

Sexual Violence and Harassment

UPR EQ10 Appendix III version 04.0

Policies superseded by this document

This document forms a new appendix to UPR EQ10 'Bullying and Harassment' with effect from 29 November 2021.

Summary of significant changes to the previous version

This is the first version of this document and should be read in full.

Glossary

A glossary of approved University terminology can be found in [UPR GV08](#).

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1 Introduction

- 1.1 The University recognises that incidents of Sexual violence and harassment can occur within the University community and acknowledges that there has been a noticeable increase nationally in the number of incidents disclosed by the student community across all educational settings.

- 1.2 As highlighted in the Universities UK (UUK) Changing the Culture report¹, it is important that the University adopts a ‘whole University’ approach to responding to sexual violence and harassment, whilst recognising that each case will require individual responses and assessment using the University framework for responding to reports of sexual violence and harassment (Appendix III UPR EQ10). The recently published Department for Education Guidance ‘Sexual Violence and sexual harassment between children in Schools and Colleges’² also stresses the necessity for all staff to maintain an attitude of ‘it could happen here’.
- 1.3 The University is committed to a zero-tolerance approach to any incidents of sexual misconduct and violence. Any incidents will be thoroughly addressed to ensure the preservation of a safe work and study environment. ‘Zero tolerance’ for the purposes of this policy means that incidents of such behaviour should not be left unchallenged.

2 Definitions of Sexual Violence

- 2.1 Sexual violence and harassment refer to a broad spectrum of behaviours that cannot be divorced from other types of gender-based violence including intimate partner violence or domestic abuse, coercive and/or controlling behaviour, and stalking. The University acknowledges that Sexual Violence and harassment can be experienced by any individual, regardless of their identity.
- 2.2 Definitions of Sexual Violence as listed under the [Sexual Offences Act 2003](#)³ are as follows:
- 2.3 **Rape:**
A person (A) commits an offence of rape if: they intentionally penetrate the vagina, anus or mouth of another person (B) with their penis, B does not consent to the penetration and A does not reasonably believe that B consents.
- 2.4 **Assault by Penetration:**
A person (A) commits an offence if: they intentionally penetrate the vagina or anus of another person (B) with a part of their body or anything else, the penetration is sexual, B does not consent to the penetration and A does not reasonably believe that B consents.
- 2.5 **Sexual Assault:**
A person (A) commits an offence of sexual assault if: they intentionally touch another person (B), the touching is sexual, B does not consent to the touching and A does not reasonably believe that B consents (note that sexual assault covers a very wide range of behaviour so a single act of kissing someone without consent or touching someone’s bottom/breasts/genitalia without consent, can still constitute sexual assault).

¹ <https://www.universitiesuk.ac.uk/what-we-do/policy-and-research/publications/changing-culture>

² <https://www.gov.uk/government/publications/sexual-violence-and-sexual-harassment-between-children-in-schools-and-colleges>

³ <https://www.legislation.gov.uk/ukpga/2003/42/contents>

- 2.6 **Causing someone to engage in sexual activity without consent:**
A person (A) commits an offence if: they intentionally causes another person (B) to engage in an activity, the activity is sexual, B does not consent to engaging in the activity, and A does not reasonably believe that B consents (note that this could include forcing someone to strip, touch themselves sexually, or to engage in sexual activity with a third party).

3 What is consent?

- 3.1 Consent is about having the freedom and capacity to choose (see section 11.5 below).
- 3.2 Consent to sexual activity may be given to one sort of sexual activity but not another, e.g. to vaginal but not anal sex or penetration with conditions, such as wearing a condom.
- 3.3 Consent can be withdrawn at any time during sexual activity and each time activity occurs. Someone consents to vaginal, anal or oral penetration only if they agree by choice to that penetration and they have the freedom and capacity to make that choice. Further information about consent can be found here: [Rape Crisis England & Wales - Sexual consent](#)⁴.

