters concerned and will be given copies of any relevant documentation in advance of any meetings taking place. This detail will include the source and text of the formal report as received.
- The Responding Party should be advised of the internal and external supports available to them
- In cases where the behaviour complained of is admitted by the respondent, it is possible that no investigation will take place, and the relevant disciplinary procedure will ensue.
- The Responding Party will be afforded opportunity and adequate time to respond and to state their case fully and to challenge any evidence that is being relied upon for a decision.
- The Responding Party will be entitled to examine all evidence available and to propose any witnesses or other persons as they deem appropriate in their support.
- The Responding Party may challenge any evidence that may be relied upon when making a finding.
- A clear timeline will be given to the Responding Party at the start of the formal process.
- The Responding Party should be given the right to reply to any reports/ statements arising from the investigation, on matters of fact only, before they are finalised.

#### 7.5.2. Investigation Panel

- The investigation panel may be comprised of senior persons internal and external to the organisation and should include necessary expertise pertinent to the allegation being examined.
- Care must be taken to ensure that no conflict of interest exists among the panel members with respect to the Responding Party or Reporting Party.
- The investigation panel should not include representatives from the immediate School or Department of the Responding Party or Reporting Party.
- There should be no overlap between the investigation team and those involved in the preliminary review, disciplinary panel, and any subsequent appeals process.
- Panel members should have relevant training and expertise including how to apply a trauma-informed approach to sexual violence and harassment.
- Panel members should have sufficient time available to undertake the formal investigation in an efficient manner.<sup>9</sup>
- All members of the investigation panel should understand the health and welfare issues involved, the potential interaction between the disciplinary process and the criminal process and the procedure that should be followed.
- Consideration should be given to diversity and gender balance in appointing individuals to the panel, which can be helpful in cases of trauma.
- The names of the investigation panel will be provided to both parties. Either party may raise an objection to a member of the panel based on either conflict of interest or potential for lack of impartiality. Any objection will be assessed by the Director of HR whose decision will be final.
- Where applicable, the Reporting and Responding Parties' staff and/or students' unions will be consulted in relation to the investigator to be appointed and Terms of Reference.

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<sup>9</sup> <http://www.thea.ie/contentFiles/PROPEL.pdf>

### 7.5.3. Terms of Reference

- The Panel will prepare clear Terms of Reference for the investigation.
- The principles of natural justice will at all times be respected in relation to both the Reporting and the Responding Parties, without presumptions being made about either party.

### 7.5.4. Evidence gathering

- All investigation meetings will be conducted sensitively, showing due respect for the rights of all concerned.
- At the start of the investigation, the investigator will meet the Reporting Party to define the precise issues to be investigated, and to explain the range of possible outcomes.
- The investigator will meet the Responding Party and any other witnesses as appropriate.
- The investigator will interview all parties separately. Where clarification is subsequently required, an additional interview will be scheduled by the investigator with the relevant party.
- Both the Reporting and Responding Parties may be accompanied during these meetings, this must be communicated and agreed in advance.
- Both the Reporting and Responding Parties may suggest relevant witnesses. However, it is the Panel's responsibility to select the most suitable witnesses, choosing those who are likely to have information that will aid the Panel's fact-finding, and to interview these witnesses separately.
- Character witnesses will not be used, as the characters of the Reporting and Responding Parties are not in question.
- The investigation team should have access to legal advice, if required.

## 7.6 The investigation report

- On completion of the investigation, a written report will be submitted to the Director of HR so that a decision can be taken as to whether disciplinary action is warranted.
- The investigation report will be prepared by the Panel.
- The investigation report's findings should be shared with both the Reporting and the Responding Party to ensure accuracy.
- The Reporting and the Responding Party will be given an opportunity to respond to these prior to finalisation.
- The Panel should report findings to the Director of HR within a maximum of 60 days.

## 7.7 Potential Outcomes of a Formal Complaint Process

The investigation panel can only make recommendations with respect to the validity of the claim put forward by the reporting party.

