

## **Informal Complaint Procedure For Student Misconduct**

### **1. Glossary**

1.1. In this procedure, the following terms shall have the meanings set out below:

Facilitator	A trained person who the Head of OSCCA will appoint to handle the consideration of the case and provide a report following such consideration
Group	The Group that receives the Informal Complaint Form (see paragraph 6.4)
Informal Complaint Form	The Form to be used to report a complaint under this procedure
Misconduct	Behaviour as described in paragraph 2
Misconduct Panel	The Misconduct Panel (see paragraph 8)
OSCCA	The Office of Student Conduct, Complaints and Appeals
Reporting Student	A Student who has made a complaint under this procedure
Respondent Student	A Student about whom a complaint has been made under this procedure
sexual misconduct	Behaviour as defined at paragraph 2.2
Student	A Registered Student as defined in Statute A X 2(c). <sup>1</sup> For the purposes of the membership of a Misconduct Panel, this definition includes sabbatical officers of Cambridge University Students' Union and the Graduate Union

### **2. Types of behaviour amounting to misconduct under this procedure**

2.1. Physical misconduct is any unwanted and unreasonable contact. Physical misconduct includes pinching, punching, kicking, slapping, pulling hair, biting, pushing, shoving, using weapons and using items as weapons.

2.2. Sexual misconduct is any unwanted and unpermitted sexual activity. Sexual activity includes sexual acts, kissing, sharing private sexual materials of another, touching through clothes, showing sexual organs and remarks of a sexual nature. Sexual misconduct can take place in physical or virtual environments.

2.3. Abusive behaviour is any unwanted behaviour which is reasonably likely to cause harm; or have the effect of violating another's dignity; or create an intimidating, hostile, degrading, humiliating or offensive environment for that other. It includes threats, abusive comments, the use of or supply of illicit substances, making malicious accusations, repeatedly contacting someone, and abuse that takes place within an

intimate relationship. Abusive behaviour can take place in physical or virtual environments.

2.4. The behaviour covered by these forms of misconduct can include actions that appear to have been influenced by someone's protected characteristics or their perceived protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, sexual orientation. The behaviour can take place in person or online. A non-exhaustive list of these types of behaviours include:

- a) making sexually offensive comments about dress or appearance, the display or distribution of sexually explicit material, or demands for sexual favours;
- b) engaging in harassment on the grounds of a person's sexuality or gender (or assumptions about a person's sexuality or gender) including making derogatory homophobic, transphobic, or biphobic remarks or jokes aimed at a particular person, offensive comments relating to a person's sexuality, refusal to acknowledge a person's gender or identity, or threats to disclose a person's sexuality to others;
- c) making offensive references to a person's race, ethnicity, skin colour, religion or nationality, dress, culture, background or customs which have the effect of ridiculing or undermining an individual or fostering hatred and/or prejudice towards individuals or particular groups;
- d) ignoring, disparaging, or ridiculing a person because of mistaken assumptions about their capabilities, or making offensive reference to an individual's appearance, in the context of their disability;
- e) controlling or coercive behaviour, such as pressure to subscribe to a particular political or religious belief.

2.5. The word 'unwanted' means 'unwelcome' or 'uninvited'. It is not necessary for a person to object to the behaviour for it to be unwanted.

2.6. The word 'unpermitted' means 'not permitted' or 'unauthorised'. A number of behaviours can indicate where permission has been given, for example, verbal comments or physical actions. Permission for an activity can only be given at the time it is taking place and where the person has the choice to give or not give permission. Where there is disagreement as to whether an activity was unpermitted, the applicable test shall be, taking all circumstances into account, whether a reasonable person would consider the activity was unpermitted.

### **3. Scope of procedure**

3.1. The University is committed to providing an environment that is free from discrimination and affirms the right of all members to be treated with dignity and respect.

