



STUDENT PREVENTION OF HARASSMENT AND SEXUAL MISCONDUCT POLICY

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1. Introduction

- 1.1 This policy sets out Leeds Arts University's policy on prevention of harassment and sexual misconduct for students. The policy applies to alleged incidents of harassment and/or sexual misconduct that involve one or more of the University's registered students. If the respondent is a member of staff then the report would be handled under the Staff Disciplinary Procedure. The alleged incident of harassment and/or sexual misconduct may have occurred on University premises, in the student's accommodation, via online activities or while participating in University events and activities.
- 1.2 The application of this policy will be consistent with freedom of speech principles. We will have regard to and place significant weight on, the importance of freedom of speech within the law, academic freedom and tolerance for controversial views in an educational context or environment, including in premises and situations where educational services, events and debates take place. There is a presumption that students being exposed to any of the following is unlikely to amount to harassment:
- the content of higher education course materials, including but not limited to books, videos, sound recordings, and pictures;
 - statements made and views expressed by a person as part of teaching, research or discussions about any subject matter which is connected with the content of a higher education course.

2. Definitions

The University uses the definitions of harassment and sexual misconduct as set out in the Office for Students (OfS) general ongoing condition of registration.

2.1 Harassment

2.1.1 Harassment' has the meaning given in section 26 of the Equality Act 2010 and section 1 of the Protection from Harassment Act 1997 (in its entirety, and as interpreted by section 7 of the Act). The Office for Students (OfS) has summarised section 26 of the Equality Act as *'harassment, including sexual harassment, includes unwanted behaviour or conduct which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment because of, or connected to, one or more of the following protected characteristics:*

- i. Age*
- ii. Disability*
- iii. Gender reassignment*
- iv. Race*
- v. Religion or belief*
- vi. Sex;*
- vii. Sexual orientation.*

2.1.2 The OfS have also summarised section 1 of the Protection from Harassment Act 1997 as 'a course of conduct conducted on at least two occasions that harasses one other person, or a course of conduct that harasses two or more persons at least once each. References to harassing a person include alarming the person or causing the person distress.' In considering if harassment has occurred (see Section 4.1) the following will be taken into consideration:

- the perception of the person who is at the receiving end of the conduct;
- the circumstances of the case;
- whether it is reasonable for the conduct to have the effect under scrutiny.

2.1.3 Under section 1 of the Protection from Harassment Act 1997, an offence is committed only if:

- the person knows the conduct amounts to harassment of the other, or;
- a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other person.

2.2 Sexual Misconduct

The OfS define sexual misconduct as ‘unwanted or attempted unwanted conduct of a sexual nature. This includes, but is not limited to:

- sexual harassment (occurring physically, verbally or online);
- sexual assault; and
- rape.

2.3 Consent

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

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

2.3.3 Coercion or force includes any physical or emotional harm or threat of physical or emotional harm which would reasonably place an individual in fear of immediate or future harm, with the result that the individual feels compelled to engage in a sexual act.

2.3.4 Capacity to consent: free consent cannot be given if an individual does not have the capacity to give consent. Incapacitation may occur when an individual is asleep, unconscious, semi-conscious, or in a state of intermittent consciousness, or any other state of unawareness that a sexual act may be occurring. Incapacitation may also occur on account of a mental or developmental disability, or as the result of alcohol or drug use.

2.3.5 Alcohol and/or Drug Use: S74 of the Sexual Offences Act 2003 states that a person consents to a sexual act only if they agree by choice, and have the freedom and capacity to make that choice. If a person’s capacity to consent to sex is limited by drugs including alcohol, then they can’t give consent. Intoxication is never a defence for committing an act of sexual violence and misconduct, or for failing to obtain consent. If there is any doubt as to the level or extent of one’s own or the other individual’s incapacitation, the safest approach is to not engage in a sexual act.

