



WARWICK

# Staff Sexual Misconduct Policy and Procedure



WARWICK

## In Summary

This Staff Sexual Misconduct Policy and Procedure has been designed to address all forms of sexual misconduct, including sexual misconduct committed by a third party. This policy expands on the existing principles outlined in the University's [Disciplinary Policy and Procedure](#).

Our University Principles make clear that we do not tolerate sexual misconduct, violence or abuse (Principle 3). They also make clear that we are committed to providing a working environment in which all members of our community feel safe and are respected.

All reports of sexual misconduct will be treated as potential serious breaches of discipline. The purpose of this staff sexual misconduct policy and procedure is to provide a fair and consistent mechanism for disciplinary matters for staff relating to sexual misconduct throughout the University.

We are committed to providing a supportive and confidential environment where individuals feel confident and empowered to disclose, will be listened to and understand the options available to them.

We will support everyone in our community to challenge inappropriate behaviour where it is safe for them to do so.

Allegations of sex based discrimination or unfavourable treatment should be raised in accordance with the University's [Grievance Policy and Procedure](#).



## Contents

1.	Purpose .....	4
2.	Definitions .....	4
3.	Principles .....	6
4.	Responsibilities.....	7
5.	Disclosing experiences of sexual misconduct .....	8
6.	Third Party Harassment.....	9
7.	Informal resolution.....	9
8.	Formal procedure .....	9
9.	Investigation.....	10
10.	Suspension .....	11
11.	Representation .....	12
12.	Disciplinary Hearing.....	133
13.	Appeal .....	166
14.	Confidentiality .....	17
15.	Recording and Monitoring.....	188
16.	Equality Impact Assessment .....	18
17.	Trade Union Officials.....	18

## 1. Purpose

1.1. The University is committed to preventing and eliminating all forms of sexual misconduct by any member of our University community, and by third parties such as a suppliers, visitors and members of the public. All reports of sexual misconduct will be treated as potential serious breaches of discipline however, the process to be followed will be determined by the alleged perpetrator's association with the University. The purpose of this staff sexual misconduct policy and procedure is to provide a fair and consistent mechanism for staff disciplinary matters relating to sexual misconduct throughout the University.

1.2. The policy is also designed to:

- Provide a campus environment in which all members of our community feel safe and are respected;
- Set out our expectations around the unacceptability of sexual misconduct;
- Support individuals who have experienced any form of sexual misconduct;
- Respond to disclosed incidents which breach this policy;
- Set out the terminology and definitions used in relation to sexual misconduct matters;
- Set out the variations to the University's existing disciplinary policy to ensure there is clarity for both the reporting and responding parties in relation to sexual misconduct matters.

## 2. Definitions

For the purposes of this policy and procedure, the following definitions apply:

### 2.1. Sexual misconduct

Sexual misconduct covers a broad range of inappropriate and unwanted behaviours of a sexual nature. It also covers all forms of sexual violence, including sex without consent, sexual abuse (including online and image-based abuse), non-consensual sexual touching, sexual harassment (unwanted behaviour of a sexual nature which violates your dignity; makes you feel intimidated, degraded or humiliated or creates a hostile or offensive environment), stalking, abusive or degrading remarks of a sexual nature.

### 2.2. Consent

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. 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.

#### 2.4. Coercion or Force

This 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.

#### 2.5. 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.

#### 2.6. Incapacitation due to Intoxication

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 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.

#### 2.7. Disclosure

Disclosure means that an individual tells a member of the University community that they have experienced sexual misconduct (this is different from a formal Complaint).

#### 2.8. Formal Complaint

Submitting a formal Complaint to the University regarding an individual's experience of sexual misconduct is an instruction for the University to take appropriate action. The Complaint will allow the University to investigate the misconduct as set out in this policy.

#### 2.9. Reporting Party

The Reporting Party is the person(s) who has made a formal complaint regarding an experience of sexual misconduct.

#### 2.10. Responding Party

The Responding Party is the employee(s) named in a formal complaint who is alleged to have committed an act of sexual misconduct.

