



# Sexual Misconduct Policy

**Policy owner** Equality, Diversity & Inclusion **Approval date and body** 11 May 2022, UMT

This policy document has been developed following desk-based research into best practice nationally and internationally, extensive internal consultation through externally facilitated focus groups, written submissions and individual meetings and external consultation with experts in the area of dignity and respect. The national framework, “Safe, Respectful, Supportive and Positive: Ending Sexual Violence and Harassment in Irish Higher Education Institutions, 2019”, which outlines a framework that promotes a healthy and informed understanding of consent and relationship in higher education systems, has been closely followed in support of this policy. The Irish Universities Association, How to Respond to Alleged Staff or Student or University Related Sexual Misconduct 2020 has also informed the development of this policy.

This policy is one element of a broad framework to work towards a culture of dignity and respect at UCD to include but not limited to: targeted training for key roles, an ongoing University-wide awareness raising campaign and training, dedicated full-time and voluntary support roles and a range of supporting documentation such as visual aids.

*We encourage you to come forward to seek support and assistance in relation to issues of sexual misconduct, so that we can work with you to resolve these issues. You can be assured that we will act sensitively and disclosures will be carefully and thoughtfully addressed through a process that is transparent and clearly communicated to all individuals involved. Issues of a sexual misconduct nature may potentially constitute a criminal offence. Employees or students can contact the Gardaí directly or through the Duty Manager in Estate Services who has access to a contact point in Donnybrook Garda Station at any time, day or night. The Duty manager can be contacted on Extension 716 7999.*

*All individuals involved in a sexual misconduct issue will be supported.*

## 1. Purpose

The purpose of this policy and supplementary materials, including the Dignity and Respect Support and Guidance document and the Formal Investigation Procedures document, is to support the development of a working and learning environment in which sexual misconduct is unacceptable and where individuals have the confidence and trust in the process to disclose, in the knowledge that their concerns will be dealt with appropriately and fairly.

University College Dublin has six core values driving our culture: Excellence; Integrity; Collegiality; Engagement; Diversity and Creativity. In line with these values, the University is committed to the provision of an environment of respect for diversity and equality of opportunity where:

- you have the right to be treated with dignity and respect and can work and study in a rewarding, safe and stress free environment;
- sexual misconduct will not be tolerated and can lead to disciplinary action;
- the environment is more likely to enhance performance and achievement which will allow all members of our University community to fully utilise their skills and talents and achieve their full potential.

In addition, the University wants to create a climate of trust through the provision of a transparent oversight process, to include external membership, and to take a proactive approach to monitoring and publication of statistics and identification of actions to address any patterns of inappropriate behaviour that is arising.

This policy sets out how the University defines sexual misconduct, what it expects of members of the UCD student and employee community, the responsibilities of key roles in the University and how you will be supported when issues of this nature occur.

We [University College Dublin] recognise that sexual misconduct – in either a learning or work environment – can cause not only personal distress and anxiety, but also a loss of confidence, low morale and illness. It can also lead to absenteeism from course work or the workplace and interfere with your academic performance and work. You have the right to disclose experiences of unacceptable behaviour while studying or working, to be listened to, to seek support and to have the issue resolved. We also understand that anyone involved in a situation involving sexual misconduct has the right to support and information.

This policy should be read in conjunction with the Dignity and Respect Supports and Guidance Document and Dignity and Respect Procedure (The Procedure).

## 2. Scope

This Policy applies to all members of our community and others as defined below under Section 3.

Those under the category of “other” (as defined under section 3) can avail of this policy if they wish to report or make a formal complaint of bullying and/or harassment against a member of the UCD community. If there is any issue in relation to the conduct of those under the category of “other” (as defined under Section 3), then the policy of the organisation in which they are employed or connected to will normally apply. However, UCD reserves the right to carry out an investigation under this policy taking into account the circumstances of the case. The support services of UCD are applicable to UCD Community members.

This Policy applies to all areas of University operations and programmes. It includes conduct which takes place:

- On our campus
- Other places where our employees or students or others are representing the University or are engaged in a University connected activity.
- At events such as social functions, conferences, sporting events, field trips or work assignments which are related to the University or are a University connected activity.
- In relation to clubs/societies
- At non-UCD connected activities on or off campus including social gatherings involving UCD students and employees, or other members of the UCD community as defined above, where the

alleged incident(s) has a direct impact on the individuals when there is ongoing interaction between the individuals in a university related environment.

- This conduct can be in person, in writing, on the telephone, by e-mail or on the internet and social media.

### **Students on Internship/Placements**

- Where UCD students on placement or internships in other organisations wish to make a complaint of sexual misconduct against an individual in that organisation, the dignity and respect policies of that organisation will normally apply.
- Where a UCD student on placement or internship in other organisations has a complaint made against them, they will be subject to UCD policy and they may be subject to the policy of that organisation also.
- Where a UCD student on placement or internship in another organisation makes a complaint against another UCD student on placement/internship in that organisation, they will be subject to UCD policy and they may be subject to the policy of that organisation also.
- In some situations, based on the circumstances of the case, UCD and the host organisation may need to agree on who should lead the investigation process.

### **Employees on Secondment**

- Where a UCD employee is on secondment in another organisations and wishes to make a complaint of bullying and/or harassment against an individual in that organisation, the dignity and respect policies of that organisation will normally apply.
- Where a UCD employee on secondment in another organisation has a complaint made against them, they will be subject to UCD policy and they may be subject to the policy of that organisation also.
- Where a UCD employee on secondment in another organisation makes a complaint against another UCD employee also on secondment in that organisation, they will be subject to UCD policy and they may be subject to the policy of that organisation also.
- In some situations, based on the circumstances of the case, UCD and the host organisation may need to agree on who should lead the investigation process.