3. Making a Disclosure/Reporting an Incident

- 3.1 Any student experiencing an incident(s) of harassment and/or sexual misconduct is encouraged to inform a member of the Student Advice and Wellbeing team.
- 3.2 Students also have the option to disclose incidents via the University's online Report and Support tool.
- 3.3 Disclosure does not create a formal complaint, and is not an instruction for the University to take action. The person who has disclosed will have the opportunity to be heard and to consider their options before proceeding with any further steps. No action will be taken immediately by the University unless there is a concern about immediate safety or if there is a duty under safeguarding.
- 3.4 After disclosure the student(s) may decide to:
 - a) Take no further action at this time but be offered support available to them via the Student Advice and Wellbeing service.
 - b) Make a formal complaint to the University.
 - c) Make a report to the Police: In this case no disciplinary action will normally be taken by the University whilst a Police investigation and legal proceedings are taking place. Support will however still be available from the Student Advice and Wellbeing team.
- 3.5 Information disclosed about an incident may be shared with the relevant Safeguarding lead. Where the complainant wishes to resolve the matter through informal means the University will support this in certain circumstances where both parties are willing to engage, mediation may be appropriate.

4. Formal Complaint Procedure

- 4.1 A formal complaint must be submitted in writing. The written complaint does not need to include in-depth detail about the experience, but there does need to be enough information so that the University can understand what has happened in order to assess the next steps. All formal complaints will be reviewed by a trained member of staff to assess if there is a prima facie case to answer. If the case does not progress to an investigation the reasons will be communicated to the student(s).
- 4.2 In this stage the term complainant(s) is used to describe the person(s) who is raising the formal complaint. The term respondent(s) is used to describe the person(s) who the complaint is being raised about.
- 4.3 Where formal complaints progress to an investigation, the investigation will be carried out by a trained independent investigator that will usually be a member of the University's Human Resources Team. Complainants will be advised of the investigative process by the investigator. A typical investigation would involve meeting and taking statements from both the complainant and the respondent, along with any witnesses to the incident, though other forms of evidence such as emails, texts or extracts from social media may be gathered. From this a report will be written recommending either a formal outcome (that the case go to a disciplinary hearing), informal action or that there is insufficient evidence to proceed.
- 4.4 If a matter goes to a formal disciplinary hearing then the respondent will receive the investigation report and supporting documentation prior to the hearing to enable them to

receive natural justice and consider their response. To allow this to occur it is only in exceptional circumstances that anonymity can be guaranteed to complainants and anonymous statements used. Hearings will be held in line with the procedures outlined in the staff/student disciplinary procedure.

5. Special Provisions Relating to Criminal Proceedings or Involvement of the Police

5.1 Misconduct that is also a criminal offence

5.1.1 Behaviour that may amount to a criminal offence is usually best dealt with by the police, Crown Prosecution Service, and the criminal courts in the first instance. The following provisions will apply where the allegation of misconduct, if proved, would also constitute an offence under criminal law.

5.1.2 If the offence is reported to the police, the University will normally defer taking action, except for taking any necessary precautionary measures, until the police and courts have dealt with the matter or a decision not to prosecute has been taken.

5.1.3 If the police or courts are involved, the University will normally await the outcome of those proceedings before conducting an internal investigation. The University reserves the right to take some form of temporary action against the accused student, in order to protect other students and staff members, e.g. a student may be suspended while the police investigation is conducted.

5.1.4 In exceptional circumstances, the University has the right to report any alleged criminal offence to the police. However, if a person claims to be the victim of an offence committed by a student but does not wish the police to be involved, the University may in its discretion agree not to report the matter to the police. If the Reporting Party does not report the incident to the police, this does not preclude the University from taking action under the Student Disciplinary Procedure, and it will not impact the investigation process.

5.2 Disciplinary action after sanction imposed by a criminal court

If a student 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. The impact and effect of the criminal offence will be taken into account in order to determine the sanction/s (if any) to be applied by the University.

5.3 Disciplinary action following acquittal by a criminal court

If a student is acquitted of a criminal offence then the University can still take disciplinary action against the accused student if there is sufficient evidence that unacceptable behaviour may have occurred which constitutes a breach of the University's Disciplinary Procedure. 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 different and the sanctions available will be different. The fact that the student has been acquitted of a criminal offence after a full trial is a relevant consideration and the weight attached to it will depend upon the circumstances of the case.

