

**Sexual Misconduct Student Procedures**

Contents

[**1. Purpose 4**](#_heading=h.gjdgxs)

[**2. Student Procedure Principles 5**](#_heading=h.rljvz2rkijxn)

[**3. Scope 6**](#_heading=h.30j0zll)

[**4. Procedures 7**](#_heading=h.1fob9te)

[4.1 Step 1 - Considering Your Options 7](#_heading=h.3znysh7)

[4.2 Step 2 – Reporting a Sexual Misconduct Violation 8](#_heading=h.2et92p0)

[4.2.1 Initial Disclosure 9](#_heading=h.tyjcwt)

[4.2.2 Informal Resolution 10](#_heading=h.3dy6vkm)

[4.2.3 Facilitated Discussion 11](#_heading=h.1t3h5sf)

[4.2.4 Preliminary Review by Sexual Misconduct Adviser Panel 11](#_heading=h.4i7ojhp)

[4.2.5 The Sexual Misconduct Adviser Panel 11](#_heading=h.2xcytpi)

[4.2.6 Assessing Reported Behaviour 12](#_heading=h.1ci93xb)

[4.3 Formal Complaint 12](#_heading=h.4d34og8)

[Time Delays 12](#_heading=h.2vgebqj6k9q7)

[Complaint Involving a Member of Staff 12](#_heading=h.k9rjqw4go38e)

[4.4 Anonymous Reporting/ Reluctant Reporting Party / Third Party Reports 13](#_heading=h.2s8eyo1)

[4.4.1 Speak Out Tool 13](#_heading=h.c0q93fn69vup)

[4.5 Report to An Garda Síochána 13](#_heading=h.3rdcrjn)

[4.6 Differences between a University Investigation and a Garda Investigation 14](#_heading=h.26in1rg)

[4.7 Outcome of a Criminal Process 15](#_heading=h.lnxbz9)

[**5. Making a Formal Complaint of Sexual Misconduct 16**](#_heading=h.35nkun2)

[5.1 Principles of the Formal Procedure 16](#_heading=h.44sinio)

[5.1.1 General Principles 16](#_heading=h.71b3zhgk899a)

[5.1.2 Confidentiality 17](#_heading=h.4jhdvgl8ogg)

[5.2 Formal Report 17](#_heading=h.2jxsxqh)

[5.2.1 Making a formal report 18](#_heading=h.z337ya)

[5.2.3 The Responding Party 18](#_heading=h.4j0z9vi9fe6a)

[5.4 Precautionary Measures 18](#_heading=h.3whwml4)

[5.4.1 Principles of Precautionary Measures 19](#_heading=h.2bn6wsx)

[5.5 Risk Assessment 19](#_heading=h.qsh70q)

[5.5.1 The Responding Party 20](#_heading=h.2oliwtipaejo)

[5.5.2 Possible Precautionary Measures 20](#_heading=h.3as4poj)

[5.5.3 Suspension 20](#_heading=h.1pxezwc)

[**6. Disciplinary Procedures 21**](#_heading=h.49x2ik5)

[6.1 Progressing a Formal Investigation 21](#_heading=h.f8t4rvvu2yjf)

[6.2 Disciplinary Meeting 21](#_heading=h.vx1227)

[6.3 Potential Outcomes of a Formal Complaint Process 21](#_heading=h.23ckvvd)

[6.4 Disciplinary Action 22](#_heading=h.6wqpcd25ijpp)

[6.5 Disciplinary Penalties 22](#_heading=h.3fwokq0)

[6.6 Right to Appeal 22](#_heading=h.32hioqz)

[**7. Record Keeping 22**](#_heading=h.1v1yuxt)

[7.1 Evidence for criminal investigations 22](#_heading=h.4f1mdlm)

[7.2 Data Collection 23](#_heading=h.cny7b228cctd)

[**8. Additional Supports 23**](#_heading=h.19c6y18)

[**9. Related Documentation 25**](#_heading=h.3tbugp1)

[**10. Definitions 25**](#_heading=h.28h4qwu)

[10.1 Sexual Consent 25](#_heading=h.jr8u055ktsfk)

[10.2 Sexual Misconduct 25](#_heading=h.x7e1thaac7zn)

[10.3 Sexual Harassment 25](#_heading=h.2w7vi1x9nsyp)

[10.5 Trauma-Informed Care 26](#_heading=h.bs9vytrnzlat)

[**11. Contacts 26**](#_heading=h.6p5n2lgii4zn)

[**12. Version Control 26**](#_heading=h.nmf14n)

# Purpose

Dublin City University (DCU) is committed to providing an equal, inclusive and diverse environment in which all members of the University community can expect to feel safe while being respected and valued for their unique perspectives and contributions.

This document should be read with the *Sexual Misconduct Policy for Students and Staff*. The Policy sets out the University’s commitment to the promotion of a culture that rejects any form of sexual misconduct and includes detailed information on definitions, roles and responsibilities, and policy objectives. Sexual misconduct is a serious and unacceptable experience for any person, of any age, gender, sexual orientation, race/ethnicity or religious community

For full details of the definition of sexual misconduct as well as related concepts see Section 6 of the *Sexual Misconduct Policy for Staff and Student*s and [Section 10](#_heading=h.28h4qwu) of these procedures.

Through these Student Procedures, DCU will:

* make transparent the procedures for reporting experiences of sexual misconduct
* act in a timely manner when dealing with reports of sexual misconduct, to reflect the impact of the stress of the process on all those involved
* provide information and clarity around the supports that are in place for those who feel that they have experienced sexual misconduct
* endeavour to ensure that there are trained support staff available to provide appropriate guidance and support to both the reporting and responding parties

# 2. Student Procedure Principles

The principles of the Student Procedures is to:

* respect the right of the individual making a disclosure to choose how to proceed and provide clear and consistent advice as to support and formal reporting options
* be mindful of the sensitive nature of processes which involve reports of sexual misconduct and take steps to ensure that all those impacted are fully supported, and the dignity of all parties is maintained
* create awareness of the policy and procedures so that all members of the University community are aware of their roles and responsibilities related to student sexual misconduct
* uphold the principles of natural justice recognising that both parties have a right to a good name. Therefore, a right to confidentiality and anonymity is respected within the constraints of the law
* have adequate and accessible mechanisms in place for handling sexual misconduct effectively
* assist in upholding a safe environment where sexual misconduct is considered unacceptable and not tolerated
* provide a duty of care when dealing with disclosures, reports and providing support.