3.2. This procedure provides a mechanism to limit interactions between Reporting and Respondent Students by the agreement of both parties. This Procedure does not seek to investigate the misconduct which caused the Reporting Student to submit an Informal Complaint Form and it will not reach any findings on whether any misconduct has taken place. As a result, the procedure does not require the Reporting Student to provide a detailed account of the misconduct, nor does it require the Respondent Student to provide a response to the content of the Informal Complaint Form.

- 3.3. This procedure applies where a Student (the Reporting Student) wishes to complain about the misconduct of another Student (the Respondent Student).
- 3.4. OSCCA will provide procedural advice to a Reporting Student about any other complaint procedures that are available. As the purpose of this procedure is to limit interaction between a Reporting Student and Respondent Student, complaints made by a third party and anonymous complaints cannot be accepted.
- 3.5. A complaint under this procedure may be brought by two or more Reporting Students and/or against two or more Respondent Students where the complaint describes misconduct arising from the same event(s). In such cases references in this procedure to the 'Reporting Student' or the 'Respondent Student' shall be construed, as appropriate, as referring to more than one person.
- 3.6. A Reporting Student may choose to raise a complaint under this procedure or under an equivalent College procedure. Subject to the Group's<sup>2</sup> determination that this procedure would be appropriate, it is the expectation of the Colleges and the University that this procedure will normally be used where:
  - a) the complaint relates to sexual misconduct;
  - b) the complaint relates to conduct occurring in the context of University societies or sports clubs;
  - c) the complaint is brought against Respondent Students at more than two Colleges.
- 3.7. A complaint cannot be brought under this procedure where the Reporting Student has previously made a complaint about the same event(s) which has been dealt with under the University's Student Complaints Procedure or a formal College complaints procedure.
- 3.8. The General Board shall approve and keep under review a policy on the use of personal information<sup>3</sup> under this procedure.

#### **4. General principles**

- 4.1. Any reference in this procedure to a University officer or other named role-holder includes a deputy appointed by that officer or role-holder to exercise the functions assigned to that officer under this procedure.
- 4.2. The University will act reasonably in considering complaints under this procedure, having regard to the individual circumstances of the case. Every effort will be made to ensure that all parties are treated with fairness and dignity.
- 4.3. Reporting Students who believe they have suffered any reprisal, or have received a threat of reprisal, as a result of making a complaint in good faith should raise the matter with the Head of OSCCA.
- 4.4. The time limits set out in this procedure may be varied by the Head of OSCCA for good reason, after consultation with the Reporting Student and the Respondent Student as appropriate.
- 4.5. The Head of OSCCA acting reasonably may suspend the consideration of a complaint at any stage of this procedure and/or refer the matter for consideration under another procedure including:

- the University's Procedure to Support and Assess Capability to Study or an equivalent College procedure;
- the University's Fitness to Practise procedures.

4.6. A complaint may be brought under this procedure whether or not it has been reported to the police. The Head of OSCCA will normally suspend the procedure pending the outcome of any police investigation and/or criminal proceedings and, if there are reasonable grounds to do so, may also refer the matter to the Academic Secretary to consider the matter under Special Ordinance D (v): Precautionary Action.

4.7. The Reporting Student may withdraw a complaint at any time during this procedure, by notifying the Head of OSCCA in writing. Where a complaint is withdrawn no further action will be taken under this procedure.

4.8. None of the members of any body constituted under this procedure will have any previous knowledge of the case or any material connection with either the Reporting Student or the Respondent Student. Normally, no person who is a member of the Department/Faculty or College of the Reporting Student or the Respondent Student will be involved in the consideration of the case. The holders of the offices to which this procedure refers shall appoint standing deputies to act on their behalf in the event of any conflict of interest.

## **5. Support and guidance**

5.1. OSCCA will provide advice at the outset to help both the Reporting Student and Respondent Student to understand this procedure. All parties will be directed to appropriate sources of advice and support throughout the procedure.