There will be no time limit regarding receipt of complaints by the University. The focus will not be on the length of time to bring the complaint forward but rather the impact of the delay on the likelihood of a fair investigation being carried out. The impact of the delay will need to be determined by the Screening Panel based on the information they receive as part of the formal complaint and they will consider the following:

- The circumstances of the alleged complaint
- The complexity of the alleged complaint
- The cause of the delay
- Possibility of prejudice to the respondent.

If the Screening Panel confirms, based on the information they have received as part of the formal complaint, that impact of the delay will not impinge on the likelihood of a fair investigation, an external investigator may be appointed. The external investigator, based on the information received as part of the investigation, can recommend that by reason of the passage of time and taking into account the considerations referred to above, a fair investigation will not be possible.

In the event of the death of a respondent, an investigation will not proceed.

It is possible for an individual to feel they have also been subjected to bullying and/or harassment. If this is the case, please refer also to the policy on Bullying and Harassment.

### **3. Definitions**

It is important that you make yourself aware of the definitions below as it will help determine whether the policy applies to your own situation. It will also make you aware of the type of behaviour that is not acceptable and which you should not engage in. These definitions have been developed based on a review of best practice, Codes of Practice, extensive consultation, the National Framework, Safe, Respectful, Supportive and Positive: Ending Sexual Violence and Harassment in Irish Higher Education Institutions, 2019. The fact that the person who caused the offence may not have intended to engage in sexual misconduct is not a defence, it is the impact of the behaviour that is considered. It is important to note that whilst some behaviours may not fall under the definitions as outlined below, the University does not tolerate unacceptable behaviour of any type. Please refer to Section 6 below on Related Documents for information on other related policies.

#### **UCD Community**

- All UCD employees, whether part time or full time, permanent or temporary;
- All UCD employees based in overseas campus/offices;
- All students of UCD;
- Those engaged in Club activity such as graduates (player, committee member, coach/manager), those volunteering to coach/lead/manage, those being employed by the club to coach/ lead/ manage;
- Non-University employees who use University funds, facilities or other resources, including the University's name and reputation, to carry out teaching and/or research, and/or participate in UCD-administered research, including retired employees, visiting faculty and researchers; consultants, contractors, affiliated hospital staff, industrial personnel and research fellows, regardless of obligations to other companies or institutions; and
- All persons conducting teaching and/or research at or under the auspices of UCD including at any of UCD's overseas campus, including visiting faculty and researchers; consultants; contractors, Emeritus or adjunct appointments; and research fellows.

#### **Other**

In this Policy, "others" shall be taken to include, but is not limited to:

- contractors, and sub-contractors;
- alumni and past employees;
- vendors;
- those who engage and/or who interact with the University and/or its associated bodies;
- those who provide services to the University;
- those who avail of services and/or are visitors of and to the University or any of its associated bodies;
- All employees of UCD's wholly owned subsidiary companies.

#### **<sup>1</sup>Sexual Misconduct:**

<sup>1</sup> Safe, Respectful, Supportive and Positive: Ending Sexual Violence and Harassment in Irish Higher Education Institutions, 2019. Definition of Sexual Misconduct

Sexual Misconduct covers a broad range of inappropriate and unwanted behaviours of a sexual nature including sexual harassment and sexual violence. Sexual misconduct can be committed by a person of any gender and it can occur between people of the same or different genders. It is often gender targeted and perpetrated to demean, diminish and intimidate. Sexual misconduct may occur between strangers or acquaintances, including people involved, or formerly involved, in an intimate or sexual relationship.

The following are examples of behaviours associated with sexual misconduct (non-exhaustive list)

- Predicating inclusion or access to work or study opportunities or other advantages on participation in interactions of a sexual nature
- Grooming, psychological abuse and coercive contact
- Controlling, coercive and threatening behaviour including all or some forms of domestic abuse (emotional, physical, financial, sexual including threats) by a partner or ex-partner.
- Making unwanted remarks of a sexual nature, either directly, or via text or social media apps.
- Sharing private sexual materials of another person without consent;
- Any behaviour of a sexual nature that is committed without consent
- Kissing without consent.
- Touching inappropriately through clothes without consent.
- Non-consensual taking or sharing of intimate images.
- Sexual harassment/sexual misconduct on social media.
- Verbal or physical harassment in a sexual context.
- Inappropriately showing sexual organs to another person
- Creating, accessing, viewing or distributing child pornography material online or offline.
- Stalking behaviours whether online or offline.
- A promise of resources, access to education, opportunities and career progression in exchange for sexual access
- All forms of sexual violence including attempting to engage in sexual intercourse or engaging in a sexual act without consent.
- Misuse of power, by academic or professional staff towards students or more junior levels of employee or misuse of power in a relationship between students or employees who have unequal institutional power.

This definition of Sexual Misconduct also embraces Sexual Harassment (as defined below).

### **Sexual Harassment**

Sexual Harassment is defined under the Employment Equality Acts 1998 – 2015. It includes any act of physical intimacy, request for sexual favours, other act or conduct including spoken words, gestures or the production, display or circulation of written words, picture or other material that is **unwelcome** and could **reasonably be regarded** as sexually offensive, humiliating or intimidating.