### 2.11 Third Party

A third party is an individual who is not employed by the University of Warwick or a student at the University of Warwick. This could include but is not limited to a supplier, a visitor, a member of the public, a service provider or a consultant.

## 3. Principles

- 3.1. This policy expands on the existing principles outlined in the University's Disciplinary Policy and Procedure. Any variations from the existing Disciplinary Policy and Procedure that have been deemed to be appropriate by the University, in relation to sexual misconduct matters, are clearly denoted within this policy.
- 3.2. This policy and procedure is underpinned by the principles laid out in Statute 11 that members of Academic Staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges. No member of Academic Staff will be subject to a disciplinary sanction as a consequence of legitimately exercising their right to Academic Freedom as defined within Statute 11 (7)(a).
- 3.3. The University will make every effort to deal with allegations of sexual misconduct as quickly as possible and will give all individuals involved reasonable notice of any meetings in line with the ACAS code of practice.
- 3.4. Both the reporting party and the responding party have the right to be accompanied at all formal stages of the policy and procedure, i.e. a formal investigation meeting or formal disciplinary hearing. Examples of who can accompany each party is detailed in section 10.
- 3.5. Where the Head of Department is the subject of alleged sexual misconduct, the role of the Head shall be taken by a Senior Professor or Senior Officer of the University who shall be appointed by the Registrar in the case of Professional Services staff and by the Provost in the case of a member of Academic Staff.
- 3.6. If an employee raises a grievance in the course of an alleged sexual misconduct matter and the University, acting reasonably, considers the matters are related to the disciplinary issue, it may be appropriate to deal with both matters concurrently, as part of one process. Consideration may also be given to suspending the disciplinary process pending the outcome of the grievance investigation. In such circumstances, the Head of Department (or nominated representative) will seek advice from HR and inform the employee on the process to be followed.
- 3.7. Where a grievance is raised during a disciplinary process and the two matters are unrelated, it may be appropriate to deal with the two processes concurrently. In such circumstances, the Head of Department (or nominated representative) will seek advice from HR and inform the employee on the process to be followed.
- 3.8. Similarly, if allegations made/brought against an employee cover a variety of matters, which would ordinarily fall under the University's Disciplinary Policy, but include an allegation of sexual misconduct, a decision will be made by the HR Director (or nominated representative) as to whether these matters will be considered concurrently, as part of one process. The procedure associated with the Sexual Misconduct Policy will apply in this scenario.

## 4. Responsibilities

### 4.1. Heads of Department/Managers (or nominated representatives)

Heads of Department/Managers are responsible for:

- i. escalating all allegations of sexual misconduct through Report and Support;
- ii. maintaining discipline and setting fair standards of conduct and behaviour;
- iii. ensuring that their actions are lawful and do not expose the University to legal liability, either by ill-advised action or by negligence;
- iv. conducting themselves with dignity, honesty and integrity to promote an atmosphere of mutual respect, in accordance with the University's Dignity at Warwick, and other HR policies.

### 4.2. Human Resources (HR)

HR are responsible for:

- i. guiding and advising managers on all aspects of the staff sexual misconduct policy and procedure to ensure that disciplinary matters are resolved appropriately and in a timely manner;
- ii. advising members of staff on the staff sexual misconduct policy and procedure;
- iii. monitoring the use of the staff sexual misconduct policy and procedure across the University;
- iv. ensuring that the staff sexual misconduct policy and procedure is applied consistently throughout the University.

### 4.3. Employees

Employees are responsible for:

- i. ensuring that they uphold University values and maintain the standard of integrity and conduct expected by the University; specifically understanding that any form of sexual misconduct will not be tolerated;
- ii. ensuring that they conduct themselves with dignity, honesty, and integrity to promote an atmosphere of mutual respect, in accordance with the University's Dignity at Warwick, and other HR policies;
- iii. ensuring that, if required, all reasonable steps are taken to attend any meetings associated with the staff sexual misconduct policy and procedure.