# **3. Scope**

This procedure applies to all students at the University, including undergraduate, postgraduate taught, postgraduate research, online and on campus.  These are hereinafter collectively referred to as ‘Students’. A separate Staff Procedures Document is available from the [HR EDI unit.](https://www.dcu.ie/hr/edi-policies-and-toolkits)

These procedures apply to all areas of the University’s operations and programmes. It applies to conduct which takes place:

* on any University campus;
* at any other university or another place (including abroad) where students are representing the University or are engaged in a University-related activity;
* any virtual setting in relation to any University-related activity e.g. zoom meetings, Microsoft teams, etc.
* at events such as social functions, conferences, sporting events, field trips or work assignments which are related to the University or are a University-related activity;
* in person, in writing, on the telephone, by email or online, including social media, regarding any University-related activity.

**What is not within the scope of of these procedures;**

* Non-DCU connected activities on or off campus involving DCU students and employees, or other members of the DCU community as defined above.

# **4. Procedures**

**If you have experienced any behaviour that is in violation of the *Sexual Misconduct Policy for Staff and Student*s, it is important to know that it was not your fault. Victims of sexual misconduct are never to blame.** You have a right to dignity and respect. You have a right to decide what to do next. The University will support you in any decision you make. The following subsections outline the options available if you have been violated or received a disclosure of a violation.

**Confidentiality**

Confidentiality is an integral element of any report made under the Sexual Misconduct Policy and Procedures. All parties, including the reporting party, responding party, witnesses and those managing the process, must ensure that they always maintain confidentiality.

## 4.1 Step 1 - Considering Your Options

The following are some key options that you may wish to consider:

|  |  |
| --- | --- |
| **Options** | **Relevant Information** |
| 1. Do you wish to make an initial disclosure of the experience to a trained member of university staff? | * [See Section 4.2.1 of this document](#_heading=h.tyjcwt) * Contact [Student Support & Development](http://www.dcu.ie/students) |
| 1. Do you wish to make a report to An Garda Síochána? | * [See Section 4.5 of this document](#_heading=h.3rdcrjn) * DCU Garda Liaison Officer (contact the [Student Policy Officer](#_heading=h.19c6y18) for more information) |
| 1. Do you wish to seek to resolve the issue informally? | * [See Section 4.2.2 of this document](#_heading=h.3dy6vkm) |
| 1. Do you wish to attend a sexual assault treatment unit (SATU)? A SATU will ensure your immediate health needs are met and has an important role in enabling forensic evidence to be collected whilst a decision is being made about whether or not to make a report to An Garda Síochána. The best time for forensic samples to be collected is in the first 72 hours (3 days) after the assault, however, samples can still be collected within 7 days of the assault, and can be stored by the SATU for up to one year. You do not have to make a report to the An Garda Síochána if you attend a SATU. | * Visit the [HSE’s information page](https://www2.hse.ie/sexual-assault-treatment-units/) |
| 1. Do you wish to access confidential professional emotional support? | * [See Section 8](#_heading=h.19c6y18) for further contact information. * Contact [DCU’s Student Counselling Service](https://www.dcu.ie/counselling). For out of hours support, choose from the [following options](https://www.dcu.ie/counselling/after-hours-support-1). * Contact the [Dublin Rape Crisis Centre](https://www.drcc.ie/services/helpline/). You can access free, confidential, non-judgmental support through the 24/7 helpline on 1800 77 8888 or visit the webpage to access live chat. |
| 1. Do you wish to formally report the experience to the University but not to An Garda Síochána? | * [See Section 5](#_heading=h.35nkun2) * [See Section 8](#_heading=h.19c6y18) * [Student Policy Officer](#_heading=h.19c6y18) |
| 1. Do you wish to formally report the matter to the University and An Garda Síochána? | * [See Section 4.5](#_heading=h.3rdcrjn) * [See Section 4.3](#_heading=h.4d34og8) |
| 1. Do you wish to take no further action currently and to spend some more time considering your options? | * [See Section 8](#_heading=h.19c6y18) |
| 1. Do you wish to report anonymously? | * [See Section 4.4](#_heading=h.2s8eyo1) |

## 4.2 Step 2 – Reporting a Sexual Misconduct Violation

A person who has experienced sexual misconduct while at university has the right to make a report at a time that is right for them. However, it is important to note that a delay in reporting may affect the University’s ability to thoroughly investigate. DCU acknowledges and understands that preventing a person who has experienced sexual misconduct from controlling the reporting process could cause them further distress. The University acknowledges and understands the importance for those who are victims of sexual misconduct to feel that they are in control of the reporting process.

**This section explains the DCU student procedures for reporting experiences of sexual misconduct at DCU. This section clearly sets out what you can expect if you decide to:**

* Make an initial disclosure
* Resolve informally
* Report formally
* Report anonymously / reluctantly / as a third party
* Report to An Garda Síochána.

### 4.2.1 Initial Disclosure

If you believe you have experienced sexual misconduct, you may wish to make an initial disclosure to a trained member of DCU staff. If you decide to do so, you can expect to be treated sensitively, confidentially and with dignity and respect. You can also expect to be offered information about the options available to you, including where to access professional support as well as how to make both a formal report and/or a report to An Garda Síochána if that is what you would like to do.

In making an initial disclosure, the information you share will be completely confidential between you and the trained staff member. No further action will be taken unless you choose to progress the disclosure to the informal resolution stage or submit a formal report. To find out more, or to make an initial report please email [studentreport@dcu.ie](mailto:studentreport@dcu.ie) and the Student Policy Officer will put you in contact with one of our trained [Sexual Misconduct Advisers](#_heading=h.19c6y18).

If the person who is allegedly engaging in unwanted behaviour is a member of staff, contact the HR EDI unit at [edi@dcu.ie](mailto:edi@dcu.ie). The sexual misconduct procedures for staff will be used in this case. For incidents involving sports coaches or Students’ Union employee’s, contact the [Office of Student Life](https://dcustudentlife.ie/staff-profiles-1).

If you decide to make an initial disclosure, a formal or informal report to a trained member of DCU staff, you can expect:

* + - to be treated with dignity and respect at all times
    - to be listened to with sensitivity and empathy
    - that no pressure will be put on you to take any particular course of action
    - that the person receiving the initial disclosure will endeavour to provide a safe space for you to speak about your experience.
    - to receive information about how to access both internal and external professional support services ([see Section 8)](#_heading=h.19c6y18).
    - to receive information about how to make a formal report within the University. (You do not have to make a formal report and you can come back to this option at a later date, if you wish)
    - The initial disclosure is only between you and the person you have disclosed to and they will take no action unless you choose to instigate a formal process. However there are limited circumstances when this assurance cannot be given such as when the reporting party in a minor or vulnerable.[[1]](#footnote-1)

The *DCU Sexual Misconduct Policy for Students and Staff* and these accompanying procedures respect your right to choose how to take forward the initial disclosure. Your decision regarding whether to report to An Garda Síochána (if applicable) will be respected within the constraints of the law.[[2]](#footnote-2)

* Making an initial disclosure may help you to access support and to learn more about what other reporting options are available.
* It is important to understand that making an initial disclosure is not the same as making a formal complaint ([see Section 5.1](#_heading=h.44sinio)) and that no action will be taken by the University unless you decide to take the matter further.
* It is important to understand that making an initial disclosure is not the same as initiating an informal resolution process. No action will be taken by the University regarding informal resolution unless you clearly express a wish to engage with this process.