4 Other types of behaviour contemplated by this policy (Appendix III UPR EQ10)

- 4.1 Sexual Misconduct and Violence includes a broad spectrum of behaviour. Examples of the types of behaviour that will constitute a violation of this Policy are set out below (see sections 4.3 to 4.8). Reports of such behaviour will be considered by the University and investigations will be pursuant to the procedures in UPR EQ10⁵. When the Responding Party is a student, UPR SA13 'Student Discipline' or UPR SA15 'Student Fitness to Practice' will also apply. When the Responding Party is a member of staff, UPR HR03 'Staff Grievance Policy' will also apply.
- 4.2 Some incidents of Sexual Misconduct and Violence may also constitute a criminal offence under English law. Such incidents may be addressed through criminal proceedings, internal disciplinary proceedings, or, in some cases, both criminal and internal proceedings.
- 4.3 **Sexual Misconduct and Violence:**
Sexual Misconduct and Violence is defined as any unwanted conduct of a sexual nature which occurs in person or by letter, telephone, text, email or other electronic forms of communication and/or social media and includes, but is not limited to, the following behaviour:
- a engaging, or attempting to engage in a sexual act with another individual without consent;
 - b sexually touching another person without their consent;

⁴ <https://rapecrisis.org.uk/get-informed/about-sexual-violence/sexual-consent/>

⁵ UPR EQ10 'Bullying and Harassment'

- c conduct of a sexual nature which creates (or could create) an intimidating, hostile, degrading, humiliating, or offensive environment for others including making unwanted remarks of a sexual nature;
- d inappropriately showing sexual organs to another person;
- e repeatedly following another person without good reason;
- f recording and/or sharing intimate images or recordings of another person without their consent; and
- g arranging or participating in events which may reasonably be assumed to cause degradation and humiliation to those who have experienced sexual violence, for example inappropriately themed social events, up skirting or initiations.

4.4 Domestic abuse and coercive or controlling behaviour:

Domestic abuse and coercive or controlling behaviour is defined as any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those who are, or have been, intimate partners or family members regardless of gender or sexuality. This can include, but is not limited to, psychological, physical, sexual, financial and/or emotional abuse.

4.5 Complicity:

Complicity is defined as any act that knowingly helps, promotes, or encourages any form of Sexual Misconduct and Violence by another individual.

4.6 Retaliation:

Retaliation may constitute any words or actions, including intimidation, threats, or coercion, made in response to disclosures or reports made under this policy (Appendix III UPR EQ10), by any individual including both the Responding Party (see section 11.4) and the Reporting Party (see section 11.3), as well as witnesses, friends, or relatives.

4.7 Vexatious reporting:

Vexatious reporting involves the creation of persistent, unwarranted reports made under this policy (Appendix III UPR EQ10), or a refusal to accept any reasonable decisions arising from the application of the procedures under this Policy (Appendix III UPR EQ10).

4.8 Malicious reporting:

Malicious reporting occurs when an individual shares allegations of Sexual Misconduct and Violence that the individual knows to lack a basis in fact.

- 4.9 The University recognises that there are potentially additional types of behaviour that will constitute a breach of this Policy and which will therefore need to be considered under the relevant internal disciplinary policies and regulations.

5 Scope

- 5.1 This Policy (Appendix III UPR EQ10) relates to all incidents of Sexual and Violence, as well as domestic abuse and coercive or controlling behaviour, complicity, retaliation, vexatious reporting, and malicious reporting as defined in sections 3 and 4.

- 5.2 Under this Policy all students and staff members who have experienced Sexual Misconduct and Violence will have equality of access to both internal and external specialist support (e.g. Herts Sunflower, Sexual Assault Referral Centre and Rape Crisis), regardless of when the experiences occur.
- 5.3 This policy specifically relates to those experiences which have occurred during study or work at the University when the Responding Party (see section 11.4) is a current student or member of staff of the University.
- 5.4 In line with UPRs SA13 'Student Discipline', SA15 'Student Fitness to Practise' and HR03 'Staff Grievance Policy', reports made under this Policy are not limited to University premises or the immediate areas of the University Campuses.