5.2. The Reporting Student and the Respondent Student are able to bring a supporter to any meeting held under this procedure. However, the supporter should not be someone who could be a witness to events related to the misconduct. A College Tutor or an advisor from the Students' Unions' Advice Service are good sources of support for all Students, and the Sexual Assault and Harassment Advisor is available to support Reporting Students reporting sexual misconduct. As this is an informal procedure it is not normally necessary for a Reporting Student or a Respondent Student to have a legally qualified supporter. However, both the Reporting Student and the Respondent Student may access and use legally qualified supporters at their own cost.

## **6. Raising a complaint**

6.1. A Student considering raising a complaint may discuss or meet with a member of OSCCA who can provide a description of the procedure.

6.2. To raise a complaint, a Reporting Student must complete and submit the Informal Complaint Form.<sup>5</sup> Reporting Students can be assisted in completing the form by a supporter.

6.3. In cases where the Informal Complaint Form describes conduct that could constitute a criminal offence, the Reporting Student will be informed that if the complaint is considered through a University procedure before reporting it to the police this may undermine any later police investigation and subsequent proceedings.

6.4. On receipt of the Informal Complaint Form, a Group comprising the Head of OSCCA (convener), the Pro-Vice-Chancellor (Education), and the Secretary of the Senior Tutors' Committee will consider the form and determine (by a majority decision) whether to:

- a) refer the complaint for consideration under this procedure;
- b) dismiss the complaint because it is considered to be without merit, or vexatious, frivolous, or malicious;
- c) reject the complaint because it does not fall within the scope of this procedure;
- d) decline to refer the complaint for consideration under this procedure and recommend to the Reporting Student that the complaint is raised under a College procedure;
- e) decline to refer the complaint for consideration under this procedure for other reasons.

6.5. OSCCA will normally notify the Reporting Student of the Group's decision within a week of the submission of the Informal Complaint Form.

6.6. If the Reporting Student is dissatisfied with the Group's decision, the Reporting Student shall have the right to request a review of that decision in accordance with the Procedure for the Review of Decisions of University Bodies.[6](#)

## **7. Consideration of the complaint**

7.1. Where a complaint is referred for consideration, this will be carried out by a trained Facilitator, appointed by the Head of OSCCA. The role of the Facilitator is to prepare a report, which sets out any undisputed facts and makes recommendations around proposed actions for resolution, based on the responses of both the Reporting Student and Respondent Student.

7.2. The Facilitator shall determine how to handle the case, within the context of the general principles, including the duty to act fairly and reasonably, set out in paragraph 4. The Facilitator will invite the Reporting Student and the Respondent Student to separate meetings with the Facilitator. The aim of the meetings will be to establish actions with which both parties would agree and which would limit interaction between the two parties. Each meeting will be minuted and the minutes agreed with those present as a correct record (or any disagreement noted), at which point any other record of the meeting will be destroyed.

7.3. When or before inviting the Respondent Student to a meeting, the Facilitator must:

- a) provide sufficient information to enable the Respondent Student to understand the nature of the complaint, including a summary of the complaint, the identities of those involved and the place and time where the described behaviour occurred;
- b) inform the Respondent Student that there does not need to be any response to the complaint and that no adverse inferences may be drawn from the Respondent Student's failure to attend for interview or otherwise participate in this procedure;
- c) warn the Respondent Student that the University may be required to provide as evidence in any subsequent criminal investigation or proceedings in a court of law information regarding the complaint, including any admission made in the course of this procedure (or any subsequent disciplinary proceedings) and that any admission made in the course of this procedure may also be used as evidence in University disciplinary proceedings;

- d) remind the Respondent Student that it is not normally necessary to bring a legally qualified supporter to any meetings during this procedure. However, Respondent Students may access and use legally qualified supporters at their own cost.

7.4. Where the Respondent Student declines to cooperate with the process, the Facilitator may continue with the consideration in the absence of the Respondent Student's cooperation. The Facilitator will aim to provide the report to the Head of OSCCA within four weeks of the complaint being referred for consideration, but some cases may require longer, in which case the Facilitator will keep the Reporting Student and the Respondent Student updated.

