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How To Handle Alleged Student Misconduct
Which May Also Constitute A Criminal Offence



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This report has been prepared and written by **Nicola Bradfield from Pinsent Masons LLP** with assistance from members of a steering group. This group included members of the Universities UK Taskforce which was established to examine violence against women, harassment and hate crime and other representatives.

The members of the steering group are:

- Jo Attwooll – Programme Manager, Universities UK
- Liz Bromley – Registrar and Secretary, Goldsmiths University of London (until Summer 2016)
- Laura Gibbs – Chief Operating Officer, Queen Mary University of London
- Dr Paul Greatrix – Registrar and Secretary, University of Nottingham
- Jenny Jenkin – Registrar, University of Bedfordshire
- Jess Lishak – Women’s Officer, University of Manchester Students’ Union 2014-16
- Maria Lorenzini – Director of Student Experience, Bangor University
- Professor Graham Virgo – Pro-Vice-Chancellor for Education, University of Cambridge
- National Union of Students – Hareem Ghani, Sally Thomas, Minda Burgos-Lukes.

Universities UK also consulted specialist agencies which



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In 1994, the Council of Vice-Chancellors and Principals (CVCP), now Universities UK (UUK), published the *Final Report of the Task Force*

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There are many instances where an alleged act of misconduct may also constitute a criminal offence and this guidance focusses on providing recommendations about how universities should deal with these cases.

Importantly, when dealing with allegations that have been made about the conduct of one of its students, universities must have regard to the various duties and obligations that they owe to all of their students including performing contractual obligations, exercising a duty of care, applying the principles of natural justice (i.e. the right to a fair hearing before an impartial decision-maker), complying with equality law duties and upholding human rights.

Cases involving allegations made by one student against another student are very difficult to manage because universities owe the same duties and obligations to **both** students and will wish to take steps to protect **both** students from harm and to provide education to **both** students. This results in universities having to balance the conflicting rights and interests of two students when considering what action to take.

The management of cases where an alleged act of student

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The welfare of students is paramount. Universities must recognise that any allegation of misconduct which may constitute a criminal offence is likely to have an adverse impact on all students involved (whether the incident is dealt with through a disciplinary process or a criminal process). We therefore recommend that, as a priority, universities should ensure that all students involved in any such incidents, particularly the reporting student and the accused student, have access to support, advice and assistance throughout the process.

The nature and scope of an internal disciplinary process and the nature and scope of a criminal process are fundamentally different. It is therefore important to maintain a clear distinction between them. The internal disciplinary process is a civil matter, is based upon an allegation that a student has breached the university's rules and regulations, the allegation has to be proven on the balance of probabilities and the most serious sanction that can be applied is permanent expulsion from the university. In contrast, the criminal process is an external procedure, deals with allegations that a student has committed a criminal act, the allegation has to be proven beyond reasonable doubt and the most serious sanction that can be applied is imprisonment (although any adverse finding could result in the student having a criminal record and that could have a serious detrimental effect on the future of the individual concerned).

Taking the above differences into account, we recommend that universities follow two key principles:



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Regulations is more appropriate then our view is that this is a reasonable and proportionate approach to take.

Where the victim is not the university, then the university should usually allow the **victim** to decide whether or not to report the matter to the police. Where the victim is a member of the university community i.e. a student or employee of the university (or another person visiting, working or studying at the university) and they wish to make a report to the police then the university should support them to do that. If they do not wish to make a report to the police then, subject to the points made in the paragraph below, the university should comply with that decision.

Universities should only in exceptional circumstances report an alleged crime to the police cont2m7ryto the

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We strongly recommend that Disciplinary Regulations expressly provide for the university to impose precautionary measures on a student who is alleged to have committed a criminal offence or a breach of discipline at an early stage pending the outcome of criminal/disciplinary proceedings.

It should be made clear that any such action is a **precautionary measure only**, it is not a penalty or sanction and does not indicate

measures that should be taken

in order to ensure the safety of the student

and the integrity of the university

and to prevent any further harm to the student or the university.

Such measures should be proportionate to the risk

posed by the student.