**In exceptional circumstances,** the University reserves the right to instigate a formal investigation against the wishes of the complainant. This exceptional situation arises only where sufficient concern exists, having regard to the University’s broader obligation for the safety and welfare of others or where there is a requirement to report the incident to An Garda Síochána. This may occur if there is a situation where there is a risk that the Responding Party may pose a threat to the physical or psychological safety of others; or where the Reporting Party is a minor or a vulnerable adult. Appropriate internal and external supports will be made available to you and precautionary measures required will be taken. [See section 5.4](#_heading=h.3whwml4) for more information.

### 4.2.2 Informal Resolution

If the reporting party wishes to do so, they may attempt to resolve the issue informally. This process is entirely the choice of the individual who believes they have experienced sexual misconduct. The University will not attempt an informal resolution unless the individual who believes they have experienced sexual misconduct clearly states that they wish to engage with this process.

1. As part of an informal resolution process, the reporting party may decide to initially discuss the matter with the person/people concerned and request that the unwanted behaviour stop. If choosing to engage in this process, it is recommended that individuals should talk about the impact that the behaviour has had on them and ask the person responsible to stop the unwanted behaviour. The meeting should be held in a private but safe space.
2. If the reporting party is uncomfortable with asking for the behaviour to stop themselves, but they still wish to attempt to resolve the matter informally, they may ask trained Sexual Misconduct Advisers to facilitate a discussion with the person engaging in the unwanted behaviour (Respondent(s)). [Section 4.2.3 Facilitated Discussion](#_heading=h.1t3h5sf) provides details below.

### 4.2.3 Facilitated Discussion

To arrange a facilitated discussion, this should be done in writing by email to [studentreport@dcu.ie](mailto:studentreport@dcu.ie) and the Student Policy Officer will refer your case to a Sexual Misconduct Adviser. The Sexual Misconduct Adviser will have an initial meeting to discuss your case and outline your options. If agreed by the reporting party, the respondent will be contacted to request a meeting between all parties involved (see facilitated meeting below). Details provided in a written statement will be used as evidence when the respondent is contacted.

**Facilitated Meeting**

The facilitated meeting is convened by a Sexual Misconduct Adviser. Through mediation, a solution may be found at which point the issue will be deemed to have been resolved. Where mediation does not provide a solution, the complainant may proceed to [Section 5, the formal complaint procedure](#_heading=h.35nkun2).

As part of a facilitated meeting the reporting party is asked to provide a written statement outlining the situation. This is provided to the respondent prior to the facilitated meeting, to allow all parties time to understand the reason for the meeting. A brief written record of the meeting will be kept, in line with relevant data protection legislation, and agreed outcomes and dates will be noted by the by the Sexual Misconduct Adviser who is responsible for managing the resolution.

### 

### 4.2.4 Preliminary Review by Sexual Misconduct Adviser Panel

If the reporting party is considering a formal complaint, a decision on whether a complaint falls within the scope of the *Sexual Misconduct Policy and Student Procedures* will be made at the preliminary review stage. If the preliminary review concludes that the report(s) may constitute a breach of sexual misconduct policy and cannot reliably be deemed to be mistaken, the institution should initiate a formal investigation under the relevant procedure.

### 4.2.5 The Sexual Misconduct Adviser Panel

* The preliminary review will be administered by a Sexual Misconduct Adviser Panel (consisting of the Student Policy Officer, Director of Student Support and Development and one other member of the panel). A panel member can be replaced if there is overlap of a disclosure.

### 4.2.6 Assessing Reported Behaviour

* The *Sexual Misonduct Adviser Panel* will assess the reported behaviour in the context of the definitions in the Sexual Misconduct Policy.
* The review will be based on the written submission of the Reporting Party only.
* Reported behaviour that, upon examination at this stage, does not align with the definition as outlined in the Sexual Misconduct Policy, may be addressed under another applicable institutional policy or procedure e.g. the Dignity and Respect Policy.
* If the reported behaviours may reliably be considered not to constitute sexual misconduct or could be dealt with through an informal resolution, the formal report may be dismissed at this stage of the procedure.
* Those who make allegations in good faith should not be penalised and will be offered additional support.

4.2.7 Progressing a Report to a Formal Complaint

* If an agreement is made that the report falls within the scope of the Sexual Misconduct Policy and Student Procedures, the reporting party will be notified. See [Section 5](#_heading=h.35nkun2) for details of the formal procedure.

## 4.3 Formal Complaint

A formal complaint occurs when a person makes a formal statement about sexual misconduct to the Secretary of the Disciplinary Committee who has the authority to initiate a formal investigation process. The formal complaint will be managed in accordance with the DCU *Sexual Misconduct Policy for Students and Staff* and these accompanying procedures. The decision of the individual making a formal complaint regarding whether to report to An Garda Síochána (if applicable) will be respected within the constraints of the law.[[3]](#footnote-3)

Being the subject of a complaint can be upsetting and may leave you feeling vulnerable and alone. It can be helpful to talk to someone about what is happening. Emotional support for students is available through the [DCU Student Advice Centre](http://www.dcu.ie/advice) or the [DCU Counselling & Personal Development Service](http://www.dcu.ie/counselling). The Student Policy Officer will additionally allocate a Sexual Misconduct Adviser as a support contact.

### Time Delays

As part of making a decision to proceed with a formal complaint, it is important to understand that time delays between an incident(s) and a formal complaint may impact on the findings of any investigation as, for example, witness memory and evidence preservation may be compromised.

### 

### Complaint Involving a Member of Staff

Where a formal complaint of sexual misconduct is made against a member of staff of the University by another member of the University community, the Director of HR will be informed via the HR EDI unit at [edi@dcu.ie](mailto:edi@dcu.ie) and the *Sexual Misconduct Staff Procedures* followed. See [Section 9 f](#_heading=h.3tbugp1)or an outline of the full DCU Staff Procedures for making a formal report of sexual misconduct.