The following are examples of behaviours associated with sexual harassment: (non-exhaustive list)

Physical contact such as unnecessary touching, patting or pinching or brushing against another body, assault, coercive sexual intercourse or rape.

- Sexual advances, propositions or pressure for sexual activity, continued suggestions for social activity after it has been made clear that such suggestions are unwelcome, unwanted or offensive flirtations, suggestive remarks, innuendos or lewd comments
- The display of pornographic or sexually suggestive pictures, objects, written materials including posters, emails, text-messages, social media messaging or faxes
- Leering, whistling or making sexually suggestive gestures

- Conduct that denigrates or ridicules or is intimidatory or physically abusive of a person because of their sex

The Employment Equality Acts 1998 - 2015 do not prohibit all relations of a sexual or social nature at work. To constitute harassment/sexual harassment the behaviour complained of must firstly be unwelcome. It is up to each employee/student/other (e.g. visitor or sub-contractor) to decide

- what behaviour is unwelcome, irrespective of the attitude of others to the matter and
- from whom such behaviour is welcome or unwelcome, irrespective of the attitudes of others to the matter

The fact that an individual has previously agreed to the behaviour does not stop them from deciding that it has become unwelcome. It is the unwanted nature of the conduct which distinguishes harassment/sexual harassment from behaviour which is welcome and mutual.

In addition, to constitute harassment/sexual harassment under the Employment Equality Acts 1998 - 2015, the behaviour must have the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

### **Consent**

Consent in the context of sexual misconduct is defined as the freely given verbal or non-verbal communication of a feeling of willingness to engage in sexual activity. A person consents to a sexual act if they freely and voluntarily agree to engage in that act. There is no consent if the victim is asleep or unconscious; force or the threat of force is used; they cannot consent because of the effect of alcohol/other drug; they cannot communicate consent because of a physical and mental disability; they are mistaken about the act or about the identity of the other person; the only indication of consent came from a third person, or if they are being unlawfully detained at the time of the act. This is not an exhaustive list and are illustrative only.

Consent can be withdrawn at any time, and just because someone has previously given consent, does not preclude that person from withdrawing consent.

Non-consensual sexual activity may amount to a prosecutable criminal offence.

This definition is consistent with the definition of consent in the Criminal Law (Sexual Offences) Act 2017. The full definition is included under Section 6 below.

### **Disclosure**

In the context of this policy, disclosure refers to the case where an individual discloses that they feel they have been subjected to sexual misconduct, which includes sexual harassment and sexual violence. Making a disclosure does not constitute a formal complaint, however after speaking with someone, you may decide to then submit a formal complaint. When making a disclosure, you will be supported to work through the issue by a trained support person, such as the Dignity and Respect Support Service Advisor, and discuss what a resolution would look like for you, with safety for everyone being of paramount importance. You will also be signposted towards other internal and external supports. You will be made aware of your right to make a formal complaint and/or contact the Gardaí (Police) in the case of an alleged criminal offence.

### **Reporting Person**

A reporting person is defined as an individual that has come forward to report an incident(s) that they consider to be sexual misconduct type behaviour, however they have not submitted a formal complaint form.

## **Person being Reported**

A person being reported is defined as the individual that the reporting person considers to be carrying out the sexual misconduct type behaviour, however no formal complaint form has been submitted.

## **Informal Resolution**

Informal resolution refers to the options available to resolve an issue without instigating the formal investigation procedure. The appropriateness of informal interventions in instances of sexual misconduct will depend on the nature of the conduct.

The key principle to be maintained is that individuals reporting allegations of sexual misconduct, with the appropriate supports, should be the decision maker around whatever actions should be taken and the possible routes and actions towards informal resolution should be explored when they are engaging with University and/or external supports.

Informal resolution options include the reported person being contacted to let the person being reported know that the alleged behaviour described is not acceptable and is in contravention of the Sexual Misconduct policy and should stop. The reporting person may also wish to consider other options that they feel will assist them in resolving the issue informally. In helping determine if this option may be appropriate, the health and safety of all parties would be of paramount importance.

Reporting persons are advised to discuss options for resolution with the Dignity and Respect Support Services Advisor.

## **Formal Complaint**

A complaint is deemed to be formal once the Dignity and Respect complaint form has been completed and submitted to the Equality, Diversity and Inclusion (EDI) unit. Following receipt of a formal complaint, a preliminary screening carried out by a screening panel will decide on a prima facie basis whether the alleged behaviour falls within the definition of sexual misconduct and scope as defined in this policy. The screening panel can also recommend if informal interventions should be considered. If deemed to fall within the definitions and scope and informal interventions are deemed inappropriate by the screening panel, or the complainant does not wish to engage in informal interventions, the complaint will proceed to a formal investigation which will be supported by either UCD HR or the Students Engagement, Conduct, Complaints and Appeals office, as appropriate. If the Screening Panel finds that the behaviour does not fall within the definitions and scope of sexual misconduct, the panel may direct the complaint to an alternative process. Consideration will be given to the fact that a formal complaint form has already been completed in relation to the issues. Further information in relation to the screening panel and formal investigation process is located in the Formal Complaints Procedure.

## **Complainant**

The complainant is a person who makes a formal complaint, using the Dignity and Respect complaint form, that they have been subject to sexual misconduct.

## **Respondent**

The respondent is a person who is named in a formal complaint as having allegedly carried out the sexual misconduct.