The Regulations should also state that

such measures should be imposed on a case-by-case basis.

Such measures should not be imposed on a student unless it is necessary to protect the safety of the student or the university.

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As set out above, we recommend that if a report is

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beyond reasonable doubt (in contrast to disciplinary cases where

As set out above, we recommend that if the reporting student decides not to make a report to the police (or the police decide not to investigate or the prosecutor decides not to prosecute), where the accused is a student of the university, the reporting student should have the option of requesting that the university deal with the matter under its internal disciplinary process and, in such circumstances, the university should follow its Disciplinary Regulations when determining what action should be taken (note that a university should also ensure that its Disciplinary Regulations provide that it has the ability to take disciplinary action against the accused student of its own volition if the reporting student does not wish to make a formal complaint).

If a university refused to take disciplinary action simply because an alleged act of misconduct could constitute a serious criminal offence (including a serious sexual offence) that could lead to a perverse situation where a reporting student receives greater protection from their university if he/she makes an allegation about a less serious act than if he/she makes an allegation about a very serious act. Note that we are not advocating that all matters should be progressed through the disciplinary process as that may not be appropriate (for example, due to lack of evidence), but the matters should not be excluded from consideration simply because the alleged act could constitute a serious criminal offence.

The question arises as to how universities can deal with alleged acts of student misconduct which could constitute a serious criminal offence under their internal processes. As set out above, we strongly recommend that any such cases are dealt with as a potential breach of discipline and not as a criminal offence, and as such, no criminal offences should be referred to when seeking to define unacceptable behaviour in the Code (see Appendix 1). It is unreasonable and dangerous for all involved to ask a university to make any findings about an alleged criminal offence. To do so would undoubtedly open universities up to legal challenge (particularly by an accused student as a finding of "rape" or "fraud" or "theft" by a disciplinary panel could have very serious ramifications for his/her future career). Institutions have neither the standing nor the expertise to make such findings about criminal offences. Only a criminal court can make such findings when the prosecution has proven the offence

Further key points that need to be considered by universities when dealing with cases involving serious allegations of student misconduct which may constitute a criminal offence through an

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Code of Conduct (for illustration purposes only)

The Code of Conduct below is produced in order to illustrate how such a Code could be drafted. However, it is not comprehensive as more detail will need to be included to:

- define the types of unacceptable behaviour which will amount to a breach of discipline and indicate how seriously different acts will be treated - this is particularly important in relation to sexual misconduct as different acts arising from the same type of behaviour will be treated very differently, for example, in relation to the unacceptable behaviour of kissing without consent, the act of forcefully kissing another on the lips is likely to be regarded as a serious disciplinary offence whereas the act of lightly kissing another on the back of a hand is likely to be regarded as a less serious disciplinary offence – to emphasise the work required in this area, the examples of unacceptable behaviour and examples of sanctions have not been separated into serious and less serious disciplinary offences in the Code.
- explain that the examples of unacceptable behaviour that are listed are not exhaustive and that the university can bring action in relation to other unacceptable behaviour
- explain that the indication of the sanctions which may be applied if certain behaviour is found to have taken place is illustrative only and that a full list of the sanctions which may be imposed by the university are set out in the disciplinary procedure - there will be instances when certain behaviours which would usually be considered to be minor are in fact very serious and will require a more serious sanction and there will be instances when certain behaviours which would usually be considered to be serious are in fact minor and will require a less serious sanction
- provide that multiple or repeated incidents of misconduct may be more serious than a single act of misconduct and previous findings may be taken into account when determining what sanction should be imposed
- provide definitions of any terms which may need to be interpreted to prevent any misunderstanding or argument when seeking to take disciplinary action against a student and to avoid the need to look at any external sources e.g. "consent" could be defined as "a person consents if he/she agrees by choice and has the freedom and capacity to make that choice".