### 

## 4.4 Anonymous Reporting/ Reluctant Reporting Party / Third Party Reports

It would be exceptional for the University to pursue a formal investigation where the reporting party is a third-party, the complainant is reluctant to pursue a formal report, or where the complainant has chosen to remain anonymous. There are limitations in responding to these types of reports, such as the lack of detail provided, that could impact on the rights of respondents as per the rules of natural justice. In these situations, the University will examine reports on a case-by-case basis. However, if a reporting party wishes to make an anonymous report to note that an incident happened, they can do so through **‘**[**Speak Out’**](#_heading=h.c0q93fn69vup). Here they will have access to information and support should they wish to pursue a report or support in the future.

### 4.4.1 Speak Out Tool

Speak Out, is an anonymous-reporting tool for DCU staff and students. The tool allows any member of staff or student to submit a report of sexual misconduct in a way that protects their identity and the identity of the alleged perpetrator. The tool is completely confidential and no identifying information is collected.

The anonymous reporting tool will assist the University to monitor data related to experiences of sexual misconduct within the University to identify trends and patterns. The University will then use these findings to inform future work: for example, to identify training and information needs and any gaps in current policies and procedures or to address areas of risk which had not previously been identified. To anonymously report an incident, go to [**SPEAK OUT.**](https://dcu.speakout.ie/)

## 4.5 Report to An Garda Síochána

Some instances of sexual misconduct may also constitute a criminal offence. You are under no obligation to report your experience to An Garda Síochána and you will not be pressured to pursue this course of action. \*

\*(Only in the most exceptional circumstances and with the benefit of specific legal advice, will the University refer a report of sexual misconduct to An Garda Síochána contrary to the wishes of the reporting party. The circumstance in which a report by the University may be justified is if the affected party is legally a minor6 or, where there is clear evidence of wrongdoing available to the University separate from the complainant itself or, where there is a clear and imminent risk to the safety of the complainant or of third parties. In deciding whether to make such a report, and what information to disclose, the University will consider any potential harm that the unauthorised disclosure may cause to the person who has experienced sexual misconduct. This assessment will be undertaken on a case-by-case basis taking on board the knowledge that disclosing information to An Garda Síochána without the consent of the person who has experienced sexual misconduct could cause significant harm and could undermine the relationship of trust and confidence between the University and the person who has experienced sexual misconduct. If the University decides that it is necessary to report the sexual misconduct to An Garda Síochána, then the reasons for taking that action should be explained to the complainant so that they understand what is happening and are prepared if/when An Garda Síochána contact them.)

If you do decide to make a report to An Garda Síochána, the University will be available to help facilitate this if you wish. DCU has a Garda Liason Officer and the university can arrange an informal and confidential meeting. You may wish to make both a formal report to the University as well as to An Garda Síochána.

## 4.6 Differences between a University Investigation and a Garda Investigation

An internal DCU investigation is a civil matter and is based upon a report that a member of the University community breached the University’s rules and regulations. The allegation must be proven on the **balance of probabilities**. The most serious sanction that can be applied is permanent expulsion from the University or termination of employment. In contrast, the criminal process is an external process, and involves the accusation of a criminal act. The allegation has to be proven **beyond reasonable doubt** and the most serious sanction that can be applied is imprisonment.[[4]](#footnote-4)

It is important to understand the full details of the differences between the two reporting processes: ·

* Under the criminal process, the report will be treated as a potential criminal offence. Under the disciplinary process, the report will be treated as a potential breach of discipline.
* A disciplinary process will generally be completed in a much shorter timeframe than a criminal process.
* In a criminal trial, the Court (judge/jury) will consider the criminal charge, the evidence called by the State prosecutor, the challenges to that evidence made by or on behalf of the accused person, and any evidence given by or on behalf of the accused person. The Court will ultimately decide whether the prosecution has proved the case beyond reasonable doubt, in which case a conviction will be recorded and a penalty (fine/imprisonment) will be imposed.
* In the University process, if a formal report of Sexual Misconduct is received, precautionary action will be considered, the formal report will be investigated and, if it is upheld on the balance of probability, a sanction (warning/suspension/expulsion/dismissal) will be imposed on the responding party.
* A disciplinary investigation will be more limited than a criminal investigation because forensic analysis and medical examinations may not be available to the University and the University has no general power to compel witnesses to give evidence.
* Under the criminal process, a judge can impose a wide range of sanctions on an individual who is found to have committed a criminal offence (including imprisonment) and can put conditions/restrictions on that individual which apply nationwide for significant periods of time.
* Under the disciplinary process, the most severe sanction that can be imposed on a staff member is dismissal and the most severe sanction that can be imposed on a student is permanent expulsion.
* The reporting party should understand that following a disciplinary process, there will be very limited circumstances in which the University can disclose any information about the misconduct to the reporting party or any other person. The University has a general obligation to keep the information confidential and, subject to certain exemptions, specific obligations not to disclose the information to third parties under Data Protection obligations.
* The criminal process may take a significant length of time whereas the University disciplinary process may be resolved within a shorter timeframe.

If the Reporting Party chooses to report an experience of sexual misconduct through internal University procedures as well as through criminal proceedings, the University will reserve the right to suspend its internal investigation until that of An Garda Síochána has concluded so as not to prejudice the criminal investigation. If the University process is paused, the institution will take any necessary precautionary measures to protect all parties in the interim.

## 4.7 Outcome of a Criminal Process

* If the responding party is convicted of a criminal offence, then the conduct or behaviour that they have been found to have committed can be relied upon to establish a disciplinary offence within the University and the focus of any disciplinary process by the University should be to consider the impact and effect of the conviction in order to determine the sanction/s (if any) to be applied by the University.
* If the responding party is acquitted of a criminal offence, then the University can still take disciplinary action against the person concerned if there is sufficient evidence that unacceptable behaviour, which constitutes a breach of discipline under the University’s policies, occurred. This is because in a disciplinary process, the alleged “offence” will be different, the evidence that can be taken into account may be different, the burden of proof will be lower and the sanctions available will be different. The fact that the responding party has been acquitted of a criminal offence after a full trial is a relevant consideration and the weight to be attached to it will depend upon the circumstances of the case.
* Where the responding party is acquitted of a criminal offence and no disciplinary action is taken against them, the University will acknowledge that both the reporting and responding parties are likely to continue to require support. The measures that are necessary will be assessed on a case-by-case basis, but could include changes being made to academic, living or pastoral arrangements, consideration of steps that could be put in place to seek to limit contact between the parties, as well as access to the relevant support services.