### 4.4. The University of Warwick

The University is responsible for:

- iv. providing a campus environment in which all members of our community feel safe and are respected;
- v. preventing and eliminating all forms of sexual misconduct;
- vi. Providing employees and line managers with training in relation to sexual misconduct;
- vii. providing a supportive and confidential environment where individuals feel confident and empowered to disclose, will be listened to and understand the options available to them;
- viii. supporting everyone in our community to challenge inappropriate behaviour where it is safe for them to do so.

## 5. Disclosing experiences of sexual misconduct

- 5.1. Members of our University community should disclose experiences of sexual misconduct via the online reporting platform, [Report & Support](#). After submitting a disclosure with contact details, they will be contacted within two University working days by a Liaison Officer, who will explain the support and options available.
- 5.2. 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 the University has a duty under safeguarding.
- 5.3. Where a person chooses to disclose anonymously via the University's online reporting tool, no action will usually be taken on the basis of their disclosure, but further support will be available to them. Anonymised data will help the University to understand patterns in behaviour and inform future policy. After disclosure there are several options available to the person who has disclosed their experience. They can choose the level and types of support that are right for them. After discussion with a Liaison Officer, the person who has disclosed may choose to:
  - a) Take no further action at this time.
  - b) Undertake an informal resolution. Trained mediators are available where such a resolution is appropriate.
  - c) Make a report to the Police. Internal investigations will not be bound by the outcome of any external criminal investigation, unless the University deems it appropriate to do so. Where the alleged conduct requires prompt attention, the University is not restricted by awaiting the outcome of any prosecution before taking action. Should an investigation by the University be suspended pending the outcome of the Police investigation, support will still be available for those involved.
  - d) Make a formal complaint to the University. If the person who has disclosed chooses this option they will be asked to confirm that they wish the University to proceed with a formal investigation, and the Liaison Officer will contact the relevant HR Business Partner.
- 5.4. The Liaison Officer will act a single point of contact throughout the formal procedure. The Liaison Officer is not an advocate or representative. They are able to provide information on University processes and to facilitate practical support, as well as acting as a conduit for communications between the University and the person who has made the report. Should the person against whom a report has been made also choose to receive support from a Liaison Officer, they will be assigned a different individual.
- 5.5. The University reserves the right to investigate any formal allegations made against a staff member if it is felt that there is a risk to the institution or members of our community. In some circumstances this may include carrying out an investigation with or without the reporting party's cooperation. However, all attempts will be made to secure the reporting party's agreement.



## 6. Third Party Harassment

- 6.1. Members of our University community who feel they have experienced or witnessed sexual misconduct by a third party should disclose this via the online reporting platform, Report and Support and seek further support from their line manager and HR. If there is an immediate threat, contact should be made with the University's Community Safety team who will contact the emergency services. If the incident takes place off campus contact should be made with emergency services directly where there is an immediate threat or where a crime has taken place. Once disclosed, this may involve notifying third parties and using their complaints procedure.
- 6.2. Third parties who feel they have experienced or witnessed sexual misconduct by a member of our University community may make a formal complaint using [the complaints procedure](#) and may also consider reporting the matter to the police.

## 7. Informal resolution

- 7.1. A reporting party may wish for the matter to be resolved informally.
- 7.2. Where an informal resolution is appropriate, a Liaison Officer will facilitate the informal resolution, in collaboration with Human Resources and other services such as Wellbeing Support Services where appropriate.
- 7.3. Informal resolution can only go ahead on the mutual agreement of both parties. The Liaison Officers will follow up to check that the informal resolution has taken place, however as the allegation has not been proven they cannot enforce compliance.
- 7.4. Informal resolution may include, but is not restricted to, the following outcomes:
- Written apologies
  - Attendance at awareness sessions
  - Participation in behavioural change programmes
  - No contact agreements
  - Any other penalties which are not punitive in nature
  - Mediation
- 7.5. Both parties will be notified of the outcome of the informal resolution in writing. The relevant Head of Department (or nominated representative) will also be made aware and will be responsible for overseeing any agreed outcomes.