The panel may find in its view:

- Sexual misconduct did take place. The matter will be dealt with under the appropriate disciplinary procedures (see section 8);
- Sexual misconduct did not take place. In this case the investigating panel will dismiss the report and outline the reasons for this conclusion in their report. No action will be taken against the reporting party provided that the report was made in good faith.

- No sexual misconduct was evident and the report appears to be malicious or vexatious. The matter will be dealt with under the appropriate disciplinary procedures.

### 7.8 Communicating the Outcome

- The Reporting and the Responding Parties should be informed of the outcome of the process in writing. This communication should acknowledge the impact of the process on all parties with a reminder regarding internal and external support services available.
- Insofar as possible, and subject to the University's legal advice, findings in the Panel's report should be shared with the Reporting Party.
- It may also be legal and appropriate in some instances for the Reporting Party to be made aware of any sanctions arising from the disciplinary process.
- If the Reporting Party cannot be made aware of any sanctions arising from the disciplinary process, due to this being confidential to the individual involved, they should be assured that appropriate actions will be taken, including those to protect the Reporting Party to ensure that a similar situation does not arise in future.

### 7.9 Right to Appeal

- In the event that either party can demonstrate that the investigation process was flawed or compromised, then they may appeal and/or request the University President to appoint an external, independent adjudicator.
- On hearing the appeal, the nominated external, independent adjudicator will report to the President, who will then decide whether to uphold the appeal.
- There should be no overlap between the investigation panel and those involved in the preliminary review, disciplinary panel, and any appeals process.

## 8. Disciplinary procedures

The University takes breaches of the Sexual Misconduct Policy very seriously and can result in disciplinary action, up to and including dismissal/expulsion.

At all times, the principles of natural justice will be adhered to and a disciplinary sanction will only be issued following a fair disciplinary procedure.

### 8.1 Disciplinary action

The University may take appropriate action against an individual(s) where:

Formal reports of sexual misconduct, where substantiated, may lead to penalties under our University's employees or student disciplinary procedures being invoked.

- Issues relating to alleged sexual misconduct by employees against any other member of the University community will be dealt with in accordance with this document, *Sexual Misconduct Procedures Document for staff*.
- Issues relating to alleged sexual misconduct by students against any other member of the University community will be dealt with in accordance with the procedures document, *Sexual Misconduct Procedures Document' for students*.
- Where allegations are deemed to be malicious and without foundation, the person responsible for such allegations, or any parties involved in the support of such allegations, are also likely to be the subject of disciplinary action.

#### 8.1.1 Gross Misconduct

- Although disciplinary action normally follows the progressive stages outlined therein, the procedure may be implemented by the institution at any stage of the process if the alleged misconduct warrants such action.

### 8.2 Disciplinary Meeting

- If so warranted, a disciplinary meeting will be convened at the appropriate stage of the disciplinary process.
- Where any disciplinary or other action needs to be taken as a result of the findings of the investigation they will be processed through the appropriate HR policies and procedures.

### 8.3 Disciplinary Penalties

- Penalties may be applied in accordance with the disciplinary procedure under the University's Statutes No. 5 of 2010: 'Suspension and Dismissal of Employees', and/or the employee's contract of employment.
- Mitigating, aggravating, and compounding factors will be considered in disciplinary decision-making. For example, mitigating factors would be a request for leniency by the Reporting Party or the expression of genuine remorse by the Responding Party. An aggravating factor might be if the Responding Party refused to cease a particular behaviour, despite being previously asked to do so. A compounding factor could be if this is not the first time that the Responding Party has been disciplined for similar behaviour.
- Employees should be aware that using the Complaints Procedure will not affect their right to make a complaint under the Employment Equality Acts 1998 – 2011, or under the Equal Status Acts 2000 – 2012.

