



Sexual Violence & Misconduct Policy

V1

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SEXUAL VIOLENCE AND MISCONDUCT POLICY



Introduction

UCA recognises that incidents of sexual violence and misconduct occur within the University and 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. The University is committed to promoting a culture in which any incidents of sexual violence and misconduct will not be tolerated and will be dealt with to ensure the preservation of a safe work and study environment.

Privacy Notice

Allegations of sexual violence and misconduct are considered confidential by the University and as such details contained within them will not be shared with persons other than those named within the regulations as being essential to the investigation and final decision-making process.

UCA will securely retain and process information received in connection with an allegation during the period of investigation and for five years thereafter. For further information see the **Student Data Protection Privacy Notice** at the following link:

webdocs.ucreative.ac.uk/Student_Data_Privacy_Notice_May_2018-1527162600001.pdf

Principles

UCA holds the following set of Principles to reflect the University's commitment to establishing a culture of support and respect. All members of UCA have a responsibility for upholding the following principles:

- We will treat all parties with dignity and respect at all times, and it is expected that all members of UCA share in this responsibility for creating and sustaining an environment which upholds the dignity of all.
- We recognise the significant impact of all experiences of Sexual Violence and Misconduct, and acknowledge the potential detriment to studies and employment, regardless of when the experience occurred.
- We strive to maintain equality and diversity within our community and will work to sustain an equal and safe environment in which a culture of prevention will be promoted through appropriate and consistently applied education and training.

- We will actively respond to all Reports of Sexual Violence and Misconduct and, whilst recognising that some experiences may constitute a criminal offence, we will ensure that, in all cases, Reports are carefully and thoughtfully addressed by relevant staff members through a process that is transparent and clearly communicated to all involved. We will respect the right of the individual disclosing an experience to choose how to take forward a Disclosure.
- All University staff will have been informed of the Policy and will be trained as appropriate to their roles. All staff involved in the process will act with impartiality and discretion at all times.
- We believe that no person should suffer the effects of Sexual Violence or Misconduct alone, and will ensure that there is dedicated specialist support, including free and accessible counselling for all individuals involved.
- We will work with local partners and key groups to forge positive relationships to support all our work in this area, from prevention to enquiry and post-incident care.
- We are mindful of our civic responsibilities to the wider community.
- In addressing experiences and working with both internal and external experts, we will seek to learn from experience, enabling the University to both shape and respond to national and international policy and practice.

Scope

This Policy relates to all incidents of sexual violence and misconduct as well as vexatious and malicious reporting, complicity and retaliation as defined below. Under this Policy all students and staff members who have experienced sexual violence and/or misconduct will have equality of access to both internal and external specialist support (e.g. Sexual Assault Referral Centre and Rape Crisis), regardless of when the experiences occurred. Disclosures and reports made under this Policy are not limited to University premises or the immediate geography of the University.

This Policy should be read in conjunction with the **UCA Student Code of Conduct and Disciplinary Procedure**.

Sexual violence and misconduct include a broad spectrum of sexual behaviour. Examples of the types of behaviour that will constitute a violation of this Policy are set out below. Some incidents of sexual violence and misconduct may also constitute a criminal offence under English law such incidents may be addressed through criminal proceedings, internal disciplinary proceedings, or, in some cases, both criminal and internal proceedings.

A list of definitions is provided below to clarify the exact scope of the Policy.

Definitions

1. Type of Behaviour

For the purposes of this Policy, **Sexual Violence and Misconduct** is defined as any unwanted conduct of a sexual nature which occurred in person or by letter, telephone, text, email or other electronic and/or social media and includes, but is not limited to, the following behaviour:

- Engaging, or attempting to engage in a sexual act with another individual without consent;
- Sexually touching another person without their consent;
- Conduct of a sexual nature which creates (or could create) an intimidating, hostile, degrading, humiliating, or offensive environment for others including making unwanted remarks of a sexual nature;
- Inappropriately showing sexual organs to another person;
- Repeatedly following another person without good reason;
- Recording and/or sharing intimate images or recordings of another person without their consent; and
- Arranging or participating in events aimed at degrading or humiliating those who have experienced sexual violence, for example inappropriately themed social events or initiations.

2. Terminology

Reporting Party is, for the purposes of this Policy, the person(s) who has been the subject of the alleged incident of Sexual Violence or Misconduct.