## **Precautionary Measures**



If a person makes a formal complaint of sexual misconduct, reasonable precautionary measures may be put in place pending the outcome of a University or criminal investigation process. A precautionary measure is not a penalty or a sanction and does not indicate that it has been concluded that the person concerned has committed a breach of discipline or a criminal offence. Rather these precautionary measures may be put in place in the best interests of all parties involved, including any witnesses. Precautionary measures may potentially be kept in place following an intervention depending on the circumstances. (Further information on the range of measures are outlined in the formal Investigation Procedures document).

### **Discrimination**

The Employment Equality Acts 1998 – 2015 defines discrimination as treating one person in a less favourable way than another person based on any of the equality grounds (see grounds listed under harassment). These include recruitment and promotion; equal pay; working conditions; training or experience; dismissal and harassment including sexual harassment. Claims of discrimination (other than harassment and sexual harassment) are managed under the Grievance Procedure for employees or Student Complaints (or other) for students.

### **Victimisation**

No person should be the subject of any act or omission that affects them to their detriment for having raised sexual misconduct, making a formal complaint in good faith, for giving evidence in an investigation (as a witness/bystander for example) or by giving notice of intention to do so. The University takes victimisation very seriously and action will be taken in instances where this occurs. Any individual that experiences victimisation is strongly encouraged to seek support and report this behaviour to the Dignity and Respect Support Service Advisor or EDI Unit.

### **Penalisation**

The Safety, Health and Welfare at Work Act, 2005 (the “2005 Act”) prohibits employers from penalising employees for making complaints in respect of health and safety matters in the workplace. Penalisation under the 2005 Act is defined as any act or omission of an employer which affects a term or condition of employment of an employee to their detriment. Penalisation could include suspending, demoting, dismissing an employee or reducing their wages. It could also include coercion or intimidation.

### **Dignity and Respect Environmental Assessment**

A Dignity and Respect Environmental Assessment is an assessment of the broader cultural issues/prevaling conditions within an area. A periodic environmental assessment may be undertaken at intervals as directed by a sub-group of the Dignity and Respect Oversight group where a small number of areas will be randomly selected by the sub-group.

A targeted Dignity and Respect Environmental Assessment may also occur where particular statistical trends have been highlighted. These trends may be identified through anonymous reports made by individuals (reporting person) in the <sup>2</sup>[Report and Support Tool](#) for example or where an individual(s) have come forward informally to report an incident but do(es) not wish to make a formal complaint at that point in time. Trends may also be identified where bystanders/witnesses have reported incidents. These assessments will help measure how well this policy is being embedded across the University and its impact.

<sup>2</sup> Report and Support provides the opportunity for you to make the University aware of incidents that you have either experienced or witnessed by reporting them anonymously. More information can be found at [reportandsupport.ucd.ie](http://reportandsupport.ucd.ie)



The Dignity and Respect Oversight Sub-Group will monitor this data on a quarterly basis. If an environmental assessment of an area is identified, either on a periodic review basis or arising from a review of data available, the area must cooperate with the assessment. All environmental assessments will be conducted by an independent third party. A Dignity and Respect Environmental Assessment will not result in any sanctions being issued, however it gives the University the authority to implement action plans aimed at changing culture or behaviours.

**The framework for these assessments is currently under development through a sectoral project sponsored by the Irish Universities Association. It is still in the pilot phase and has not yet been rolled out in the sector. This policy will be updated once the framework is available.**

### **Malicious Complaint**

Adopting the definition under the Code of Code of Practice on Bullying 2021, a malicious complaint can be described as an allegation being made without foundation, and with malicious intent, where a person knowingly or without regard to whether it is true or not, accuses another person of alleged sexual misconduct against them. This could also apply to where one person maliciously complains of someone allegedly engaged in sexual misconduct with a third party, without fully exploring the veracity of the claim. A malicious complaint has the power to disrupt another person's life to a significant extent and the potential damage should not be underestimated. Being accused of sexual misconduct can have a serious impact on any person and reduce their reputation in the eyes of others, even if later shown to not have been proven. Those making complaints - and those involved in early assessment of the circumstances of a complaint - should always be mindful of the context and situational aspects of the event and accept the different perspectives and points of view different people bring to the same event. Making a malicious complaint, if proven, can have serious implications for the employment / studies of the person making such a complaint and this includes disciplinary action, where established.

## **4. Principles**

The key principles of the policy are to:

- Ensure that the University has proactive measures in place to promote a positive culture of dignity and respect and to create a working and learning environment which makes clear the expectations of members of our community with regard to respecting each other and that unacceptable behaviour will not be tolerated.
- Create a safe and respectful environment where people feel encouraged to disclose the issues they are experiencing and have trust and confidence in the process that the issues will be dealt with appropriately and fairly.
- Ensure that there is a range of trained supports available, both voluntary and full-time dedicated roles, whom you can approach and seek support and guidance from and that these are widely communicated.
- Promote understanding of our definitions of sexual misconduct and consent.
- Ensure that there are both informal and formal options available for resolution acknowledging that informal options need to be considered carefully.
- Enhance transparency by having external expert involvement at key stages of the dignity and respect process including external membership on the screening panel, the appointment of external investigators and external membership on the EDI Dignity and Respect Oversight Sub-Group.
- Expectation that you will cooperate with all efforts in order to resolve complaints under the policy and without undue delay as appropriate.
- Expectation that you will respect the confidentiality of the process. However, you are strongly encouraged to seek support from the support services available, your family and other personal supports which will involve you sharing information confidentially with them.

- Have an effective and transparent monitoring and analysis process of dignity and respect related data, and the reporting of this data to relevant internal and external bodies on a defined periodic basis in order to demonstrate accountability.
- Review this Policy on a regular basis in line with changes in the law, relevant case-law, feedback from people's experience of the policy or other developments.