People

Disciplinary Offence

Examples Of Unacceptable Behaviour

Examples Of Sanctions

Physical Misconduct

- Punching
- Kicking
- Slapping
- Pulling hair
- Biting

- Expulsion
- Suspension/Exclusion
- Restrictions/Conditions

- Pushing
- Shoving

- Formal Warning
- Compulsory attendance at a workshop/
coaching session
- Written Apology

Sexual Misconduct

- Sexual intercourse or engaging in a sexual act without consent
- Attempting to engage in sexual intercourse or engaging in a sexual act without consent
- Sharing private sexual materials of another person without consent
- Kissing without consent
- Touching inappropriately through clothes without consent
- Inappropriately showing sexual organs to another person
- Repeatedly following another person without good reason
- Making unwanted remarks of a sexual nature

- Expulsion
- Suspension/Exclusion
- Restrictions/Conditions
- Formal Warning
- Compulsory attendance at a workshop/
coaching session
- Written Apology

Abusive Behaviour

- Threats to hurt another person
- Abusive comments relating to an individual's sex, sexual orientation, religion or belief, race, pregnancy/maternity, marriage/civil partnership, gender reassignment, disability or age
- Acting in an intimidating and hostile manner

- Expulsion
- Suspension/Exclusion
- Restrictions/Conditions

- Use of inappropriate language
- Repeatedly contacting another person (by phone, email, text or on social networking sites) against the wishes of the other person

- Formal Warning
- Compulsory attendance at a workshop/
coaching session
- Written Apology

Property

Disciplinary offence

Unauthorised Taking Or Use Of Property

- Unauthorised entry onto or unauthorised use of University premises

University

Disciplinary Offence	Examples Of Unacceptable Behaviour	Examples Of Sanctions
Operational Obstruction	<ul style="list-style-type: none"> • Acts/omissions/statements intended to deceive the University • Disruption of the activities of the University (including academic, administrative, sporting and social) on University premises or elsewhere • Disruption of the functions, duties or activities of any student or employee of the University or any authorised visitor to the University 	<ul style="list-style-type: none"> • Expulsion • Suspension/Exclusion • Restrictions/Conditions
	<ul style="list-style-type: none"> • Improper interference with the activities of the University (including academic, administrative, sporting and social) on University premises or elsewhere • Improper interference with the functions, duties or activities of any student or employee of the University or any authorised visitor to the University 	<ul style="list-style-type: none"> • Formal Warning • Compulsory attendance at a workshop/ coaching session • Written Apology
Reputational Damage	<ul style="list-style-type: none"> • Behaviour which has caused serious damage or could have caused serious damage to the reputation of the University 	<ul style="list-style-type: none"> • Expulsion • Suspension/Exclusion • Restrictions/Conditions
	<p>Behaviour which has damaged or could have damaged the reputation of the University</p>	<ul style="list-style-type: none"> • Formal Warning • Compulsory attendance at a workshop/ coaching session • Written Apology

Case Study 1:

The reporting student states that he/she does not want to report the incident to the police.

- The university should ensure that the reporting student is provided with reassurance, support and assistance (this should include support from external specialist agencies, such as sexual violence counsellors, where appropriate).
- The university should provide the reporting student with information about the options available to him/her (including

Case Study 3:

The reporting student reports the incident to the police and the accused is charged. The trial date is set for many months away.

- The university should review the risk assessment and, where appropriate, amend the risk analysis. For example, in some circumstances, as a decision by the prosecutor to charge a student with a criminal offence indicates that there is some evidence to support the charge, a charging decision may constitute an increase in risk. Similarly, in some circumstances, a decision by the prosecutor to reject a serious charge and proceed with a more minor charge may constitute a decrease in risk.
- As part of the review of the risk assessment, the university should consider whether there is a need to make any changes to support arrangements and/or precautionary measures. For example, the university may wish to partially lift a restriction on the accused student speaking to other students on his/her course if the criminal proceedings are to continue for the duration of the academic year. The precautionary measures

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Risk Assessment

Risk assessment for student A

What are the risks to the well-being and safety of student A /others	What measures are required to manage the risk/concerns?	Action by whom and by when?	Completed
Academic progress – student A failed to submit two pieces of coursework within the prescribed deadline			
Personal health and well-being – student A has a history of mental health difficulties			
Safety – student A is concerned that student B will approach her and be abusive towards her			
[Others]			

Review date



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