## 8. Formal procedure

- 8.1. The University will consider all allegations of sexual misconduct as serious breaches of discipline, which could potentially lead to dismissal or a termination of contract/association for a first offence. For employees, if, following a thorough investigation and on completion of a disciplinary hearing, the University is satisfied that

gross misconduct has occurred, the result will normally be summary dismissal, which is the termination of employment without notice or pay in lieu of notice.

- 8.2 Should the reporting party wish to proceed with a formal complaint against an existing employee of the University the alleged sexual misconduct will proceed as a disciplinary matter in accordance with this policy.
- 8.3 HR will be notified that the reporting party wishes to proceed with a formal complaint. In all cases of sexual misconduct, a risk assessment will then be carried out to identify any potential risks that may affect the health and safety of both the person who has reported the alleged incident, the person against whom the allegations have been made and our wider community. If it is believed that there is a danger to the person who has disclosed or to anyone else, they will refer the disclosure to the Risk Assessment Group (RAG). The Risk Assessment Group is quorate with 3 members from:
- A member of HR Senior Leadership Team (Chair) (or nominee)
  - Director of Wellbeing and Safeguarding (or nominee)
  - Head of Community Safety & Security (or nominee)
  - Director Conduct and Resolution (or nominee)
  - Other University representatives as required
- 8.4 The Risk Assessment Group will consider whether a recommendation for suspension of the responding party is appropriate. Section 9 of this procedure outlines the criteria associated with suspension from the University.
- 8.5 The responding party must be informed in writing about the details of the alleged misconduct against them and the process that will be followed to resolve the matter(s). In all cases of alleged sexual misconduct, the responding party will also be offered the option of support from a Liaison Officer who will act as a single point of contact for the responding party throughout the formal procedure. The Liaison Officer is not an advocate or representative. They are able to provide information on University processes and to facilitate practical support, as well as acting as a conduit for communications between the University and the responding party.

## 9. Investigation

- 9.1 Cases of sexual misconduct will be investigated by a specialist, External Investigating Officer who has undertaken training in trauma-informed investigation. The External Investigating Officer will determine the scope of the investigation and this will depend on the complexity of the case.
- 9.2 Where appointed, the role of the Investigating Officer will be:
- to ensure that, where practicable, all relevant facts and witness statements are obtained in relation to the alleged misconduct;
  - to decide which witnesses are necessary to interview and, accordingly, to invite them to participate in an investigatory interview. Such witnesses will have the right to be accompanied by a work colleague or Trade Union representative should they so wish. Student witnesses may be accompanied by a fellow student or an advocate from the Students' Union;
  - to conduct the investigation in a confidential manner, and complete the investigation without undue delay wherever possible;

- to provide a written report outlining the findings of the investigation to the HR Director (or nominated representative) or Commissioning Officer.
- 9.3 In cases of sexual misconduct, the Investigating Officer's Report will be reviewed by the Disciplinary Review Group (DRG). All panel members will have undergone specialist training.
- 9.4 The membership of this group is quorate with 3 members from:
- A member of HR Senior Leadership Team (Chair) (or nominee)
  - Director of Legal and Compliance Services (or nominee)
  - Director of Wellbeing and Safeguarding (or nominee)
  - Director Conduct and Resolution (or nominee)
  - Expert counsel will be invited to advise on particular cases as appropriate from internal and external sources.
- 9.5 The group will make a recommendation to the Registrar, Provost or nominated representative as to whether there is sufficient evidence for the matter to be considered at a Disciplinary Hearing. The HR Business Partner/Liaison Officer (or nominated representative) will be responsible for informing the responding party of the outcome and advising on any next steps, i.e. whether the matter will be progressing to a Disciplinary Hearing.
- 9.6 Should the matter proceed to a Disciplinary Hearing, the responding party will be provided with a copy of the Investigating Officer's report for information. In all cases of sexual misconduct, the person who made the initial report of the incident will also receive a copy of the Investigating Officer's report. In exceptional circumstances, for example where it is deemed that the release of the report may be damaging to other parties, the report may be redacted.
- 9.7 Where it is deemed appropriate by the Disciplinary Hearing Chair/Panel, the Investigating Officer will be asked to make themselves available to attend the Disciplinary Hearing.
- 9.8 If it is determined that the matter will not progress to a Disciplinary Hearing the DRG may make suggestions to the Responding Party regarding actions they might undertake, such as seeking support via Wellbeing Support Services or attending awareness sessions. If it is appropriate and necessary to make such suggestions, they will be communicated to the Responding Party and an outcome letter will be issued. The Reporting Party will be informed of the decision via their Liaison Officer and an outcome letter will be issued. Both parties will be informed of the ongoing support available to them.