6. Confidentiality

6.1 Any student or member of staff involved in the informal or formal procedures covered in this policy are expected to keep information confidential. This is to protect the confidentiality of the person making the complaint, as well as the reputation of the person being complained

about. If it is felt that the safety of an individual(s) is at risk of serious harm, confidentiality in these circumstances may be overridden by a duty of care and legal obligations to disclose.

- 6.2 Where either the complainant or the respondent is under the age of 18 their parents will normally be notified of what is happening unless exceptional circumstances are determined to exist. At the reporting stage, names will be anonymised so that individuals are not identified.
- 6.3 Where a complaint is student on student, both parties will be made aware of any measures which are put in place either during or after an investigation. This might include restrictions on being in the same areas on campus, or in some circumstances not being on campus on the same days where timetables permit. A complainant will be notified of the outcome of any formal investigation process, including what sanction has been imposed once any period for review has passed. In addition, a complainant will be notified of any actions that the University will be undertaking to help prevent such events being repeated such as additional training being delivered to the student population as a whole, or an individual student.
- 6.4 A similar arrangement will operate for where a staff member is the respondent to the complaint, but the student complainant will not be notified of the nature of any sanction that has been given against a staff member, just that a hearing has taken place and if a sanction has been given. This restriction is in line with employment law requirements.

7. Monitoring of Incidents

Cases which have gone through the disciplinary procedure will be recorded on the student's ILP (FE) or student file (HE). Cases will be monitored by the Head of Student Support or their nominee, and by the Head of Human Resources where they proceed to formal disciplinary investigation. The Head of Student Support and the Head of Human Resources will report on incidents, using statistics, at the Equality, Diversity and Inclusion Committee on an annual basis and to the SMT on a bi-annual basis. The Head of HR will include a section on numbers and outcomes of cases in the annual HR report to the Board of Governors.

8. Support for Students

- 8.1 Students who have questions about this policy or need support understanding the procedure are encouraged to speak to the Student Advice and Wellbeing team.
- 8.2 The University will provide support to students who disclose harassment and sexual misconduct regardless of whether the behaviour/incident meets the threshold for investigation.
- 8.3 Support is provided at all relevant times as appropriate, for example, before any formal investigation, for the duration of an investigation, and following its outcome. This includes for students who have alleged and/or experienced harassment or sexual misconduct, actual or alleged perpetrators and witnesses.
- 8.4 A wide range of support including counselling and specialised support can be accessed through the Student Advice and Wellbeing team.



Harassment and/or Sexual Misconduct notification of complaint form

The completion and submission of this form initiates a formal complaint under the University's Prevention of Harassment and Sexual Misconduct Policy.

Completed forms should be submitted to the Head of Student Support at saw@leeds-art.ac.uk. Alternatively, you may send a copy of the form to Human Resources at hradvisers@leeds-art.ac.uk

1	Name	
2	Student Number	
3	Course and Level of Study	
4	Home Address	
5	Contact Details Mobile Number: Email:	
6	Name(s) of the person(s) about whom you are complaining (i.e. the Respondent(s))	
7	Please state if this is a complaint about harassment or Sexual Misconduct or both	
8	Please provide information if the complaint relates to a protected characteristic?	
9	Have the police been involved?	

Please outline your complaint with a brief description of what occurred during the incident(s) including the date(s) and location(s). Who was involved and were there any witnesses? Are there any other points you wish to raise?

In signing this form, I signify that this report is a true record of my complaint.

I understand that this form may be given to the respondent during an investigation of my complaint; if my complaint results in a disciplinary hearing the form will be included in the papers for the hearing; I may be asked to give evidence at the hearing.

Complainant's name (PLEASE PRINT).....

Complainant's signature: Date:.....

NB. Head of Student Support must advise Human Resources of this formal complaint before proceeding.