# 5. Making a Formal Complaint of Sexual Misconduct

The university has a duty to ensure that all investigations take place without prejudice and take the appropriate measures to ensure fair, transparent and impartial treatment of both parties. The processes should be trauma-informed and person-centred and the wellbeing and safety of the individuals involved should be the paramount consideration. The following procedures should be followed by any member of the University community who is subjected to sexual misconduct and wishes to submit a formal report. Due to the seriousness of these types of reports, a formal investigation procedure is usually considered the most appropriate procedure as compared to informal options.

**Sexual Harassment**

In terms of sexual harassment, the formal procedures provide for a formal complaint where:

• the reporting party wishes it to be treated formally or

• the alleged sexual harassment is too serious to be treated under the informal procedure or

• informal attempts at resolution have been unsatisfactory or

• the sexual harassment continues after the informal procedure has been followed.

## 5.1 Principles of the Formal Procedure

### 5.1.1 General Principles

**For the Reporting Party**

* Reporting and considering a report of sexual misconduct can be a stressful experience for all parties involved. All parties are entitled to be treated with sensitivity, dignity and respect
* Formally reporting an experience of sexual misconduct is always the choice of the affected individual and they should not feel under pressure to proceed with a formal process unless they choose to
* At all times, the reporting party will be supported by the University to make a formal report if that is what they wish to do
* To avoid re-traumatisation, the number of times that the Reporting Party is required to recount their experience will be minimised.

**For the Reporting and Responding Party**

* The principles of natural justice and fair procedure will at all times be afforded to both the reporting party and responding party
* The Reporting Party and the Responding Party will each be offered appropriate support. This support will be separate. The same person will not provide support to both parties
* If precautionary measures are required, every effort will be made to ensure such measures are reasonable and support will be provided to the individuals involved. See [Section 5.4](#_heading=h.3whwml4) for further information regarding Precautionary Measures
* During formal investigation meetings, all parties may be accompanied by a trusted person
* All parties are asked to co-operate and make themselves available to ensure that the investigation can be completed within a reasonable timeframe
* The nature of the allegations may mean that it is necessary to notify legal or regulatory authorities which, consequently, might require the University to comply with an investigation led by a legal or regulatory body, which may take precedence over the internal procedure. This procedure may continue in parallel or may have to be suspended and continued later
* The member of staff who received the initial disclosure should not be included in any element of the formal investigation process to avoid a conflict of interest.

### 

### 5.1.2 Confidentiality

* Confidentiality is an integral element of any report made under the Sexual Misconduct Policy and Procedures. All parties, including the reporting party, responding party, witnesses and those managing the process, must ensure that they always maintain confidentiality
* Confidentiality will be maintained throughout the investigation to the greatest extent possible, consistent with the requirements of a fair investigation
* All individuals involved in the initial disclosure and/or formal report procedures are expected to maintain the utmost confidentiality on the subject. However, DCU will be obliged to disclose the details of any formal complaint to such persons and to such an extent as is necessary to investigate the complaint properly and fairly
* All individuals are required to give due regard for GDPR legislation in the collection and storage of any personal information
* Both the Reporting and Responding Parties have a right to privacy and protection, and information should only be shared on a need-to-know basis
* The requirement for confidentiality extends to all who are party to a Formal Report, including witnesses and to those managing the complaint.

## 5.2 Formal Report

A formal report occurs when a person makes a formal statement about sexual misconduct to a staff member in the institution who has the authority to initiate a formal investigation process - for students at DCU, this person is the Secretary of the Disciplinary Committee (SDC). The formal report will be managed in accordance with *DCU Sexual Misconduct for Staff and Student Policy* and these accompanying procedures.

The decision of the individual making a formal report regarding whether to report to An Garda Síochána (if applicable) will be respected within the constraints of the law.8  If an individual decides to make a formal report, this should take place as soon as they are ready to do so.

## 

### 5.2.1 Making a formal report

* To lodge a formal report against a DCU student, the Reporting Party must write to the Secretary of the Disciplinary Committee with full details of the complaint (see [Disciplinary Committee](https://www.dcu.ie/ocoo/disciplinary-committee) - Section ‘*Complaints under the Code*’ ) including copies of all or any relevant notes of the alleged behaviours. The SDC will then initiate a formal investigation which is carried out by the [University Disciplinary Committee](https://www.dcu.ie/ocoo/disciplinary-committee) (UDC)
* The Reporting Party will be asked to indicate whether a report has been or will be made to An Garda Síochána
* Where this has occurred, the University will reserve the right to suspend its internal investigation until that of An Garda Síochána has concluded so as not to prejudice the criminal investigation. If the University process is paused, the institution may take any necessary precautionary measures to protect all parties in the interim
* The Reporting Party should be advised of all available internal and external supports
* If the University procedures are suspended, the *UDC* [(see Section 4.2.4)](#_heading=h.4i7ojhp) may implement Precautionary Measures ([see Section 5.4](#_heading=h.3whwml4)) in the meantime
* The Reporting Party will receive a written response from the Secretary of the Disciplinary Committee as soon as possible following submission of allegations, acknowledging receipt of the report.

### 5.2.3 The Responding Party

* Upon receipt of the complaint, the Chairperson of the Disciplinary Committee will provide the complaint to the person named by the complainant who for these purposes will be called the respondent(s). Details of the Disciplinary process can be found in [Section 6 of the Student Code of Conduct and Discipline](https://www.dcu.ie/ocoo/disciplinary-committee)
* Being the subject of a complaint can be upsetting and may leave you feeling vulnerable and alone. It can be helpful to talk to someone about what is happening. Emotional support is available through the [DCU Student Advice Centre](http://www.dcu.ie/advice) or the [DCU Counselling & Personal Development Service](http://www.dcu.ie/counselling) for Students.

## 5.4 Precautionary Measures

In certain cases, it may be necessary to take precautionary measures related to an individual who is the responding party in a formal report of sexual misconduct pending the outcome of criminal/disciplinary proceedings. The grounds for taking any such action should be clearly established.

Precautionary measures may be put in place provided they are proportionate and necessary and could help to:

* ensure that a full and proper investigation can be carried out (either by An Garda Síochána or a University investigator); and/or
* protect the complainant or others whilst the report is being dealt with as part of a criminal process or disciplinary process.

**Precautionary measures are precautionary only, and do not represent a penalty or sanction.** They do not indicate that the University has concluded that the person concerned has committed a breach of discipline or a criminal offence. Precautionary measures, including suspension, may be taken where there are legitimate concerns relating to a range of issues, such as, but not limited to:

* the safety, health and welfare of staff/students;
* the potential for intimidation or interference with witnesses or evidence;
* the university's reputation.