## 10. Suspension

- 10.1 The University will only suspend employees when the University considers it absolutely necessary to do so. The University considers that suspension with pay is not a disciplinary sanction and is a neutral act.
- 10.2 Both the Risk Assessment Group (RAG) and the Disciplinary Review Group (DRG), have the authority to make a recommendation for suspension of the responding party, if appropriate, pending the outcome of an

investigation or hearing. The suspension should be authorised by the Registrar for Professional Services staff or by the Vice Chancellor or Provost for members of Academic Staff.

- 10.3 Suspension shall be on base salary (i.e. that which the employee would have normally received, excluding overtime). The responding party will be given formal written notification of the reasons for the suspension and, where possible, an indication of the likely length of the suspension. The suspension should be reviewed at regular stages and communicated to the individual concerned.
- 10.4 Suspension may be appropriate in the following circumstances:
- to allow an investigation which might be inhibited by the presence of the employee;
  - when there are strong reasons for doubting the ability or willingness of the employee to work normally during the course of a disciplinary investigation;
  - if the employee is the subject of potential criminal investigation and/or proceedings which may affect their job;
  - where the presence of the employee on site is unacceptable to others and/or may increase the likelihood of further misconduct during the course of a disciplinary investigation;
  - where it is deemed to be in the employee's or the University's best interest to be removed from the workplace.

## 11. Representation

- 11.1 At each stage of the formal sexual misconduct policy and procedure (including any investigatory stage), the responding party and other relevant parties have the right to be accompanied by one person at each formal meeting.
- 11.2 Examples of who can accompany the reporting or responding party are either:
- a) Liaison Officer
  - b) University of Warwick work colleague (for staff) or fellow University of Warwick student (for students)
  - c) Trade Union representative or an official employed by the Trade Union.
  - d) Liaison Officer (if reporting party is a student)
  - e) Students' Union Advice Centre Adviser (if reporting party is a student)
  - f) Independent Sexual Violence Adviser
- 11.3 When arrangements for meetings are confirmed, it will be the responding party's responsibility to notify their chosen companion of the arrangements and provide them with a copy of all relevant paperwork. The companion may address the meeting/hearing at which they are present, sum up the responding party's case and confer with the responding party. They are not permitted to answer questions on the responding party's behalf, nor address the meeting/hearing, if the responding party does not wish them to do so.
- 11.4 The responding party will be responsible for notifying the Disciplinary Hearing Chair/Panel or the relevant HR Business Partner in advance of the meeting, the name of the person who will be accompanying them.
- 11.5 There is no requirement for a work colleague to accept a request to accompany a responding party.

11.6 Availability of a work colleague or Trade Union representative should not prohibit the expedience of the process or cause unreasonable delay, and the employee may be asked to identify alternative representation in the event of delay of more than 1 University working week.

## 12. Disciplinary Hearing

12.1 If the DRG identifies a potential breach of the University Staff Sexual Misconduct Policy following review of the IO's report, both parties will be notified that the matter will proceed to a Disciplinary Hearing. The specific allegation(s) will be clearly communicated to both parties.

12.2 The responding party will be notified of the date of the hearing, with a minimum of 2 working weeks' notice of the hearing date, unless an earlier date is otherwise mutually agreed.

12.3 In cases of sexual misconduct, the reporting party may also be invited to attend the Disciplinary Hearing, however their attendance is not obligatory.