## 5. Roles and responsibilities

As members of our community, we are all expected to work to develop and maintain a high degree of respect in our diverse community and to participate in creating a positive and safe environment.

As with all policies and procedures, this document assigns responsibilities to a range of roles within the University, including senior management of the University. Failure to uphold the responsibilities assigned is taken very seriously and may lead to informal or formal action, including, in the case of students, under the Student Code and Student Discipline Procedure, and in the case of employees under the Disciplinary Statute (Statute 28). Formal sanctions available for breach of university policies and procedures are graduated by reference to the seriousness of the breach, for students ranging between a written reprimand to permanent expulsion from the University, and for employees at all levels ranging between a verbal warning to dismissal.

### Governing Authority

- Support the pursuit of the development and implementation of leading policies/procedures that clearly represent the values of UCD.
- Amplify the value and importance of dignity and respect in the University and supporting strategy of the Governing Authority.
- Oversee the work of the Dignity and Respect Oversight Group and receive an annual report from this group on the implementation of the policy and supporting framework and monitor emerging trends.
- Engage in relevant training in relation to dignity and respect and broader equality, diversity and inclusion.

### University Management Team (UMT)

The University Management Team is the senior leadership team of the University led by the President. They have overall formal responsibility for the operation of this policy. They have the responsibility to:

- Visibly lead and champion a positive culture of dignity and respect free from sexual misconduct where trust and transparency around dignity and respect is paramount. This will include ensuring that all senior leaders are appropriately trained.
- Ensure that adequate resources are allocated to support a positive culture of dignity and respect including training and awareness-raising campaigns and supports for employees and students.
- Proactively encourage individuals to seek support and guidance if experiencing issues of a sexual misconduct nature.
- Review dignity and respect reports and recommendations submitted on a quarterly basis from the Dignity and Respect Oversight Group and EDI group and take the necessary action.
- Ensure that data is publicly available to enhance transparency around the process.
- Engage in relevant training in relation to dignity and respect and broader equality, diversity and inclusion.
- Engage with the Governing Authority and external bodies such as the HEA in relation to progress on the implementation of the dignity and respect framework as appropriate.

## **Dignity and Respect Oversight Committee**

The Dignity and Respect Oversight Committee, reporting to the EDI Group and UMT on a quarterly basis and annually to the Governing Authority, will consist of key stakeholders from across the University and external members who are expert in the area of dignity and respect. It will have responsibility to provide oversight and guidance and enhance transparency around dignity and respect as follows:

- Provide guidance and direction in relation to the implementation of the Dignity and Respect policies and supporting framework to support a culture of dignity and respect.
- Monitor progress in relation to the implementation of the broader Dignity and Respect Framework and Consent Framework under <sup>3</sup>ESHTE and measure against established KPIs.
- Monitor statistical data relating to reports made under the Report and Support tool, formal dignity and respect complaints and contacts with designated support roles such as the Dignity and Respect Contact Persons and the Dignity and Respect Support Service Advisor.
- Direct both periodic and targeted environmental assessments based on available data to be undertaken to assess the culture in an area in relation to Dignity and Respect and measure the impact of the policy.
- Ensure there is transparency in relation to Dignity and Respect in UCD through the publication of statistics and actions to address themes arising.
- Advise on best practice nationally and internationally.
- Act as Champions for a positive culture of dignity and respect and trust in the process.
- Report into and make recommendations to the EDI Group and UMT on a quarterly basis and report annually to the Governing Authority.

## **Dignity and Respect Support Service Advisors**

Reporting to Equality Diversity and Inclusion, the full-time roles of Dignity and Respect Support Service Advisors will work proactively with employees and students who disclose issues of sexual misconduct and those who are reported. These roles, who are experienced and trained to support, respond and advise on all reports of a dignity and respect nature, will provide you with a supportive, confidential environment in which to discuss the issues and support you to make a decision that is right for you and your situation.

As a reporting person, these roles will provide support and work with you in relation to the steps to seeking a solution to the issues you are experiencing but the decision will rest with you as to how you would like the issue to be resolved. They can also assist you in making a formal complaint if you wish to do so and continue providing that support throughout the formal complaints process which may include accompanying you to investigation meetings and the provision of aftercare support following any informal or formal interventions.

As a person being reported, the Dignity and Respect Support Service Advisors are also available to support you if you have been accused of carrying out such behaviour however different advisors will support the various people involved to avoid a conflict of interest. If a formal complaint has been made, they will provide information as to what this will normally entail. They may accompany you to investigations if you wish and also provide aftercare support.

The Dignity and Respect Support Service Advisors will also support, and work closely with the panel of Dignity and Respect Contact Persons, who are trained voluntary support roles available to those

<sup>3</sup> Ending Sexual Violence in Third Level Education Project

experiencing issues of a dignity and respect nature. Further information on these roles is available in the Support and Guidance document.

The Dignity and Respect Support Service Advisor roles are available during normal working hours, however in the case of emergency the Duty Manager in Estate Services is available at any time day or night on 716 7999 and has a direct contact to the Gardaí (Police) if required.

