

These notes must be read in conjunction with the Procedure for Handling Cases of Student Harassment and Sexual Misconduct, the paragraph numbers within these explanatory notes link with the paragraphs of the procedure.

Explanatory Notes on Handling Cases of Student Harassment and Sexual Misconduct

Address: Head of OSCCA
Student Registry
4 Mill Lane
Cambridge
CB2 1RZ

Tel: +44 (0)1223 (7)61816

Email: oscca@admin.cam.ac.uk

2. Scope of procedure

- 2.1. This procedure applies only to complaints by students about the conduct of other students. The Head of OSCCA will be able to advise on the correct procedure for other types of complaint made by or about students.

Because this procedure places an emphasis on reaching consensual resolution, complaints made by a third party and anonymous complaints will not normally be accepted (see paragraph 2 of the Policy in the Appendix). College Tutors and others may wish to discuss alternatives to the use of this procedure with the Head of OSCCA.

In cases where a complaint is referred for consideration under the University's disciplinary procedures, there are different disciplinary procedures applicable depending on whether the Respondent is a matriculated student or not.

Matriculated students, i.e. all those pursuing a degree course, will be subject to the University's General Regulations for Discipline and the disciplinary procedure set out in the University's Statutes and Ordinances.

Non-matriculated students studying for a diploma or certificate will be subject to the disciplinary procedures of the University institution responsible for their course of study.¹

For the purposes of the University's General Regulations for Discipline, a definition of harassment is set out in Regulation 6 (***Statutes and Ordinances, p. 191***). This definition covers acts of sexual misconduct. Under Regulation 6, a member of the University or person *in statu pupillari* commits a breach of the General Regulations for Discipline if that person engages in an act of harassment against another member, officer, or employee of the University or a College in any circumstances.

Complaints about the behaviour of officers of the Cambridge University Students' Union or the Graduate Union in the course of their duties should be referred to the relevant Union.

- 2.3. Sub-paragraph (c) anticipates a complaint in which there is more than one Complainant and/or Respondent, in accordance with paragraph 2.2.
- 2.4. Bringing a complaint under this procedure does not prevent the Complainant from reporting the matter to the police at any time. See also paragraph 3.6 concerning suspension of this procedure pending the outcome of any police investigation and/or criminal proceedings. The University will support the Complainant in reaching a decision on whether to make a complaint to the police.

See the Appendix regarding the exceptional circumstances in which the Head of OSCAA may report the matter to the police.

- 2.5. A complaint that has been dismissed by a College will be treated as one which has been dealt with by the College for the purpose of this procedure.

3. General principles

- 3.2. A Complainant who believes that he or she has suffered any reprisal, or has received a threat of reprisal, as a result of making a complaint in good faith should raise the matter with the Head of OSCCA.

These notes must be read in conjunction with the Procedure for Handling Cases of Student Harassment and Sexual Misconduct, the paragraph numbers within these explanatory notes link with the paragraphs of the procedure.

The Head of OSCCA will keep the Complainant and the Respondent informed of the general progress of the complaint. Where a complaint under this procedure leads to disciplinary proceedings, the Complainant will be kept informed of the progress in the proceedings and will be formally notified of the outcome of any disciplinary hearing and any sanctions applied.

- 3.5. The Head of OSCCA may suspend the consideration of a complaint and recommend to the Complainant that he or she should raise it under an external complaints procedure (see also paragraph 6.1.4 concerning College complaints procedures).

The Head of OSCCA may refer a case for consideration under one or more of the following internal procedures:

- the University's Fitness to Study procedure (*Statutes and Ordinances*, p. 225) or an equivalent College procedure
- the University's Fitness to Practise procedures (*Statutes and Ordinances*, p. 207 and p. 215)

- 3.6. *Guidance for Higher Education Institutions*² recommends that, if a matter is being dealt with under the criminal process, then, save for taking any necessary precautionary action (see paragraph 3.7), any internal disciplinary process should be suspended until the criminal process is at an end.

- 3.7. Under Special Ordinance D (v), the Academic Secretary has authority to take precautionary action where any matter is being dealt with under a University procedure or as part of a criminal process.

Where the risk is not considered high enough to require the suspension of a student in full from the student's studies, it may still be necessary to exclude the student from certain University facilities or premises, or impose conditions on the student's access to such facilities and premises. If appropriate, a College or Colleges may be consulted and agree to exclude the student from certain College facilities or accommodation. Precautionary action may include a requirement that the student should have no contact of any kind with named individuals, for example, the complainant or potential witnesses.

This action is not intended to be a punishment and it does not make any presumption of wrongdoing. It is to protect both parties whilst the allegation is being dealt with under a University procedure or as part of a criminal process, and/or to ensure that a full and proper investigation (whether by the police or the University) can be carried out.

If a student breaches any restrictions that have been imposed, this may be a breach of the General Regulations for Discipline. A breach can be considered as part of any subsequent University investigation of the original complaint or as a separate matter. A breach of the restrictions may be considered to increase the level of risk to the University community and therefore may increase the level of restriction subsequently imposed upon a student.