7.5. On receipt of the Facilitator's report, the Head of OSCCA may:

- a) refer the report for consideration by a Misconduct Panel under paragraph 8; or
- b) reach a decision regarding the report under paragraph 8 without reference to the Misconduct Panel.

7.6. The Head of OSCCA will normally refer a report involving sexual misconduct to the Misconduct Panel.

## **8. Determining the outcome of the complaint**

8.1. If the report is referred to a Misconduct Panel, the Registry will appoint three members of the University, one of whom shall be a Student, to serve on the Misconduct Panel.

8.2. The Head of OSCCA or the Misconduct Panel shall consider the complaint and the report prepared by the Facilitator.

8.3. Having considered the complaint and the report, the Head of OSCCA or the Misconduct Panel (by a majority decision) may:

- a) propose one or more of the resolutions set out in paragraph 9;
- b) dismiss the complaint because it is considered to be without merit, or vexatious, frivolous, or malicious;
- c) decide that no further action should be taken under this procedure;
- d) with the consent of the Reporting Student, refer the complaint for consideration under the University's disciplinary procedures in accordance with paragraph 10.

8.4. The Reporting Student and the Respondent Student will be notified in writing of the decision of the Head of OSCCA or the Misconduct Panel within four weeks of the Head of OSCCA receiving the Facilitator's report.

8.5. If the Reporting Student is dissatisfied with the decision of the Head of OSCCA or the Misconduct Panel under paragraph 8.3, the Reporting Student shall have the right to request a review of that decision in accordance with the Procedure for the Review of Decisions of University Bodies.

## **9. Resolutions**

9.1. The Head of OSCCA or the Misconduct Panel may propose a resolution to the complaint, which may include (but are not limited to) the following:

- a) that the Respondent Student will agree to abide by a conduct agreement issued by the Head of OSCCA. A conduct agreement may include an undertaking by the Respondent Student to refrain from contact with the Reporting Student for a specified period of time. A record of the agreement will be retained by the University. If the agreement is breached then this breach can be investigated and sanctioned under the Student Disciplinary Procedure. In addition, the agreement may also be taken into account if a further complaint is made against the Respondent Student under this procedure;
- b) with the prior approval of the relevant body, that the Respondent Student will take a period of intermission from study;
- c) that the Respondent Student will attend behaviour awareness training or workshops.

The relevant body for the purpose of the consideration of a request for intermission will be the Postgraduate Committee for applications concerning postgraduate students and the Examination Access and Mitigation Committee concerning other students. Approval may be granted by Chair's action on behalf of the relevant body.

- 9.2. The proposed resolution will only stand if the agreement of both the Reporting Student and the Respondent Student are obtained. The Facilitator will facilitate the process of reaching agreement between the Reporting Student and the Respondent Student and will issue written confirmation of any agreed resolution(s) to them.
- 9.3. If attempts at reaching an agreed resolution are unsuccessful the Head of OSCCA, with the Reporting Student's consent, may refer the complaint for consideration under the University's disciplinary procedures in accordance with paragraph 10.
- 9.4. If there are grounds to believe that the Respondent Student has failed to comply with the terms of an agreed resolution, the Head of OSCCA shall determine whether the original complaint and/or the alleged breach of the agreed resolution should be referred for consideration under the University's disciplinary procedures in accordance with paragraph 10.

## **10. Disciplinary proceedings**

- 10.1. Where the Head of OSCCA or the Misconduct Panel refers a complaint for consideration under the University's disciplinary procedures, it will be referred, with the consent of the Reporting Student, to the Student Discipline Officer or the University Advocate, depending on whether the described misconduct took place before or after 1 October 2019. The Head of OSCCA will provide information on the relevant disciplinary procedure, including the timeframe within which the Reporting Student and Respondent Student will be notified in writing of a decision about whether or not to invoke disciplinary proceedings.
- 10.2. All relevant material, including the report of the Facilitator and the decision of the Head of OSCCA or the Misconduct Panel will be made available to the relevant disciplinary body.

## **11. Reporting**

- 11.1. An annual report of complaints considered under this procedure will be made to the Council, the General Board, and the Colleges, in which references to individual cases will be made anonymously.

