

Procedure For Managing Disclosures Or Reports Involving Allegations Of Staff Sexual Violence And Misconduct

1. Introduction

- 1.1. This procedure sets out how the University will deal with incidents of Sexual Violence and Misconduct where the Accused Party is a member of staff. The procedure is part of the University's Sexual Violence and Misconduct Policy (SVM Policy) and should be read in conjunction with that Policy.
- 1.2. The policy sits alongside other University policies such as Respect at Work and Study which may be applicable in certain circumstances. If an individual is unsure which policy is most appropriate for their situation, they may wish to contact a member of the Harassment and Bullying Network for signposting advice.
- 1.3. Durham University recognises that incidents of Sexual Violence and Misconduct may occur within the University, and acknowledges that there has been a noticeable increase in the number of incidents disclosed by the student community; a trend reflected across the Higher Education sector and beyond. The University acknowledges that Sexual Violence and Misconduct can be experienced by any individual, regardless of sex, gender, sexual orientation, relationship status, age, disability, faith, ethnicity, nationality and economic status.
- 1.4. The University recognises that sexual violence and misconduct as defined in the SVM Policy may also include misuses of power enacted by academic, professional, contracted or temporary staff especially in their relations with students or staff members. Examples of this type of sexual violence and misconduct can include inappropriate or unwanted behaviour such as harassment, grooming, bullying, sexual invitations, comments and non-verbal communication with sexual content or overtones, creation of inappropriate sexual atmosphere, and promised resources in exchange for sexual interaction. It is identified that this type of misconduct specifically raises issues of unequal relationships, consent, and the prevention of equal access to education, opportunities and career progression.
- 1.5. Where the University is made aware of any incidents or allegations which are unrelated to the organisation, i.e. incidents or allegations that happen outside of work, but may be a concern for the University, they reserve the right to take

action under this procedure, the University Discipline Regulations, or any other University policy deemed as appropriate to the circumstances.

- 1.6. The University is committed to promoting a culture in which any incidents of Sexual Violence and Misconduct will not be tolerated, and will be thoroughly addressed to ensure the preservation of a safe work and study environment. This could include any disclosures or information relating to both current and non-recent incidents but noting that the University may not be able to fully investigate non-recent incidents.
- 1.7. Any offence which may also be of a criminal nature or involve issues of public protection may also be referred to the police on the direction of the LSVMO and HR Director. The University reserves the right, and may be under an obligation, to share information in 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. Anyone disclosing will be kept informed if it is felt action needs to be taken.

2. Scope

- 2.1. This procedure applies to all alleged incidents of Sexual Violence and Misconduct between the University's staff and/or students where the Accused Party is a member of staff, irrespective of their role. 2.2. Staff are defined as all contracted staff including :-
- 2.2. **Regular Full-time Staff** (staff members with indefinite appointments (including staff members on 'contingent upon funding' appointments).
- 2.2.1. **Regular Part-time Staff** (staff members who work regularly scheduled hours but who on a daily, weekly, monthly or annual basis work fewer hours than those worked by regular full-time staff in a similar classification or salary grade.)
- 2.2.2. **Temporary Appointment Staff** (staff members with fixed-term appointments)
- 2.2.3. **Casual Staff** (are staff members employed for less than three months or on intermittent basis or who do not have regularly scheduled hours of work, or who are employed under an arrangement where they may elect to work or not when requested to do so).
- 2.2.4. **Bank Staff** (ad hoc hourly paid part-time teachers who receive variable pay based on hours worked).
- 2.2.5. Anyone else working for the University with a contract of employment

- 2.3. It does not cover incidents of non-sexual harassment as the University has a separate policy (Respect at Work: Harassment and Bullying Policy) in relation to those matters. If a conflict arises between this procedure and any other procedures of the University, then the Lead Sexual Violence and Misconduct Officer ("LSVMO") and HR Director shall determine which procedure will be used. In the event that the Accused Party is a student, the student procedure within the SVM Policy should be followed.
- 2.4. Where students who are also staff members are the accused party, the Lead Sexual Violence and Misconduct Officer ("LSVMO") and HR Director will decide whether this staff procedure or the student procedure will be followed dependant on the circumstances of the allegation and the most appropriate way of managing the investigation being cognisant of safeguarding and risk management needs.
- 2.5. If a decision is taken not to deal with a case under this procedure then the Reporting Party can request a review of that decision in accordance with the process set out in section 6.

3. Manager Guidelines

- 3.1. The University will promptly act on all reports of sexual violence and misconduct alleged against a member of staff of the University in line with the University's [Sexual Violence and Misconduct Policy](#), Staff [University Disciplinary Regulations](#) or any other appropriate University policy.
- 3.2. Individuals who identify as victims/survivors are encouraged to visit the Sexual Violence and Misconduct website at www.durham.ac.uk/sexualviolence for more information on the reporting procedure as well as the support available.
- 3.3. Definitions used within this guidance are available in the SVM Policy.
- 3.4. For the purpose of this procedure, relevant officials with key responsibilities are:
- LSVMO - Lead Sexual Violence and Misconduct Officer, or their nominee; and
 - Director of HR, or their nominee.
- 3.5. All staff are encouraged to access the University training and policies on issues related to sexual violence and misconduct and to become familiar with the contents.