12.4 The responding party will be notified of the allegations against them and the potential consequences if the allegations are well founded.

12.5 Where it has not already been released, the responding party will be provided with a copy of the Investigating Officer's report (where an investigation has taken place) or other evidence (where an investigation has not taken place) at the same time that the employee is invited to attend the hearing.

12.6 The responding party will be given a deadline of 5 University working days (unless otherwise mutually agreed) prior to the disciplinary hearing to make any submission to the panel, including notification of the intention to call relevant witnesses.

12.7 Membership of the Disciplinary Hearing Panel will be:

- a) Chaired by a member of Senior Management (Grade 9 or above) from an unrelated area.
- b) The Chair will be accompanied by a minimum of one other appropriate manager.
- c) Representation from the Students' Union (if the allegation has been made by a student)

12.8 In all Disciplinary Hearings, a member of HR will be present and will advise on procedure.

12.9 All panel members will have undergone unconscious bias and specialist training.

12.10 Where the Head of Department is the subject of the disciplinary action or is involved in a personal capacity, their role in the process will be undertaken by a Professor or Senior member of staff to be nominated by the Vice Chancellor, Provost or the Registrar.

12.11 A University Officer may be called to present the disciplinary case against the responding party and may call witnesses, where relevant and subject to paragraph 11.12.

- 12.12 The detailed procedure for the hearing will be determined by the Chair in conjunction with the disciplinary panel and notified to those present at the commencement of the hearing.
- 12.13 Where a hearing is established for gross misconduct or cumulative misconduct (i.e. that could potentially result in dismissal) and concerns a member of Academic Staff, the responding party can submit a case for consideration by the Academic Freedom Review Committee (AFRC), if they consider that there are relevant matters of Academic Freedom. Where AFRC determines that there is no infringement of Academic Freedom in whole or in part, the AFRC findings will be considered at the Disciplinary Hearing.
- 12.14 The Chair of the Disciplinary Hearing, in consultation with the other panel members will consider any requests for witnesses to be called by either party and will determine whether the panel wishes to hear from any witnesses, or the Investigating Officer. The Disciplinary Hearing Chair/Panel will reasonably consider any requests and may determine to hear from witnesses in writing, in person, or not at all.
- 12.15 Where requested, the University will provide a written summary of the meeting which will be shared with parties present. The responding party may take their own record of the meeting, but recording devices will not be permitted apart from in exceptional circumstances, for example as a reasonable adjustment for a disabled employee and following agreement in advance by all parties.
- 12.16 Where a responding party fails to attend a Disciplinary Hearing without reasonable cause, the hearing will be postponed. If an employee fails to attend a reconvened Disciplinary Hearing, the hearing may either be reconvened, or the hearing may proceed in the employee's absence and a decision taken based on the information available to the Panel.
- 12.17 The Chair may adjourn the Disciplinary Hearing at any time, such as to allow for further investigations or re-interviews of witnesses in light of any matters raised at the disciplinary hearing. The responding party will be given 5 University working days to consider any new information obtained before the hearing is recommenced.
- 12.18 The outcome of the Disciplinary Hearing will normally be confirmed by the Chair of the Hearing in writing to the responding party within 10 University working days. In cases of sexual misconduct, the reporting party will also be informed of the outcome of the Disciplinary Hearing. In exceptional circumstances, for example where it is deemed that the release of the full information may be damaging to other parties, the outcome information may be redacted.
- 12.19 The Disciplinary Hearing may result in a number of possible outcomes or sanctions:

#### **12.19.1 Dismissal**

As detailed in section 3.10 the University will consider all allegations of sexual misconduct as serious breaches of discipline, which could potentially lead to dismissal for a first offence. If, following a thorough investigation, on completion of a disciplinary hearing, the University is satisfied that gross misconduct has occurred, the result will normally be summary dismissal, which is the termination of employment without notice or pay in lieu of notice.

Only the Chair of a Disciplinary Hearing, can take the decision to dismiss an employee having notified the Provost for cases with Academic staff and the Registrar for cases with Professional Services staff prior to the dismissal being communicated to the responding party.