### 5.4.1 Principles of Precautionary Measures

* Precautionary measures can be taken at any stage of the policy violation procedures
* Precautionary measures are not contingent on the making of a criminal complaint and can be put in place to facilitate an investigation or pending the outcome of a university’s disciplinary process
* Precautionary action must be reasonable and proportionate
* The precautionary measures that are put in place should be those which will best protect the investigation and/or the reporting party /others from harm whilst having the minimum possible impact on the responding party
* The Responding Party and the Reporting Party (and, if relevant, any witnesses) will be informed of any precautionary measures taken
* Any precautionary measures should be kept under review during the investigation and should not be unnecessarily protracted
* If there are any changes to these measures throughout the process, both parties will be informed
* The Reporting Party will be given reasons/information/updates at every stage of the process
* Any suspension shall not infer any wrongdoing on the part of the suspended student nor shall it influence or infer any finding of the investigation
* The decision to suspend a student as a precautionary measure will depend on the seriousness of the situation
* The student should be given the opportunity, if the student wishes, to respond to the precautionary measure and be afforded the right of representation by a member of staff of their choice or an official of the Students’ Union.

## 5.5 Risk Assessment

* The type of misconduct, the circumstances of the incident, the circumstances of the individuals involved, and the views of An Garda Síochána/prosecutor, if applicable, will all be relevant in assessing risk and in determining if, and what, precautionary action is required
* If a criminal complaint has been made, any bail conditions that have been imposed on the respondent as part of the criminal process should be considered as part of this analysis as any such conditions will need to be accommodated by the University and may affect the decision about whether or not precautionary action is required
* The risk assessment should include consideration of the support arrangements that need to be put in place to protect and support the parties involved, and to protect any investigation that may be undertaken
* As circumstances may change during the life of the matter, the risk assessment and any precautionary measures put in place should be reviewed at regular intervals and reconsidered as the case develops.

### 5.5.1 The Responding Party

In relation to any precautionary measures recommended, the respondent should have an opportunity to:

* Consider the reasons why such a decision might be made
* Make representations to the decision-maker before the decision is made (or if that is not possible or appropriate due to the urgent or sensitive nature of the matter, as soon as possible thereafter)
* Request a review at any stage if there is a material change in the circumstances of the case.

### 5.5.2 Possible Precautionary Measures

* Imposing conditions on the respondent (for example, requiring the respondent not to contact the complainant and/or certain witnesses and/or requiring the respondent to remain out of certain libraries, restaurants, bars, clubs and societies, social spaces etc.)
* Making appropriate accommodation arrangements to ensure separation between the respondent and complainant in academic settings
* Excluding/restricting the person concerned (for example, prohibiting the person concerned from going to certain accommodation blocks or using the sports facilities or from attending a placement). A qualified or partial exclusion may be put in place where appropriate.

### 5.5.3 Suspension

* In certain cases, the University may have to consider suspending a student pending the conclusion of an investigation and/or a disciplinary process
* Any decision to impose suspension can have serious consequences. Therefore, such a step should only be taken where the risk level is high and where there are no alternative measures that could be put in place to mitigate that risk
* The decision to impose suspension as a precautionary measure should be made by the President with guidance from the Office of the Vice-President Academic Affairs.
  + Any suspension should be fixed for a specified period of time and subject to review at regular intervals
  + Prior to deciding to suspend a student, the student should, where circumstances reasonably allow, be advised of the reasons why suspension is being considered
* During any period of suspension, a student shall not be permitted to attend at the University’s premises and/or make contact with employees or students of the University regarding University business, or matters relating to their suspension, without the prior written consent of the University and should ordinarily not be permitted, unless the University considers it feasible, to have access to the University information technology systems
* Any student being placed on suspension is required to confirm their non-DCU email address as access to University IT systems may be denied.

## 

# **6. Disciplinary Procedures**

## 6.1 Progressing a Formal Investigation

The [Student Code of Conduct and Discipline Sections 7 and 8](https://www.dcu.ie/system/files/2020-09/165_-_student_code_of_conduct_v3.0.pdf) contain procedures concerning the University Disciplinary Committee (UDC). The objective of an investigation by the UDC is to ascertain whether, on the balance of probabilities, the behaviours complained about occurred. It will have already been established that the behaviours align with definitions of sexual misconduct. The complainant and respondent can access advice and guidance regarding the disciplinary process from [Student Support & Development via a Sexual Misconduct Adviser or Student Policy Officer](#_heading=h.19c6y18).

The University takes breaches of the Sexual Misconduct Policy very seriously and can result in disciplinary action, up to and including dismissal/expulsion. At all times, the principles of natural justice will be adhered to and a disciplinary sanction will only be issued following a fair investigation and disciplinary procedure.

## 6.2 Disciplinary Meeting

* If so warranted, a disciplinary meeting will be convened at the appropriate stage of the process
* Where any disciplinary or other action needs to be taken as a result of the findings of the investigation they will be processed through the appropriate policies and procedures. In the case of students, please refer to the [*DCU Student Code of Conduct*](https://www.dcu.ie/ocoo/disciplinary-committee)document.

## 6.3 Potential Outcomes of a Formal Complaint Process

The UDC can only make recommendations with respect to the validity of the claim put forward by the reporting party.

**The panel may find in its view:**

* Sexual misconduct did take place. The matter will be dealt with under the appropriate disciplinary procedures (see [section 9 Student Code of Conduct and Discip](https://www.dcu.ie/sites/default/files/policy/165_-_student_code_of_conduct_v3.0.pdf)line)
* Sexual misconduct did not take place. In this case the investigating panel will dismiss the report and outline the reasons for this conclusion in their report. No action will be taken against the reporting party provided that the report was made in good faith
* No sexual misconduct was evident and the report appears to be malicious or vexatious. The matter will be dealt with under the appropriate disciplinary procedures.

## 6.4 Disciplinary Action

The University may take appropriate action against an individual(s) where:

* Formal reports of sexual misconduct investigated and substantiated, may lead to penalties being invoked under our student disciplinary procedures
* Where allegations are deemed to be malicious and without foundation, the person responsible for such allegations, or any parties involved in the support of such allegations, are also likely to be the subject of disciplinary action.

## 6.5 Disciplinary Penalties

* Penalties may be applied in accordance with the disciplinary procedure under the [Section 9 of the Student Code of Conduct and Discpline](https://www.dcu.ie/system/files/2020-09/165_-_student_code_of_conduct_v3.0.pdf).
* Mitigating, aggravating, and compounding factors will be considered in disciplinary decision-making. For example, mitigating factors would be a request for leniency by the Reporting Party or the expression of genuine remorse by the Responding Party. An aggravating factor might be if the Responding Party refused to cease a particular behaviour, despite being previously asked to do so. A compounding factor could be if this is not the first time that the Responding Party has been disciplined for similar behaviour.