The key responsibilities of the roles include:

- Providing impartial information and support around options in relation to resolving issues of a sexual misconduct nature.
- Supporting and guiding the reporting person in making a formal complaint if they wish to do so.
- Accompanying complainants and respondents to investigation meetings if they wish and providing after care support following a formal investigation process regardless of the outcome.
- Signposting and referring individuals to other appropriate support services both within the University and externally.
- Keeping accurate records to a safe, professional and ethical standard and monitor and report statistical data.
- Providing specialist advice to University and College employees on individual cases of dignity and respect, including possible actions to ensure that employees and students feel safe and protected.
- Providing key support for the panel of Dignity and Respect Contact Persons and guide and advise as appropriate ensuring a high standard and consistency in delivery of support as well as championing of the panel.
- Liaising closely with other key Dignity and Respect supports such as Student Advisers, EDI, HR and the Dignity and Respect Oversight Committee.
- Supporting the delivery of dignity and respect training to employees and students.
- Monitoring contacts and disclosures which will feed into the overall data reporting system that will support the Dignity and Respect Oversight Sub-Group make decisions around instigating targeted environmental assessments.
- Keeping abreast of best practice developments in this area nationally and internationally.

### **Individuals**

As individual members of the University Community, we all have a responsibility to:

- At all times, treat all members of the University community with whom you interact with dignity and respect and be aware of the impact of your actions.
- Be familiar with the principles of this policy and positively contribute to a culture of dignity and respect by engaging with any training and/or awareness raising and initiatives.
- If you witness behaviour that you consider to be sexual misconduct, you should report it to a Head of School/Line Manager or the Dignity and Respect Support Service Advisor.
- Encourage any individual that confides in you that they have experienced sexual misconduct, to seek support and guidance from the sources available.
- Engage in training and awareness raising on the matters that are the subject of this policy.
- Engage in respectful conduct or behaviour that will not endanger your own safety, health and welfare or work or that of any other person including obligations under the Safety, Health and Welfare at Work Act, 2005.

### **Human Resources/Office of the Registrar as appropriate**

- Provide advice to Heads of School/Unit and line managers on addressing dignity and respect related matters including how they can best support those experiencing issues of a dignity and respect nature.
- Signpost employees and students to specialist supports and advisors such as the Dignity and Respect Support Service Advisors, Dignity and Respect Contact Persons, Employee Assistance Service, Student Counselling Service etc.
- Provide management support to external investigators in the formal Dignity and Respect Complaints process.
- Maintain communications with the reporting person/complainant and person being reported/respondent and keep them informed of the progress of the formal investigation.

### **Equality, Diversity & Inclusion (EDI) Unit**

- Support the roles of the Dignity and Respect Support Service Advisors.
- Receive formal dignity and respect complaints through the completion of the Dignity and Respect Complaints form and managing the formal complaints process up to and including the screening panel stage.
- Champion and promote a culture of dignity and respect throughout the University Community where sexual misconduct is not tolerated.
- Lead out on periodic reviews of the Dignity and Respect –Sexual Misconduct policy.
- Support the work of the Dignity and Respect Oversight Group.
- Engage in relevant and appropriate training.
- Monitor, report on and publish the data in relation to sexual misconduct from the various sources and compile statistical reports and make recommendations to the Dignity and Respect Oversight Group, UMT and the Governing Authority.

### **People Managers (Heads of School/Unit and those with line management responsibilities) (for employees)**

**People managers have important roles to play in creating a culture of dignity and respect in their School/Unit and supporting employees who are experiencing issues of dignity and respect, with support from HR. There may be instances where an individual may feel that there is a conflict of interest in approaching their line managers where the issue is with the line manager or if both individuals involved report to the same manager. In this instance, individuals can approach the next management level up or contact the Dignity and Respect Support Service Advisor as well as seek support from the other sources of support available.**

The role of the People Manager is to:

- At all times, treat all members of the University community with dignity and respect.
- Proactively promote ongoing awareness in relation to dignity and respect in their area including keeping dignity and respect as a regular agenda item at School/Unit meetings.
- Work with those involved in a sexual misconduct issue in a proactive manner to support the resolution of issues and stop the unacceptable behaviour. Seek advice from HR and the Dignity and Respect Support Service Advisor as well as engaging with other people managers to seek support and advice (anonymously) in relation to addressing issues of dignity and respect in their areas.
- Undertake appropriate training and be able to explain the policy and the supports to employees in their area.
- Encourage employees to come forward to report issues and to encourage them to seek support and guidance from the Dignity and Respect Support Service Advisors and other supports that can assist in the resolution of issues.
- Monitor and follow up on the situation to ensure that unwelcome and non-consensual behaviour does not occur or recur.

- Be vigilant for signs of sexual misconduct through observation and by getting feedback and to take appropriate action before a matter escalates.
- Where unwelcome behaviour has occurred, and is admitted, be clear that it is not acceptable and to take disciplinary action if appropriate.
- Work with HR to take precautionary measures as deemed reasonable by the University.
- Facilitate and/or pro-actively request environmental assessments in their area and encourage participation by students and employees, ensuring that they are supported throughout the process.

#### **Heads of School, Associate Deans and Programme Co-ordinators (in the case of students)**

- At all times, treat all members of the University community with dignity and respect.
- Proactively promote ongoing awareness in relation to dignity and respect amongst students.
- Respond sensitively and promptly to students who are raising sexual misconduct issues and signpost them to the various supports such as the Student Advisers and Dignity and Respect Support Service Advisor.
- Seek advice from the Dignity and Respect Report and Support Adviser if required in relation to issues raised by students.
- Be vigilant for signs of sexual misconduct through observation and by getting feedback and to take appropriate action before a matter escalates.
- Undertake appropriate training and be familiar with the Dignity and Respect Policies and Supports.
- Facilitate and/or pro-actively request environmental assessments in their area and encourage participation by students and employees, ensuring that they are supported throughout the process.