## 9. Record keeping

### 9.1 Evidence for criminal investigations

- All involved in dealing with alleged sexual misconduct which may also constitute a criminal offence should be aware that any notes that are made or documents that are created could be requested by An Garda Síochána as part of a criminal investigation and individuals could be called to give evidence.
- Note taking that informs a decision in relation to breach of discipline, and the rationale for that decision, would be particularly important.
- Every effort should be made to ensure that written records are clear, accurate and appropriate.

### 9.2 Institutional Management Team

- The University's senior management personnel should, as necessary and appropriate, be kept informed at various points in the process, albeit without the identities of Reporting or Responding Parties being revealed.
  - Upon receipt of the initial written allegations.
  - After the preliminary review has been completed.
  - After any formal investigation has been completed.
  - After any disciplinary meeting.
- In general, it will be the responsibility of the Director of HR to update senior management.

## 10. Additional supports

Service	Phone	Web
<b>DCU Employee Assistance Programme</b>	24/7 freephone number 1800 814 243, or by texting (SMS) or WhatsApp by sending 'Hi' to 087 369 0010	<a href="https://www.dcu.ie/hr/dcu-employee-assistance-programme-eap">https://www.dcu.ie/hr/dcu-employee-assistance-programme-eap</a>
<b>Text 50808</b>	Free 24/7 Support in a Crisis - Text 'HELLO' to 50808	<a href="https://text50808.ie/">https://text50808.ie/</a>
<b>Samaritans</b>	National Helpline - 116 123	<a href="https://www.samaritans.org/ireland/samaritans-ireland/">https://www.samaritans.org/ireland/samaritans-ireland/</a>

<b>Dublin Rape Crisis Centre</b>	Dublin Rape Crisis Centre's 24-hour helpline - 1800 77 8888	<a href="https://www.drcc.ie/">https://www.drcc.ie/</a>  Your local Rape Crisis Centre/Network <a href="https://www.rapecrisishelp.ie/find-a-service/">https://www.rapecrisishelp.ie/find-a-service/</a>
<b>HSE</b>		<a href="https://www2.hse.ie/services/sexual-assault-treatment-units/rape-sexual-assault-where-to-get-help.html">https://www2.hse.ie/services/sexual-assault-treatment-units/rape-sexual-assault-where-to-get-help.html</a>
<b>Sexual Assault Treatment Units</b>		<a href="https://www2.hse.ie/sexual-assault-treatment-units/">https://www2.hse.ie/sexual-assault-treatment-units/</a>
<b>Women's Aid</b>	24-hour helpline - 1800 341 900	<a href="https://www.womensaid.ie/">https://www.womensaid.ie/</a>
<b>Men's Aid</b>	National Confidential Helpline – 01 554 3811	<a href="https://www.mensaid.ie/">https://www.mensaid.ie/</a>
<b>Your local Gardaí</b>		<a href="https://www.garda.ie/en/crime/sexual-crime/">https://www.garda.ie/en/crime/sexual-crime/</a>
<b>HSE My Options</b>	Freephone - 1800 828 010	<a href="https://www2.hse.ie/unplanned-pregnancy/">https://www2.hse.ie/unplanned-pregnancy/</a>
<b>LGBT Ireland</b>	National Helpline - 1890 929 539	<a href="https://lgbt.ie/">https://lgbt.ie/</a>

## 11. Related Documentation


DCU Sexual Misconduct Policy
Dignity and Respect at Work Policy
Dignity and Respect at Work Procedure
Code of Conduct for Employees
Employee Grievance Procedure

Statute on Suspension and Dismissal of Employees
Social Media Policy
Student Gender Identity Policy

## 12. Contacts

For further details on any aspect of this procedure please contact your HR Business Partner or [edi@dcu.ie](mailto:edi@dcu.ie).

## 13. Version Control

Document Name	Sexual Misconduct Employee Procedure	
Version Reference	V1.0	
Document Owner	Human Resources	
Approved by	Governing Authority	
Date	18th April 2023	

End.