## 6.6 Right to Appeal

* In the event that either party can demonstrate that the investigation process was flawed or compromised, then they may appeal under the Student Code of Conduct and Discipline. See [Section 10](https://www.dcu.ie/sites/default/files/policy/165_-_student_code_of_conduct_v3.0.pdf) for further details of the process
* There should be no overlap between the investigation panel and those involved in the disciplinary panel, and any appeals process.

# 7. Record Keeping

## 7.1 Evidence for criminal investigations

* All involved in dealing with alleged sexual misconduct which may also constitute a criminal offence should be aware that any notes that are made or documents that are created could be requested by An Garda Síochána as part of a criminal investigation and individuals could be called to give evidence
* Note-taking that informs a decision in relation to breach of discipline, and the rationale for that decision, would be particularly important.
* Every effort should be made to ensure that written records are clear, accurate and appropriate.

## 7.2 Data Collection

The personal data provided as part of a report is obtained, processed and retained by Dublin City University ‘Data Controller') for the purposes that are directly connected with the administration and operation of the Student Misconduct Policy and Procedures and will be treated in accordance with the DCU Data Privacy Policy which can be accessed on the [Chief Operating Officers website](https://www.dcu.ie/ocoo/data-protection.shtml).

Some data will be shared with the HEA or Department of Further and Higher Education, Research, Innovation and Science for statistical purposes only. No identifying, personal or sensitive data will be shared.

# **8. Additional Supports**

|  |  |  |
| --- | --- | --- |
| **Service** | **Phone** | **Web** |
| Student Support  & Development  (Student Advice) | 01 700 7165 | [www.dcu.ie/students](http://www.dcu.ie/students) |
| Student  Counselling Service | 01 700 5165 | [www.dcu.ie/counselling](http://www.dcu.ie/counselling) |
| Student Health  Centre | 01 700 5143 | [www.dcu.ie/health](http://www.dcu.ie/health) |
| DCU Students’  Union Wellbeing  Officer | Glasnevin Campus  01 700 5392  St. Patrick’s Campus  01 700 9117 | [www.dcusu.ie](http://www.dcusu.ie) |
| Free 24/7 Support in a Crisis | Text ‘HELLO’ to 50808 | <https://text50808.ie/> |
| Samaritans National Helpline | Tel: 116 123 | [https://www.samaritans.org/ireland/sa](https://www.samaritans.org/ireland/samaritans-ireland/) [maritans-ireland/](https://www.samaritans.org/ireland/samaritans-ireland/) |
| Dublin Rape  Crisis Centre | Dublin Rape Crisis Centre’s  24-hour helpline - 1800 77 8888 | [Dublin Rape Crisis Centre](https://www.drcc.ie/)  Your local Rape Crisis Centre/Network [https://www.rapecrisishelp.ie/ﬁnd-a-se](https://www.rapecrisishelp.ie/find-a-service/) [rvice/](https://www.rapecrisishelp.ie/find-a-service/) |
| HSE | | [https://www2.hse.ie/services/sexual-as](https://www2.hse.ie/services/sexual-assault-treatment-units/rape-sexual-assault-where-to-get-help.html) [sault-treatment-units/rape-sexual-assa](https://www2.hse.ie/services/sexual-assault-treatment-units/rape-sexual-assault-where-to-get-help.html) [ult-where-to-get-help.html](https://www2.hse.ie/services/sexual-assault-treatment-units/rape-sexual-assault-where-to-get-help.html) |
| Sexual Assault Treatment Units | | [https://www2.hse.ie/sexual-assault-tre](https://www2.hse.ie/sexual-assault-treatment-units/) [atment-units/](https://www2.hse.ie/sexual-assault-treatment-units/) |
| Women’s Aid | 24-hour helpline -  1800 341 900 | [Women's Aid](https://www.womensaid.ie/) |
| Men’s Aid | National Conﬁdential  Helpline – 01 554 3811 | [Men's Aid](https://www.mensaid.ie/) |
| Your local Gardaí | | [https://www.garda.ie/en/crime/sexual-](https://www.garda.ie/en/crime/sexual-crime/) [crime/](https://www.garda.ie/en/crime/sexual-crime/) |
| HSE My Options | Freephone -  1800 828 010 | [https://www2.hse.ie/unplanned-pregn](https://www2.hse.ie/unplanned-pregnancy/) [ancy/](https://www2.hse.ie/unplanned-pregnancy/) |
| LGBT Ireland | National Helpline - 1890 929 539 | [LGBT Ireland](https://lgbt.ie/) |



# **9. Related Documentation**

* DCU Sexual Misconduct at Work or Study Policy
* [Dignity and Respect at Work or Study Policy](https://www.dcu.ie/students/bullying-sexual-consent-assault-harassment)
* [Student Dignity and Respect Procedure](https://www.dcu.ie/students/bullying-sexual-consent-assault-harassment)
* [Code of Conduct for Students](https://www.dcu.ie/ocoo/disciplinary-committee)
* [Social Media Policy](https://www.dcu.ie/policies/policies-a-z)
* [Student Gender Identity Policy](https://www.dcu.ie/policies/policies-a-z)
* [Ending Sexual Violence and Harassment in Irish Higher Education Institutions](https://hea.ie/policy/gender/ending-sexual-violence-and-harassment-in-irish-higher-education-institutions/)
* [How to respond to a disclosure of sexual misconduct](https://www.dcu.ie/sites/default/files/inline-files/identifying-responding-to-students-in-distress-21_0.pdf)

# **10. Definitions**

Below is a brief definition of sexual consent, sexual misconduct and sexual harassment. Full definitions can be found in Section 6 of the Sexual Misconduct at Work and Study Policy.

#### 10.1 Sexual Consent

Sexual Consent is described as the freely given verbal or non-verbal communication of a feeling of willingness to engage in sexual activity. This description entails an ongoing, mutual and preferably verbal communication, and is consistent with the definition of consent in the Criminal Law (Sexual Offences) Act 2017, as where the individual “freely and voluntarily agrees to engage in that act”.

#### 10.2 Sexual Misconduct

Sexual Misconduct is defined as any form of unwelcome behaviour of a sexual nature that may be subject to disciplinary proceedings. This includes but is not limited to crimes of sexual violence, sexual cyberbullying, image based sexual abuse including non-consensual taking and/or sharing of intimate images, creating, accessing, viewing or distributing child sexual abuse material online or offline, stalking behaviours whether online or offline in a sexual context, and any verbal or physical harassment in a sexual context[[5]](#footnote-5).