Accused Party is, for the purposes of this Policy, the person(s) whose behaviour it is alleged amounted to an incident of Sexual Violence or Misconduct.

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, or from the absence of complaint and each new sexual act requires a re-confirmation of consent. Consent may be withdrawn at any time.

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

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

Capacity to consent: Free consent cannot be given if the 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.

Alcohol and/or Drug Use: Incapacitation arising from alcohol or drug consumption should be evaluated on the basis of how the alcohol/drugs have affected the individual; signs of incapacitation may include, but are not limited to, one or more of the following: slurred speech, unsteady gait, bloodshot eyes, dilated pupils, unusual behaviour, blacking out, a lack of full control over physical movements, a lack of awareness of circumstances or surroundings, and/or an inability to communicate effectively. Intoxication is never a defence for committing an act of Sexual Violence or Misconduct, or for failing to obtain consent.

Disclosure, for the purposes of this Policy, involves an individual choosing to tell anyone who is part of the University about their experience of Sexual Violence and/or Misconduct (this is different from Report).

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 as set out below (this is different from Disclosure).

3. Other Policy Violations

The University recognises that there may be other types of behaviour that will constitute a violation of this Policy and which will therefore need to be considered under the relevant internal disciplinary regulations including:

- **Vexatious reporting** involves the creation of persistent, unwarranted reports of Sexual Violence and Misconduct, or a refusal to accept any reasonable decisions arising from the application of the Student Code of Conduct and Disciplinary Procedure.
- **Malicious reporting** occurs when an individual alleges an incident of Sexual Violence and Misconduct that the individual knows to be untrue.
- **Complicity** is any act that knowingly helps, promotes, or encourages any form of Sexual Violence and Misconduct by another individual.
- **Retaliation** may constitute any words or actions, including intimidation, threats, or coercion made in response to disclosures or reports of Sexual Violence and Misconduct, by any individual including both the Accused Party and the Reporting Party, as well as witnesses, friends or relatives.

Police investigations and judicial proceedings

Where a criminal investigation or judicial proceedings are ongoing or are likely to commence in respect of a Disclosure, the University will not investigate a Report of Sexual Violence and Misconduct and will suspend an ongoing investigation until the criminal investigation or judicial proceedings have been concluded.

In all cases, the University will advise the Reporting Party that it does not have the legal investigatory powers of the Police and cannot make a determination on criminal guilt. An internal investigation is focussed exclusively on whether a breach of the University's Sexual Violence and Misconduct Policy has occurred. The internal process cannot therefore be regarded as a substitute for a Police investigation or criminal prosecution.

Where a student has been convicted of a criminal offence or accepts a Police caution in relation to behaviour that falls within the scope of the University's Sexual Violence and Misconduct Policy, the conviction/caution will be taken as conclusive evidence that the behaviour took place and no further investigation shall be required by the University.

Support

The University is committed to providing support for those members of its community affected by these issues. The University will provide information on support resources available and offer interim measures as appropriate to the Reporting Party, Accused Party, and witnesses involved in alleged incidents of Sexual Violence and Misconduct. Support resources are available to any member of the University who discloses an incident regardless of their choice to make a Report to the University or Police. Support provided to the Reporting Party and Accused Party will be separate; one member of staff will not provide support to both parties. The Reporting Party will be signposted to the Sexual Assault Referral Centre if appropriate.

For the procedure on how to investigate and respond to allegations of sexual violence and misconduct, please refer to the **UCA Student Code of Conduct and Disciplinary Procedure**.

Appendix 1: Student Code of Conduct (Appendix A, Section 2)

(iv) Sexual misconduct (including violence) against or sexual harassment of any student or member of staff of the University, or any visitor to the University. The following are examples of sexual misconduct, whether, or not, the activity took place within a relationship:

- sexual intercourse or engaging in a sexual act without consent;
- attempting to engage in sexual intercourse or engaging in a sexual act without consent;
- sharing private sexual materials of another person without consent (for example: images, video, voice recordings, text message, letters, emails, etc);
- kissing without consent;
- touching inappropriately without consent;
- inappropriately showing sexual organs to another person;
- making unwanted remarks of a sexual nature

Appendix 2: Disclosure of Alleged Sexual Misconduct – Flowchart for students