The employee will be given written details of the findings of the Disciplinary Hearing, the reason for dismissal, the date on which employment terminates (taking into account notice periods, where appropriate, as per terms and conditions of employment) and the right of appeal.

#### **12.19.2 Final Written Warning**

The final written warning will give details of the misconduct, the findings of the Disciplinary Hearing, the action(s) required and any relevant timescales. The letter will also warn that dismissal will be considered if there is further misconduct, and it will advise of the right of appeal. A copy of the warning and associated documents will be kept on file by Human Resources and will normally remain in force for a maximum period of 24 months. It will normally be disregarded for the purposes of any further disciplinary action thereafter provided there has been no further misconduct of any description during the period of the warning.

#### **12.19.3 First Written Warning**

The written warning will give details of the misconduct, the findings of the Disciplinary Hearing, the action(s) required and any relevant timescales. The letter will also warn that further disciplinary action will be considered if there is no satisfactory improvement, and it will advise of the right of appeal. A copy of the warning and associated documents will be kept on file by Human Resources and will normally remain in force for a maximum period of 12 months. It will normally be disregarded for the purposes of any further disciplinary action thereafter, provided there has been no further misconduct of any description during the period of the warning.

#### **12.19.4 No Further Action**

If there is insufficient evidence to support the allegations of sexual misconduct, the case will be dismissed.

12.20 Other possible sanctions, under the formal disciplinary procedure may include, but are not limited to, one or more of the following:

- Requirement to participate in training or mediation;
- redeployment from the department of the individual subject to the allegation(s);
- modification of duties;
- withholding increments.

12.21 Movement through the stages of the Staff Sexual Misconduct or Disciplinary policy and procedure will not necessarily be in relation to the same offence. Cumulative progression through the policies will be determined by the nature and seriousness of the offence(s).

## 13. Appeal

- 13.1 In all cases of sexual misconduct, *both* parties may appeal the outcome of the disciplinary hearing. The appeal should be made in writing, setting out the grounds for appeal, with any appropriate supporting evidence addressed to the relevant HR Manager. Any appeal must be lodged within 10 University working days of receipt of written notification of the decision. The appeal will be heard as soon as practicable and normally no later than 4 working weeks after the appeal has been lodged, except where it is mutually agreed that this time limit be altered.
- 13.2 The grounds of appeal against a decision of the disciplinary panel will normally come under one or more of the following headings:
- i. Further evidence not previously considered at an earlier stage**

The reporting and/or responding parties are able to demonstrate that relevant evidence was not included in the original investigation or was not available to the disciplinary hearing when reaching the decision.
  - ii. Process or Procedural aspects**

The reporting and/or responding parties are able to identify areas of the procedure which were not operated correctly or appropriately and as a result could have influenced the final outcome or decision.
  - iii. Final Decision not appropriate**

The reporting and/or responding parties considers that the decision cannot be sustained on the basis of the findings of the disciplinary investigation and/or the penalty imposed is not appropriate, taking into account the seriousness of the offence and any mitigating factors.
  - iv. Potential infringement of Academic Freedom (in cases of dismissal of Academic Staff)**

A member of Academic Staff who requested an AFRC Review prior to their Disciplinary Hearing may appeal on the grounds that there has been a breach of AFRC procedure and/or significant new evidence related to Academic Freedom. In such cases, the appeal will be referred to AFRC before going to the appeals panel.
- 13.3 In all cases of sexual misconduct, the person who originally made the report of the incident will also be informed that an appeal hearing will take place and will be informed of the outcome. If the appeal is submitted by the person who originally made the report of the incident, the responding party will be informed.
- 13.4 Where possible, the appeal will be heard by an individual more senior than the person who determined the original disciplinary sanction, although there may be circumstances where it is appropriate for an individual at the same grade as the Chair of the Disciplinary Hearing to chair an appeal.
- 13.5 The Chair of the appeal will be accompanied by a minimum of one other senior member of staff independent of the allegation. The individuals on the appeal panel should not have been involved in any of the prior stages of the disciplinary policy and procedure.