- 3.9. A Complainant who is considering whether to withdraw a complaint may wish to discuss the matter with those able to offer support as listed in the note to paragraph 4.2.
- 3.10. No person serving under this procedure as a member of a decision-making body or as an investigator will have any previous knowledge of the case or any material connection to the Complainant or the Respondent. Normally no person who is a member of the Department/Faculty or College of the Complainant or the Respondent will be involved in consideration of the case. The Complainant or the Respondent (or their representatives) will be entitled to object to the involvement of an individual for good cause. Standing deputies are appointed on a rolling basis, without reference to a specific complaint.

4. Support and guidance

- 4.2. The Head of OSCCA will be able to direct both Complainants and Respondents to the following sources of advice and support:

- personal support available within the collegiate University and in the local community
- guidance and support for seeking alternative resolution of the complaint, including mediation

These notes must be read in conjunction with the Procedure for Handling Cases of Student Harassment and Sexual Misconduct, the paragraph numbers within these explanatory notes link with the paragraphs of the procedure.

- legal advice and representation available free of charge from a panel of volunteers in the Faculty of Law; a list is available from the Secretary to the Faculty Board of Law.

The Appendix sets out the University's policy on the use of personal information under this procedure. A copy of the Appendix should normally be provided to Complainants, Respondents, and witnesses to events relating to the complaint so that they understand how their personal information will be used and the limits on confidentiality. The policy explains how information may be shared with certain University and College officers.

The Complainant and the Respondent can be accompanied to any meeting under the procedure by a College tutor, a student representative, or a friend. 'Student representative' in this context means a CUSU or GU officer or an advisor with the Student Union Advice Service. In addition, each is entitled, if they wish, to be accompanied by a legal representative; the officer convening a first meeting under the procedure will normally remind the Complainant/Respondent of this in writing.

5. **Alternative resolution**

See the note on paragraph 4.2 above.

6. **Formal procedure**

6.1.1. A formal written complaint should be addressed to the Head of OSCCA and sent to the postal or email address above, using the form available online at [URL]. Anonymous complaints will not normally be accepted; see the Appendix.

6.1.4. If a complaint does not fall within the scope of this procedure, it may nevertheless be referred for consideration under another procedure; see the note on paragraph 3.5 above.

See paragraph 2.3 concerning the complaints which would ordinarily be considered under this University procedure; the group may agree to consult with the Complainant and/or the College before deciding whether to decline a complaint and recommend its referral for consideration under that College's equivalent procedure.

The University reserves the right, after due consideration, to take no further action and may decline to refer the matter for investigation under this procedure for any reason, for example, because it lacks the necessary investigatory powers or forensic capability.

6.2.1. The Head of OSCCA will appoint an investigator from a pool of investigators (which may include external investigators) who have undergone training in investigating complaints under this procedure.

6.2.2. The following sets out the normal format of the investigation. The investigator will offer to have individual meetings with the Complainant and with the Respondent, and may also seek to have a meeting with any witnesses. Witnesses may be accompanied at a meeting by a supporter and/or legal representative in the same way as the Complainant and the Respondent are entitled to be accompanied. 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.

6.2.3. When the Respondent is reminded that he or she is entitled to seek independent legal advice, reference will be made to the availability of legal advice and representation free of charge from a panel of volunteers in the Faculty of Law (see paragraph 4.2 above).

6.2.5. The Head of OSCCA will normally refer a complaint alleging sexual misconduct to the Panel.

6.3.2. Both the Head of OSCCA and the Panel have discretion as to whom they meet.

6.3.5. The Registry shall normally appoint members from among those appointed to serve on the panels of the Discipline Committee and University Tribunal and as reviewers under the Student Complaints Procedure.

6.4.1. See the Appendix. A conduct agreement may include an undertaking by the Respondent to refrain from contact with the Complainant for a specified period of time.

These notes must be read in conjunction with the Procedure for Handling Cases of Student Harassment and Sexual Misconduct, the paragraph numbers within these explanatory notes link with the paragraphs of the procedure.

The relevant body for the purpose of the consideration of a request for intermission will be the Board of Graduate Studies³ for applications concerning graduate students⁴ and the Council's Applications Committee for applications concerning other students.⁵ Approval may be granted by Chair's action on behalf of the relevant body.

- 6.4.4. Where there is evidence of conduct constituting a failure to comply with an agreed resolution, the Head of OSCCA may decide that the original complaint should be referred for consideration under disciplinary procedures under paragraph 6.4.4. The Head of OSCCA may also consider whether a referral under the University's disciplinary procedures should be made in respect of the conduct which is alleged to constitute a breach of the terms of the agreed resolution.
- 6.5.1. See the Appendix.
- 6.5.4. See the note on paragraph 6.3.5 above.
- 6.5.5. See the Appendix.
- 6.6.5. Save where the reviewing body refers the original decision back to the decision-maker for further consideration, the adjudication in writing that is issued by the reviewing body will complete the University's internal procedures in relation to the complaint and, when the adjudication is sent to the Complainant, it should be accompanied by a Completion of Procedures letter in a form which accords with guidance published by the Office of the Independent Adjudicator from time to time.