#### 10.3 Sexual Harassment

Sexual harassment is defined in section 14A(7) of the EEA as

‘*any form of unwanted verbal, non-verbal or physical conduct of a sexual nature which has the purpose or effect of violating a person’s dignity and creating an intimidating, degrading, humiliating or offensive environment for the person*’.

Outside of the work place there is no specific law in relation to sexual harassment but there is a law relating to harassment. [The Non Fatal Offences Against the Person Act 1997](https://www.irishstatutebook.ie/eli/1997/act/26/enacted/en/html), Section *10. —(1)* defines harassment *as*

*‘Any person who, without lawful authority or reasonable excuse, by any means including by use of the telephone, harasses another by persistently following, watching, pestering, besetting or communicating with him or her, shall be guilty of an offence’.*

#### 10.5 Trauma-Informed Care

Trauma-informed care is sensitive and compassionate. Awareness includes understanding how a survivor can cope after an event, ability to access services and supports and feel safe both physically and emotionally. Care is strength-based and non-pathologising. Care providers take steps to identify potential trauma triggers, reduce re-traumatisation, and aim to provide quality of interactions between staff and survivors receiving services.

# **11. Contacts**

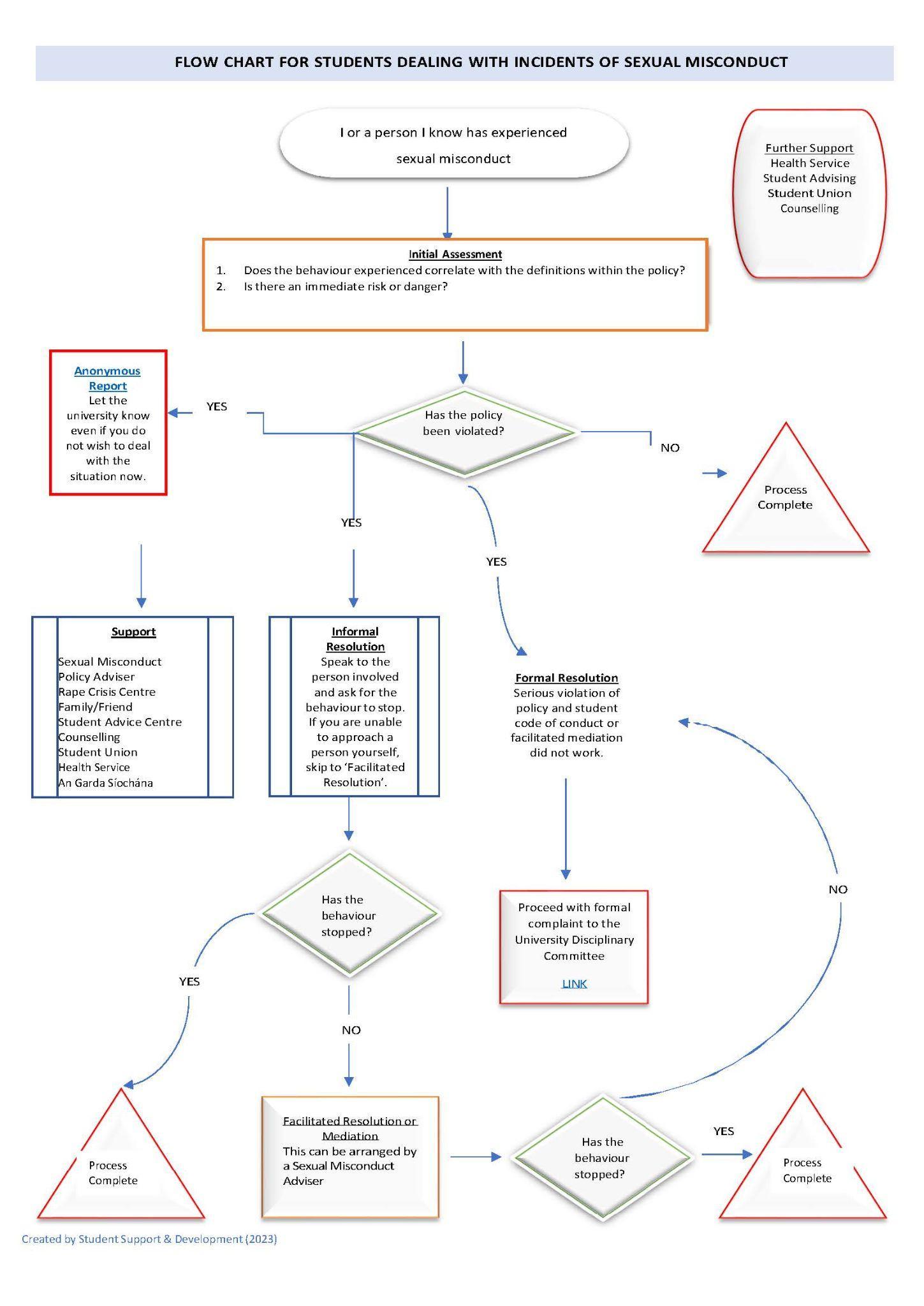
For further details on any aspect of this procedure please contact the Student Policy Officer [deirdre.moloney@dcu.ie](mailto:deirdre.moloney@dcu.ie)

# **12. Version Control**

|  |  |  |
| --- | --- | --- |
| Document Name | Student Sexual Misconduct Procedure |  |
| Version Reference | V2.0 |
| Document Owner | Deirdre Moloney, Student Policy Officer, Student Support and Development |
| Approved by | None Required |
| Date | 18th April 2023 |

**End.**

**Appendix 1: Disclosure and Reporting of a Sexual Misconduct Incident - Flowchart**

****

1. Where a complaint concerns a minor, the University should in the first instance report the matter in line with the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012 and the Children First Act 2015 to ensure that the University complies with its statutory obligations [↑](#footnote-ref-1)
2. Where a complaint concerns a minor, the University should in the first instance report the matter in line with the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012 and the Children First Act 2015 to ensure that the University complies with its statutory obligations [↑](#footnote-ref-2)
3. Where a complaint concerns a minor, the University should in the first instance report the matter in line with the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012 and the Children First Act 2015 to ensure that the University complies with its statutory obligations. [↑](#footnote-ref-3)
4. 6Where a complaint concerns a minor, the University should in the first instance report the matter in line with the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012 and the Children First Act 2015 to ensure that the University complies with its statutory obligations. [↑](#footnote-ref-4)
5. *Ref Safe, Respectful, Supportive and Positive Ending Sexual Violence and Harassment in Irish Higher Education Institutions (pg 14).* [↑](#footnote-ref-5)