**There are a number of support roles in the University that provide support and information to students and employees such as the Dignity and Respect Contact Persons, Student Advisers, Chaplains, Students Union and Trade Unions. Further information in relation to these roles can be found in the Dignity and Respect Supports and Guidance document.**

#### **Trade Unions (for employees)**

Trade Unions can play an important role in providing information, advice and support to employees who feel that they are being subject to sexual misconduct or against whom a complaint has been made. The trade unions with the right to represent grades of employees in UCD are: IFUT, SIPTU and UNITE.

#### **Student's Union (Students)**

The Student's Union has a number of full-time sabbatical officers who are elected each year by students. They are a further point of contact for students who may be experiencing issues relating to dignity and respect. They can play an important role in providing information, advice and support to students who feel that they are being subject to sexual misconduct or against whom a complaint has been made. They assist students by providing a listening ear and signposting to Student Advisers and Dignity and Respect Support Service Advisor for specialist support and guidance.

#### **Role of Bystanders**

A bystander in the context of this policy is an individual that witnesses an incident(s) of sexual misconduct. As a bystander, you are encouraged to report any incidents witnessed to your Head of School/Module Co-ordinator or Dignity and Respect Support Service Advisor in the case of students and in the case of employees, your manager or Dignity and Respect Support Service Advisor who will



advise as to the various options available to address the issues. A Dignity and Respect Environmental Assessment may also potentially occur on foot of a Bystander report.

## **6. Related documents**

- Dignity and Respect: Support and Guidance Document
- Dignity and Respect Formal Investigation Procedure
- Dignity and Respect, Bullying and Harassment Policy
- The Irish Universities Association, How to Respond to Alleged Staff or Student or University Related Sexual Misconduct. 2020
- Grievance Procedure Policy
- Equality, Diversity and Inclusion Policy
- Employee-Student Relationship Policy
- Student Code of Conduct
- Disciplinary Statute
- Dignity and Respect Data Privacy Statement

### **a) Legislation**

This Policy is designed to ensure compliance with the Codes of Practice issued under the Safety, Health and Welfare at Work Act 2005, the Industrial Relations Act 1990 (as amended) and the Employment Equality Act (as amended) and the provisions of the Work Relations Commission (WRC) S.I. 208/2012 for addressing harassment/sexual harassment.

The following legislation is relevant to sexual misconduct:

- Safety, Health and Welfare at Work Act 2005
- Non-Fatal Offences Against the Person Act 1997
- Equal Status Acts 2000 - 2018
- Prohibition to Incitement of Hatred Act 1989
- Employment Equality Acts, 1998 – 2015
- Data Protection Act 1988 – 2018
- Irish Human Rights and Equality Commission Act 2014
- Criminal Law (Sexual Offences) Act 2017
- Protected Disclosures Act 2014
- Industrial Relations Act 1990 (Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work Order 2020) (SI no 674 of 2020)

The national framework, “Safe, Respectful, Supportive and Positive: Ending Sexual Violence and Harassment in Irish Higher Education Institutions, 2019”, which outlines a framework that promotes a healthy and informed understanding of consent and relationship in higher education systems, has been closely followed in support of this policy. The Irish Universities Association, How to Respond to Alleged Staff or Student or University Related Sexual Misconduct 2020 has also informed the development of this policy.

### **b) Consent**

The following is the excerpt from the Criminal Law (Sexual Offences) Act 2017 which defines Consent.

Amendment of Act of 1990	
	<p><b>48.</b> The Act of 1990 is amended by the substitution of the following section for section 9:</p>
	<p><b>“9.</b> (1) A person consents to a sexual act if he or she freely and voluntarily agrees to engage in that act.</p>
	<p>(2) A person does not consent to a sexual act if—</p>
	<p>(a) he or she permits the act to take place or submits to it because of the application of force to him or her or to some other person, or because of the threat of the application of force to him or her or to some other person, or because of a well-founded fear that force may be applied to him or her or to some other person,</p>
	<p>(b) he or she is asleep or unconscious,</p>
	<p>(c) he or she is incapable of consenting because of the effect of alcohol or some other drug,</p>
	<p>(d) he or she is suffering from a physical disability which prevents him or her from communicating whether he or she agrees to the act,</p>
	<p>(e) he or she is mistaken as to the nature and purpose of the act,</p>
	<p>(f) he or she is mistaken as to the identity of any other person involved in the act,</p>
	<p>(g) he or she is being unlawfully detained at the time at which the act takes place,</p>
	<p>(h) the only expression or indication of consent or agreement to the act comes from somebody other than the person himself or herself.</p>
	<p>(3) This section does not limit the circumstances in which it may be established that a person did not consent to a sexual act.</p>
	<p>(4) Consent to a sexual act may be withdrawn at any time before the act begins, or in the case of a continuing act, while the act is taking place.</p>
	<p>(5) Any failure or omission on the part of a person to offer resistance to an act does not of itself constitute consent to that act.</p>

	(6) In this section—
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	‘sexual act’ means—
	(a) an act consisting of—
	(i) sexual intercourse, or
	(ii) buggery,
	(b) an act described in section 3(1) or 4(1) of this Act, or
	(c) an act which if done without consent would constitute a sexual assault;
	‘sexual intercourse’ shall be construed in accordance with section 1(2) of the Principal Act.”.