4. Monitoring

- 4.1. The University will maintain a central record of incidents held by the Student Support and Training Officer (Sexual Violence & Misconduct) to effectively engage in prevention and response initiatives. The Director of HR will have access to records of disclosures of alleged Sexual Violence and Misconduct incidents, including anonymous disclosures against staff members. The LSVMO will ensure that the University Executive Committee, Audit Committee, Senate and Council are regularly provided with anonymised data concerning the cases that are dealt with under this procedure. This will link into the trend monitoring work conducted by the Student Support and Training Officer (Sexual Violence & Misconduct) (SSTO) for student disclosures.

5. Procedure upon receiving a disclosure or report

5.1. Disclosures

- 5.1.1. Disclosure and reporting are separate actions that the Reporting Party may choose to take. The University recognises the importance of minimising the number of times the Reporting Party has to disclose an incident of Sexual Violence and Misconduct.
- 5.1.2. A disclosure involves an individual choosing to tell anyone who is a part of the University about their experience of Sexual Violence and Misconduct (different from a Report).
- 5.1.3. Students are encouraged to make disclosures to a member of staff in their College Student Support offices.
- 5.1.4. Staff are encouraged to make disclosures to any member of University staff
- 5.1.5. If a member of staff receives a disclosure from a Reporting Party, the process below will be initiated. The disclosure may be received in a variety of ways and may not necessarily be brought forward by the Reporting Party.
- 5.1.6. A disclosure does not automatically result in a report to the University being made under the SVM Policy. The University respects the right of the Reporting Party to choose how to take forward a disclosure but may have a duty to investigate should it consider this to be an appropriate measure.
- 5.1.7. Staff will signpost anyone who discloses they have been targeted by someone engaging, or attempting to engage in a sexual act without the Reporting Party's consent or sexually touching the Reporting Party without their consent to the local Sexual Assault Referral Centre (SARC) so that they may access

services provided. This will also allow the Reporting Party to make an anonymous report and have evidence stored while they choose if they want to report to the Police. Staff will signpost the Reporting Party to information from the Sexual Assault Referral Centre on how to preserve evidence. Staff can make a referral to the SARC on behalf of the Reporting Party with their agreement.

5.1.8. Following a disclosure, the Reporting Party will be given their reporting options along with information on resources for specialist support. The University recognises that the Reporting Party may require time and reflection before making a decision. The Reporting Party will be given the option and support to do one or more of the following:

- report to the Police;
- make a Report to the University under the SVM Policy;
- make no report of the incident; and/or
- receive advice on the support that is available.

5.1.9. The University reserves the right, and may be under an obligation, to share information in 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. Anyone disclosing will be kept informed if it is felt action needs to be taken.

5.1.10. Third Party Disclosures, where the person disclosing has not experienced the sexual violence and misconduct, will be recorded for trend monitoring purposes. In line with the principles of the SVM Policy, the University will where possible respect the right of the individual who experienced the sexual violence and misconduct to choose how to take forward a disclosure rather than rely on a third party to make this choice for them. The University retains the right to investigate a third party disclosure should it feel that is an appropriate measure or it may decide to take no action.

5.1.11. Any member of staff who receives a Disclosure or information regarding sexual violence or misconduct are obliged to give anonymised data on this to the Student Support and Training Officer (Sexual Violence & Misconduct) which will be recorded for trend monitoring purposes

5.1.12. There may be certain circumstances where the University is required to take appropriate action to prevent potential harm to individuals or the University, based on a risk assessment, which may include acting on information despite or without knowledge of the wishes of the individual(s).

5.1.13. The University recognises that on occasion, information gained may fall short of a disclosure. However, if a pattern of behaviour that may demonstrate cause for concern is identified, an investigation may proceed according to this procedure.

5.1.14. A disclosure becomes a report if the Reporting Party wants action to be taken as part of the disclosure.

5.2. Reporting

5.2.1. A Report is the sharing of information with a staff member of the University regarding an incident of Sexual Violence and Misconduct experienced by that individual for the purposes of initiating the investigation process set out in the SVM Policy and this procedure (different from Disclosure).

5.2.2. To make a report involving a staff member to the University, the Reporting Party may submit a written statement of the allegation, indicating the Accused Party and any witnesses. If the Reporting Party is unwilling for the Accused Party to be informed of the allegation against them, it would usually not be possible to take any investigation forward. Each report that involves staff members will be logged by HR for monitoring and reporting purposes and anonymously shared with the Student Support & Training Officer (Sexual Violence & Misconduct) for statistical reporting purposes and in line with the GDPR regulations.

5.2.3. The LSVMO and Director of HR, or their deputies, should be informed without delay of the report and will consider any support needs of the parties involved in the report. They will undertake a risk assessment, seeking specialist advice where required, in order to determine if any precautionary measures, up to and including paid suspension, are required pending an investigation under the Disciplinary Regulations or any other appropriate University process.