- 13.6 For appeals by members of Academic Staff in relation to misconduct, the appeal will normally be chaired by a Chair of Faculty or a Pro-Vice-Chancellor. For appeals by members of Academic Staff in relation to dismissal under this policy the appeal will normally be chaired by a Pro-Vice-Chancellor or the Provost.
- 13.7 The Chair will be accompanied by a minimum of one other appropriate manager. For academic disciplinary cases, this would be a senior Professor from another Department.
- 13.8 The Appeal Panel will be asked to consider if the original decision was inappropriate on the grounds of appeal specified by the relevant reporting or responding parties. The appeal hearing is not normally a re-hearing of the case put before the disciplinary panel, but the grounds for the appeal will be considered when deciding the necessity for, or extent of, any new investigation or re-hearing.
- 13.9 The appeal Chair/Panel have a number of powers in relation to the action they can take including:
- confirm the decision of the original disciplinary panel;
  - reduce the sanction originally imposed;
  - re-instate following dismissal;
  - overturn the disciplinary action taken where it is considered just to do so, in light of new evidence or where the disciplinary decision was unreasonable in light of the findings of fact;
  - refer the matter back for a re-hearing where the fairness of the process/procedure was the stated grounds for appeal, and this is upheld.
- 13.10 The outcome of the Appeal Hearing will normally be confirmed by the Chair in writing to the parties, normally within 10 university working days. In cases of sexual misconduct, the person who originally made the report of the incident will also be informed of the outcome of the Appeal Hearing.
- 13.11 The decision of the appeal Chair/Panel is final and there will be no further right of appeal against this decision.

## 14. Confidentiality

- 14.1 All information relating to a sexual misconduct case will be treated confidentially. Information relating to the alleged misconduct will be shared with only those who have a legitimate requirement to see the documentation as part of resolution to the disciplinary or any consequent procedure and therefore the processing of data for contractual necessity.
- 14.2 Employees will normally be informed of the names of any witnesses whose evidence is relevant to disciplinary proceedings, unless the University believes that the identity of witnesses should remain confidential, for example in cases where there is a genuine fear of reprisals or violence.
- 14.3 It is expected that all parties will be sensitive to the nature of such proceedings, including matters discussed and any evidence provided. Breach of confidence, on either side, may compromise the integrity of the procedure and may itself be subject to disciplinary action. This does not preclude individuals from seeking appropriate advice, support and information in relation to the case.

- 14.4 Where the University continues to investigate any matter as a duty of care or a legislative requirement then it may be necessary to share the information with appropriate external authorities.

## 15. Recording and Monitoring

- 15.1 HR will keep written records during the disciplinary process. It is the appropriate line manager's responsibility to monitor the responding party's conduct during the duration of warnings and to ensure that the responding party is achieving the required objectives. HR will monitor all formal complaints and sanctions imposed and informal cautions will be monitored by departments.
- 15.2 Any personal data collected or retained in relation to the sexual misconduct policy or procedure will be in accordance with the Data Protection Act 2018. Further information is detailed in the University's Privacy Notice and Record Retention Schedule.
- 15.3 Where issues related to protected characteristics are identified, they will be brought to the attention of the Equality, Diversity and Inclusion team by the relevant HR Business Partner.

## 16. Equality Impact Assessment

- 16.1 The University recognises its responsibility to ensure that no-one is discriminated against or disadvantaged in relation to a protected characteristic. For further information, please refer to the University's Equality, Diversity and Inclusion website. The Sexual Misconduct policy and procedure has been assessed as being of high relevance to our duties under equality legislation and the University will review its impact on equality and diversity, identify any inequalities by regular monitoring, and take action where necessary.

## 17. Trade Union Officials

- 17.1. Normal disciplinary standards will apply to the conduct of Trade Union officials in the same way as employees. However, no disciplinary action will be taken until the circumstances of the case have been notified to a full time official of the relevant Trade Union.