6 Values

- 6.1 The University of Hertfordshire holds the following set of values to reflect the University's commitment to establishing a culture of support and respect. All members of the University have a responsibility for upholding these values:
- 6.2 We will always treat all members of our community with dignity and respect, and all members of our community will share in this responsibility for creating and sustaining an environment which upholds the dignity of all.
- 6.3 We recognise the significant impact of all experiences of Sexual Violence and harassment, and acknowledge the potential detrimental impact it may have on studies and employment, regardless of when the experience occurred.
- 6.4 We strive to maintain equality and diversity within our community and will work to sustain an equal and safe environment in which a culture of prevention will be promoted through appropriate and consistently applied education and training in line with our Equality and Diversity Policy (UPR EQ03⁶).
- 6.5 We will actively respond to all reports of sexual harassment and violence. Whilst recognising that some experiences may constitute a criminal offence, we will ensure that, in all cases, reports are carefully and thoughtfully addressed by relevant staff members through a process that is transparent and clearly communicated to the individuals involved. We will respect the right of the individual disclosing an experience to choose how to take forward a Disclosure.
- 6.6 We will assess all reports considered under the relevant procedures (see UPR EQ10⁵) will be assessed on the balance of probabilities in line with UPR SA13 'Student Discipline', UPR SA15 'Student Fitness to Practise', UPR HR03 'Staff Grievance Policy' and sector guidance.
- 6.7 We will inform all University staff about the Policy and provide training as appropriate to their roles. All staff involved in the process will always act with impartiality and discretion.
- 6.8 We believe that no person should suffer the effects of sexual harassment and violence alone, and will ensure that there is dedicated specialist support, including free and accessible counselling for all individuals involved.

⁶ UPR EQ03 'Equality and Diversity Policy'

- 6.9 We will work with local partners and key groups to forge positive relationships to support all our work in this area, from prevention to reporting and after-care.

7 Confidentiality

- 7.1 Confidentiality will be maintained, where appropriate, throughout the Disclosure, Reporting and investigative processes in recognition of the sensitive nature of Sexual Misconduct and Violence matters. As such, information will usually only be shared with relevant individuals/entities (who may be internal or external to the University, e.g. internal counsellors, witnesses, external experts from specialist agencies like Rape Crisis, Sexual Assault Referral Centres or the Police) with the agreement of the Reporting Party.
- 7.2 The University reserves the right, and may be under an obligation, to share information in exceptional circumstances where such disclosure is necessary to protect any individual or the wider University community from harm or to prevent a crime from taking place, in line with the University's obligations under applicable legislation.
- 7.3 All individuals involved in any process under this Policy (Appendix III UPR EQ10) must keep information that is disclosed to them as part of the process confidential. Any unauthorised disclosure of confidential information will be considered a Policy violation and will be addressed accordingly. It may also be in breach of data protection requirements.
- 7.4 Throughout all proceedings, the University will act in compliance with, the University's Data Protection Policy (UPR IM08⁷), the UK retained version of the General Data Protection Regulation (GDPR) and the Data Protection Act 2018.

8 Equality and Diversity

- 8.1 Sexual Misconduct and Violence can be experienced by any individual, regardless of sex, gender, sexual orientation, relationship status, age, disability, faith, ethnicity, nationality and economic status. Women, members of the LGBT+ community, and individuals with disabilities are disproportionately affected by experiences of sexual violence.
- 8.2 Experiences of sexual misconduct and violence may intersect with other forms of harassment and discrimination. Other forms of harassment, bullying and discrimination are addressed elsewhere in UPR EQ10⁵.

9 Responsibilities

- 9.1 The Deputy Secretary and Registrar is the Lead Senior Officer and is responsible for the oversight of the application of the procedures associated with this Policy (Appendix III UPR EQ10).
- 9.2 The Dean of Students is the Operational Lead. The day-to-day management of the policy and process for Students will be overseen by the Dean of Students Team. The key staff contacts are the Sexual Misconduct Prevention and Response Officer and the Senior Investigating Officer for Student Procedures.