**c) Confidentiality (see Data Privacy statement)**

Confidentiality will be observed as far as practicable and in accordance with the provisions of the Data Protection Act 2003 - 2018 and the Children First Act, 2015 which governs child protection. Confidentiality is a key principle of the Dignity and Respect policy and is essential to the integrity of a formal complaints process. It is important that any party to a complaint, which most commonly includes reporting person/complainant, person being reported/respondent or witness, does not breach confidentiality. This does not preclude parties to the complaint from accessing confidential support services and confiding in them such as the Employee Assistance Service or Student Counselling, speaking to a designated dignity and respect contact person or a student advisor, trade union representative, accompanying person or human resources or other support. Respect for an individual’s request for confidentiality will be maintained (as far as practicable) except in any or all of the following situations:

- In situations where there is a risk that a Respondent may repeat their actions and pose a real physical/mental threat to the well-being of others. If this situation arises, the HR Director or the Registrar, as appropriate, must be contacted and there will be full disclosure to them.
- Where failure to disclose information may be a breach of statute
- Where an individual is a minor
- Where there is a potential risk to the University.

The University will take action that is necessary and proportionate in order to protect the rights of the reporting person/complainant, person being reported/respondent or witness involved in an investigation.

**d) Investigations by An Garda Síochána (Police)/ Court orders**

- i. Where an employee/student identifies a breach of this policy which constitutes a criminal offence or an immediate threat to safety, they should report the matter to the Gardaí. Individuals should also inform the University through their line manager or the Dignity and Respect Report and Support Adviser, so that appropriate steps can be taken and support

provided. Employees or students can contact the Gardaí directly or through the Duty Manager in Estate Services who has access to a contact point in Donnybrook Garda

Station at any time, day or night. The Duty manager can be contacted on Extension 716 7999.

The University will only in the most exceptional circumstances, and with the benefit of specific legal advice, report a complaint to the Gardaí contrary to the wishes of the reporting person/complainant. The circumstance in which a report by a University may be justified is if there is considered to be a clear and imminent risk to the safety of the reporting person/complainant or of third parties. If the University does decide that it is necessary to report the allegation to the Gardaí, then the reasons for taking that action will be explained to the complainant so that they understand what is happening and they can be prepared if/when the Gardaí contact them. Further details are located in the Dignity and Respect Formal Investigation Procedures.

- ii. If any individual has a court order against a UCD community member, they should provide a copy of this to the Dignity and Respect Support and Report Advisor. When the university is put on notice of a court order it will take all reasonable steps to facilitate compliance with the order where possible. Enforcement of the order is however a matter for the applicant/court.

**d) The Children's First Act 2015 and Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012**

The University is obliged to report any disclosures of child sexual abuse, assault, ill-treatment, or neglect of children to Tusla under the reporting responsibilities of the Children First Act 2015, the 2017 Guidance, the University's Child Safeguarding Statement and the principles of natural justice. Any person to whom such a report is made should contact the UCD Child Protection Officer. The University also has a reporting obligation under the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012. The Act creates a criminal offence of withholding information relating to the commission of a serious offence, including a sexual offence, against a person under 18 years or a vulnerable person.

**e) Transparency through Monitoring and Reporting**

We are committed to being transparent in relation to issues of sexual misconduct in the University whilst still protecting anonymity. Data relating to complaints and reports of sexual misconduct will be used to inform the development of initiatives and activities designed to prevent such behaviour, enhance supports for those experiencing sexual misconduct and promote a safe and respectful environment for all.

A report including an analysis of data collated in relation to contacts, reports, formal complaints and anonymous reports via the University's anonymous Report and Support system and, where appropriate, relevant recommendations will be submitted to the University Management Team and EDI Group on a quarterly basis and annually to the Governing Authority. Data will also be made available to the Dignity and Respect Oversight sub-group through a data collection system that will be established to enable the group to identify areas for targeted environmental assessments.

Specifically, the report will include:

- Statistical data relating to contact, reports, anonymous reports and formal complaints made under the Dignity and Respect - Sexual Misconduct Policy received each year.
- The number of formal complaints investigations and the number of formal complaints that led to disciplinary action.

- An analysis of the data collated and any relevant recommendations.
- Summary of progress against the Framework for Consent in HEIs action plans
- Summary of progress against the overall Dignity and Respect Implementation Plan
- Outline of planned actions and initiatives.

For the purpose of continuous monitoring and to enable local review, quarterly reports will be produced and disseminated to senior university leaders. Data will also be made available to relevant University stakeholder groups.

The University will also report dignity and respect statistical data to the HEA as appropriate.

The University will also report dignity and respect data to the HEA as appropriate.

#### **f) Data Protection**

The University has published data privacy statements for employees and students which explain how personal data is used. A specific Data Privacy statement has been developed for this policy which explains how the University will use personal data if one is a reporting person/complainant, person being reported/respondent or a witness in a case considered under the policy and procedure for handling cases of sexual misconduct.

## **7. Version history**

<b>Version</b>	<b>Date</b>	<b>Description</b>	<b>Author</b>
1.0	August 2020	New policy on and Sexual Misconduct	D&R Project Review Group 2019 / 2020
2.0	December 2020	New policy on and Sexual Misconduct	D&R Project Review Group 2019 / 2020
3.0	February 2021	External input and revised draft	Project team
4.0	April 2021	Final feedback from University community considered	Project team/Review Group
5.0	April 22	Clarification of Scope and some Definitions	EDI
5.1	February 2023	Spelling corrections	P.Fitzgerald, HR
5.2	October 2023	The Dignity and Respect Environmental Assessment paragraph has been amended.	EDI