5.2.4. Throughout this procedure the University's priority will be the interests of all parties involved with regard to safety, fairness, dignity, privacy and due process. Students or staff reporting or being accused of sexual violence or misconduct will be provided with support.

5.3. Suspension from duty

5.3.1. Where an allegation of a serious offence has been made against a member of staff, for example an offence that may amount to gross misconduct, it may be appropriate to suspend the member of staff from duty on full pay. Full details of suspension process can be found in the Disciplinary Regulations.

6. Investigation

6.1. Guidance on Investigation

- 6.1.1. All members of the University are required to cooperate fully with the investigative process. Failure to do so may result in disciplinary action.
- 6.1.2. Should the complaint also be investigated by the Police, the investigation may need to be postponed. If this is the case please seek advice from the relevant HR Business Partner who will discuss with the Police Investigating Officer.
- 6.1.3. The LSVMO and Director of HR will appoint up to two trained investigation officers to investigate the complaint fully. HR Business Partners / Advisers will provide advice and guidance to the investigators on any relevant procedural issues.
- 6.1.4. In the event the Investigators determine on the balance of probabilities there is a breach of the SVM Policy and therefore may be a breach of the Disciplinary Regulations, the LSVMO and the Director of HR will initiate the next steps under the University's Disciplinary Regulations as is deemed appropriate.
- 6.1.5. Any investigation under this procedure will normally constitute an investigation under the Disciplinary Regulations or any other University process for staff.
- 6.1.6. When an investigation is initiated, the Investigators will conduct fact-finding as to the allegations made against the Accused Party. The investigation may include, but is not limited to, interviews with the Reporting Party, the Accused Party, and other witnesses identified as having information relevant to the allegations made, as well as the examination of written statements by the parties, relevant documents, and other relevant information. Information for the investigation may be provided by the Reporting Party, the Accused Party, witnesses identified by any party, or the University.
- 6.1.7. The Investigators shall ensure that the Accused Party is informed and given a copy of all allegations raised and is provided the opportunity to respond to them. The Accused Party also has the right to be accompanied by a fellow worker or Trade Union representative to the investigation meetings.
- 6.1.8. The Reporting Party, if a member of staff, has the right to be accompanied by a fellow worker or Trade Union representative.
- 6.1.9. If the Reporting Party is a Student they may be accompanied by a member of the University community such as a member of staff, Students' Union representative or a fellow student.

6.1.10. Legal professionals are not allowed to accompany any person in any investigations unless they are employees of the University, however they would only be acting in the role of support rather than representing or providing legal representation for the person.

6.2. Investigation Report

6.2.1. The Investigators will create a report of the investigation setting out:

- Factual determination(s); and
- Recommendation as to whether the matter should proceed under the University's Disciplinary Regulations or any other University process.

6.2.2. Evidence regarding a reporting party's past sexual behaviour or activity is normally prohibited except for when it has led to a finding of misconduct and it is in connection to evidence of past sexual activity between the parties where the exclusion of such information would adversely affect the integrity or fairness of the finding. Previous consensual relationships between the parties will not in itself establish consent or preclude a finding of sexual violence and misconduct.

6.2.3. The report will be forwarded to the Director of HR and the LSVMO. Upon receiving the Investigator's report, the Director of HR and the LSVMO may seek clarity if required from the Investigators concerning their recommendations.

6.2.4. Based on the Investigators findings, the decision to move a Disciplinary panel, action short of disciplinary, or no further action may be taken by the Director of HR and LSVMO.

6.2.5. The Reporting Party and the Accused Party will receive the outcome of the investigation in writing from HR in an outcome report.

6.3. Student Request for Review

6.3.1. If the reporting party is a student and is dissatisfied with the outcome of the investigation or they believe the matter has not been handled fairly in accordance with this procedure, they may request a review in writing to the HR Director within 14 days of receipt of the outcome. This review process can be used if a decision is taken not to consider a case under this procedure or if a decision is made to take no further action following an investigation under this procedure. It cannot be used to challenge the classification of an allegation of misconduct as a non-major or major breach of the Sexual

Violence and Misconduct Policy or in respect of further action taken by the University.

- 6.3.2. The review request should include details of why the Reporting Party is dissatisfied with the way the case has been handled and demonstrate why this had a substantial, material effect on the Investigating Officers' decision, or why they believe the outcome is not reasonable together with any supporting documentation.
- 6.3.3. The Director of HR and the LSVMO or their nominee, may choose to undertake the review if they are independent of the case or will identify a senior officer, independent of the case to undertake the review ("Reviewer").
- 6.3.4. The request will be reviewed on the basis of the documentation provided by the student and that held by the Investigating Officers. The Reviewer may seek further information if necessary. If the Reviewer decides that the case was not handled appropriately, the Reviewer may take whatever action the Reviewer decides is required. If the Reviewer decides that the case has been handled fairly and the outcome is reasonable, the review request will be dismissed.
- 6.3.5. The party who requested the review will be informed of the outcome of the review request within 28 days of receipt. The decision of the review request is final.

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