⁷ UPR IM08 'Data Protection Policy and Privacy Statement'

- 9.3 The Director of Human Resources has key responsibilities for the application of the Procedure for managing disclosures or reports involving allegations of staff sexual violence and misconduct.

10 Additional relevant policies

The following additional relevant policies can be accessed via the University website at the following link:

<https://www.herts.ac.uk/about-us/governance/university-policies-and-regulations-uprs/uprs>

EQ03 'Equality and Diversity Policy'
EQ07 'Student Mental Wellbeing'
EQ10 'Bullying and Harassment'
EQ11 'Support to study'
GV16 'Whistleblowing Policy'
HR03 'Staff Grievance Policy'
HS05 'Security and Public Access'
IM08 'Data Protection Policy and Privacy Statement'
IM11 'Records Management and the Archiving and Retention of Prime Documents and Business Records'
SA01 'Student Code of Conduct'
SA03 'Admissions - Undergraduate and Taught Postgraduate Students'
SA11 'Drug and Alcohol Misuse by Students'
SA13 'Student Discipline'
SA15 'Student Fitness to Practise'
SA17 'Student Suspension Regulations'

11 Glossary of terminology

- 11.1 **Disclosure** involves an individual choosing to tell anyone who is part of the University community about their experience of sexual misconduct and violence (note: this is different from a Report).
- 11.2 **Report** is the sharing of information with a staff member of the University regarding an incident of sexual misconduct and violence experienced by that individual for the purposes of initiating the investigation process by the University, as set out in this Policy (Appendix III UPR EQ10) and the accompanying procedures (note: this is different from Disclosure).
- 11.3 **Reporting Party** is the person(s) who has been the subject of the alleged incident of sexual misconduct and violence or other policy breach.
- 11.4 **Responding Party** is the person(s) whose behaviour it is alleged amounted to an incident of sexual misconduct and violence or other policy breach.
- 11.5 **Consent** is the agreement by choice where the individual has both the **freedom** and **capacity** to make that choice. Consent cannot be assumed based on a previous sexual experience or previously given consent, or from the absence of complaint, and each new sexual act requires a re-confirmation of consent as the foundation of a healthy and respectful sexual relationship. Consent may be withdrawn at any time before or during a sexual act.

- 11.6 **Freedom to consent:** For consent to be present, the individual must freely engage in a sexual act. Consent cannot be inferred from a lack of verbal or physical resistance. Consent is not present when submission by an unwilling participant results from coercion, force, threat, intimidation or the exploitation of power.
- 11.7 **Coercion or Force** includes any physical or emotional harm or threat of physical or emotional harm which would reasonably place an individual in fear of immediate or future harm, with the result that the individual is compelled to engage in a sexual act.
- 11.8 **Capacity to consent:** Free consent cannot be given if the individual does not have the capacity to give consent. An individual is incapacitated when asleep, unconscious, semi-conscious, or in a state of intermittent consciousness, or any other state of unawareness that a sexual act may be occurring. Incapacitation may occur on account of a mental or developmental disability, or as the result of alcohol or drug use.
- 11.9 **Alcohol and/or Drug Use:** Incapacitation arising from alcohol or drug consumption should be evaluated on the basis of how the alcohol/drugs have affected the individual. Signs of incapacitation may include, but are not limited to, one or more of the following: slurred speech, unsteady gait, bloodshot eyes, dilated pupils, unusual behaviour, blacking out, a lack of full control over physical movements, a lack of awareness of circumstances or surroundings, and/or an inability to communicate effectively. Intoxication is never a defence for committing an act of Sexual Misconduct and Violence, or for failing to obtain consent. If there is any doubt as to the level or extent of one's own or the other individual's incapacitation, the safest approach is not to engage in a sexual act and assume no consent has been given.

Sharon Harrison-Barker
Secretary and Registrar
Signed: **29 November 2021**

Alternative format

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