Footnotes

¹See the Administering Bodies under the regulations for Diplomas and Certificates open to Non-members of the University (***Statutes and Ordinances*, p. 574**).

²*Guidance for Higher Education Institutions on How to Handle Alleged Student Misconduct which may also Constitute a Criminal Offence* prepared and written by Pinsent Masons and published by Universities UK in October 2016.

³See the regulations for the Board of Graduate Studies, ***Statutes and Ordinances*, p. 120**.

⁴See the General Regulations for Admission as a Graduate Student, ***Statutes and Ordinances*, p. 421**.

⁵See the regulations for Allowances to Candidates for Examinations, ***Statutes and Ordinances*, p. 229**.

These notes must be read in conjunction with the Procedure for Handling Cases of Student Harassment and Sexual Misconduct, the paragraph numbers within these explanatory notes link with the paragraphs of the procedure.

Appendix

Policy on the use of personal information under the Procedure for Handling Cases of Student Harassment and Sexual Misconduct

A copy is to be provided to the Complainant, the Respondent, and any witnesses at the earliest contact.

1. The overall purpose of processing personal data in the context of the investigation and resolution of complaints of harassment and sexual misconduct 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 conducting an investigation, 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 Harassment and Sexual Misconduct Panel, the investigator assigned to the case, solicitors in the University's Legal Services Office, the University Advocate (or other relevant officer), and members of any committee constituted under the procedure for the purposes of considering a review. An investigation under the procedure is not intended to arrive at a conclusion as to whether a breach of disciplinary regulations has been committed. In the circumstances, documentation generated in the course of an investigation under the procedure may not be disclosed in full to the Complainant and the Respondent except in so far as is reasonably necessary to conduct and to progress a fair investigation or a person has explicitly consented to the disclosure of personal data to the extent that the data relate to her or him.
2. In the interest of fairness to all parties, the University will not normally accept an anonymous complaint under this procedure. Where a complaint is brought under the procedure, the identity of the Complainant may be provided to the Respondent (and the Respondent's supporter and legal representative, if applicable), together with sufficient information to enable the Respondent to understand the gist or substance of the complaint. If you have concerns about the sharing of information between the Complainant and Respondent you should seek advice from the Head of OSCCA.
3. For both the student making the complaint and the student against whom the complaint has been made, the University will seek your written consent before providing the following people with a summary of the complaint, including your name, so that they are aware of the complaint and able to assist in providing you with support:
 - Your College Senior Tutor
 - Your Personal Tutor or Graduate TutorIn some cases, your written consent may also be sought to disclose information to the following:
 - Your Head of Department or Faculty
 - Your Supervisor (if you are a research student)
4. The investigator's report will normally be released to the Complainant and the Respondent, 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 and the decision is taken to charge the Respondent, the Complainant's written complaint and the minutes of any individual meetings with the Complainant and the Respondent and/or with any witnesses will form part of the evidence in those proceedings and can therefore be expected to be disclosed to both sides in full at that point.
5. The University will normally respect the wishes of a person who is the victim of a crime and does not wish to report the matter to the police. However, in exceptional circumstances, where the facts as they emerge give rise to concerns that there is a significant risk to members of the community, the Head of OSCCA may decide to refer the matter to the police. Unless there are exceptional reasons related to the case, the Head of OSCCA will normally inform the Complainant of the intention to report the matter to the police and give reasons before doing so.

These notes must be read in conjunction with the Procedure for Handling Cases of Student Harassment and Sexual Misconduct, the paragraph numbers within these explanatory notes link with the paragraphs of the procedure.

6. **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 (and/or any made during mediation or any subsequent disciplinary proceedings). Any admission made in the course of this procedure may also be used as evidence in University disciplinary proceedings, save that the University will abide by the confidentiality of any mediation and anything which is said in the course of mediation will not be used in evidence in any University disciplinary proceedings.**
7. Following completion of the procedure, the investigator's report and a record of the outcome, including any conduct agreement entered into by the Respondent, will be retained securely by the Head of OSCCA usually for not more than one year beyond the Respondent's period of study at the University. 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 by the same Complainant, or by a different complainant, in respect of the same Respondent, giving the University reasonable cause for concern regarding an emerging pattern of potential harassment and/or sexual misconduct, this information may be taken into account by the Head of OSCCA or the Harassment and Sexual Misconduct Panel, as appropriate, in reaching a decision under paragraph 6.3.3 of the procedure, and may also be provided to the University Advocate or other relevant officer if relevant for the purposes of conducting disciplinary proceedings or referral for consideration under another procedure under paragraph 3.5 of this procedure.
8. Nothing in this policy is intended to prejudice any rights of access to personal data which any person may have under the Data Protection Act 1998 or otherwise.
9. If you have any questions or concerns about this policy, please contact the Head of OSCCA in the first instance.