11.2. The Head of OSCCA will be responsible for the regular review of this procedure.

### **Appendix - Policy on the use of personal information under the Informal Complaint Procedure for Student Misconduct.**

*A copy of this appendix is to be provided to the Reporting Student and the Respondent Student at the earliest contact.*

1. The overall purpose of processing personal data in the context of the consideration and resolution of complaints under this procedure is to decide what steps can appropriately be taken in response to such complaints. Personal data will be disclosed only to those persons who need to see such data for the purposes of preparing a report following receipt of a complaint, or determining or recommending a resolution, or deciding what other steps can appropriately be taken. Such persons may include the Head of OSCCA, the Pro-Vice-Chancellor (Education), the Secretary of the Senior Tutors' Committee, the Academic Secretary, members of the Misconduct Panel, the Facilitator, solicitors in the University's Legal Services Office, the University Advocate or Student Discipline Officer (or other relevant officer), and Officers or Reviewers appointed under a University complaint or review procedure. Documentation generated in the course of the consideration of a complaint under the procedure may not be disclosed in full to the Reporting Student and the Respondent Student except in so far as is reasonably necessary to conduct and to progress a fair consideration of the complaint, or where a person has explicitly consented to the disclosure of personal data to the extent that the data relate to her or him.
2. (a) The University shall share the Informal Complaint Form, the Facilitator's report and agreed actions for resolution, with the Respondent Student's College Senior Tutor (if the Respondent Student is a member of a College) so that the Senior Tutor is aware of the complaint and able to assist in providing support. In some cases, a Reporting Student's written consent may also be sought to disclose information to the following:
  - The Respondent Student's Head of Department or equivalent
  - The Respondent Student's Supervisor (for research students)
- (b) Where relevant, the University shall also share this information with internal bodies (for example, a fitness to practise committee), regulatory bodies (for example, the Disclosure and Barring Service), professional bodies (for example, the General Medical Council), or other organisations with whom the Respondent Student may be connected, where it is appropriate to do so (for example, where the Respondent Student holds a position of responsibility for children or vulnerable adults).
3. Where formally requested to do so by one or more of the bodies listed in paragraph 2(b), or where the University considers that someone may be at significant and immediate risk of harm, the University may disclose information received through this procedure to the police. When initiating a consideration, the Facilitator will inform the Respondent Student in writing that information about the case will be provided to the police if formally requested by the police or if the Head of OSCCA considers that there is an immediate and significant risk to the Collegiate University Community. Unless there are exceptional reasons related to the case, the Head of OSCCA will normally inform the Reporting Student of the intention to report the matter to the police and give reasons before doing so.

4. The Facilitator's report will normally be released to the Reporting Student and the Respondent Student, but the minutes of any individual meetings will not usually be disclosed with the report. If the matter subsequently becomes the subject of disciplinary proceedings, all materials relating to this procedure will form part of the evidence in those proceedings and can therefore be expected to be disclosed to both sides in full.
5. Following completion of the procedure, the Facilitator's report and a record of the outcome, including any conduct agreement entered into by the Respondent Student, will be retained securely in accordance with the University's retention policy. This information will be used for the purposes of responding to any complaints regarding the application of this procedure as well as for compiling anonymous statistics regarding its use. Further, where any complaint is subsequently submitted under this procedure in respect of the same Respondent Student, giving the University reasonable cause for concern regarding an emerging pattern of potential misconduct, this information may be taken into account by the Group, Head of OSCCA or the Misconduct Panel, as appropriate, in reaching a decision under the procedure, and may also be provided to the University Advocate, the Student Discipline Officer or other relevant officer if relevant for the purposes of conducting disciplinary proceedings or referral for consideration under another procedure.
6. Nothing in this policy is intended to prejudice any rights of access to personal data which any person may have under the General Data Protection Regulations or otherwise.
7. If there are any questions or concerns about this policy, please contact the Head of OSCCA in the first instance.