



Bullying, Harassment and Sexual Misconduct - Formal Complaints Procedure

1. Introduction

As set out in our Dignity and Respect, Bullying and Harassment Policy and Sexual Misconduct Policy (“The Policies”), UCD is committed to providing an environment in which all members of our community should expect to be able to thrive and to be respected and valued for their unique perspectives and contributions so that they can achieve their fullest potential.

Complaints of bullying, harassment and sexual misconduct will be treated seriously, objectively and with due regard for the rights and sensitivities of the person raising the issue, referred to as the complainant and the person against whom the issue is being raised, referred to as the respondent. All investigations are conducted by independent trained investigators in Bullying, Harassment and Sexual Misconduct complaints.

These procedures outline the steps involved in a formal investigation of a complaint of bullying, harassment, and/or sexual misconduct. A single investigation can be conducted for combined complaints of bullying, harassment and/or sexual misconduct if the complainant and respondent are the same individuals involved.

This procedure has been developed, in accordance with the policies and support documentation, to ensure there is a pathway for those covered by the policy to bring complaints of inappropriate behaviour forward so they can be addressed fairly and objectively.

UCD has a dedicated Dignity and Respect Report and Support Advisory team available to support individuals who feel they have been subjected to inappropriate behaviour and for individuals who have been accused.

2. Formal Approach

Any member of the UCD community that is subjected to bullying, harassment or sexual misconduct has the right to submit a formal complaint. The University is committed to responding and addressing these issues that arise.

The formal investigation procedure is available for single or multiple complaints of inappropriate behaviour of bullying, harassment and/or sexual misconduct.

2.1 Steps of the Formal Investigation Procedure

The University will not put pressure on a reporting person to take any particular course of action, rather the focus will be to give the appropriate support to make a decision that is right for them. A reporting person will be supported to bring a complaint forward if they so wish and no penalisation/victimisation

on the basis of submitting a complaint will be tolerated. The University will support and respect the decision of the reporting person to pursue a formal complaint or not.

The formal complaint form should be used to make a formal complaint. This form should be completed and emailed to edi@ucd.ie where it will be processed confidentially by a member of the EDI team in the EDI Unit. The complaint will only be viewed by the Strategic EDI Manager and the administrator for the EDI Unit. Prior to it being submitted, this form will be reviewed to ensure it has been completed correctly.

Each section of the form should be filled out to the best of your ability. You can seek assistance when completing the form from the Dignity and Respect Report and Support Advisor or a Dignity and Respect Contact Person.

You are only required to fill out one complaint form in the instance that there are multiple complaints (i.e., a complaint falling into more than one definition of bullying, harassment, sexual misconduct) against the same respondent and all complaints will be investigated in the same investigation. If there are two or more respondents, you are required to fill out a separate complaint form for each named respondent. If there are a number of complainants making a complaint about a related incident in the same timeframe against the same respondent, this may be investigated under a single investigation and a separate report for each complainant will be issued.

The complaint will normally be acknowledged within 3 working days of receipt of the Complaint Form.

2.2 Preliminary Screening Panel

Members of the screening panel

The screening panel consists of 3 people in total: 2 primary senior nominees from HR and the Office of the Registrar and an externally appointed independent third party who will have a legal background. Advice from a UCD Legal representative can be sought if necessary. A sitting panel will have gender representation.

Members of the screening panel will receive training in relation to bullying, harassment and sexual misconduct, including trauma informed and sexual violence training.

If a conflict of interest exists in relation to any member of the screening panel regarding a particular formal complaint, the panel member will recuse themselves and the next available reserve panel member will be called upon. In the event that both the primary and reserve panel members from either HR or the Office of the Registrar are conflicted then, the Head of the area concerned will nominate a further person from their function to act as a panel member on an exceptional basis.

The Role of the Screening Panel

¹Once a formal complaint is received, the preliminary screening panel will convene a meeting to conduct a preliminary screening of the detail contained within the complaint form.

The role of the Screening Panel is as follows:

- To make a prima facie decision as to whether the alleged behaviour, which is the subject of the complaint, falls within the definition of bullying, harassment and/or sexual misconduct and the scope as outlined in Bullying and Harassment policy and Sexual Misconduct policy.
- To make recommendations in relation to the consideration of informal options where appropriate in the case of Bullying and Harassment as per the Bullying and Harassment policy and Code of Practice on Bullying 2021. Proceeding to a formal process should not be viewed as automatic and it is important that it is recognised that it is the reasonable evidence-based decision of management. This Code does not apply in the case of Sexual Misconduct. The

¹ Timelines will be adhered to as much as is reasonably possible. From time to time the timelines may be changed where there is justifiable reason for doing so. Timelines may be altered to ensure fairness throughout the process.

Screening Panel however may also make recommendations relating to informal interventions in instances of Sexual Misconduct.

- To assess the impact of a delay on bringing a complaint forward on the likelihood of a fair investigation being carried out. The impact of the delay will need to be determined by the Screening Panel based on the information they receive as part of the formal complaint and they will consider the following:
 - The circumstances of the alleged complaint
 - The complexity of the alleged complaint
 - The cause of the delay
 - Possibility of prejudice to the respondent.
- To outline the reasons for their decision in writing and to recommend alternative appropriate University policy or procedure, if relevant, such as the UCD Grievance Procedure, Research Integrity Policy, Disciplinary Statute or Student Code of Conduct, for the complainant to consider if the complaint is not deemed to fall within the remit of the Bullying and Harassment and/or Sexual Misconduct policies. In this instance consideration will be given to the fact that the individual has already completed a complaint form outlining the details of the incident(s). (The criteria that the screening panel will use to make this decision is outlined in [appendix 1](#)).
- If relevant, the Screening Panel may make a recommendation to the Chief People Officer and Director of SIRC & Legal Services or the Registrar that precautionary action should be considered, based on the information contained in the complaint form.

The Screening Panel will make its decision based on the written complaint submitted but reserves the right to seek clarification from the complainant in relation to any aspect of their complaint and/or seek legal advice.

Where there is more than one University procedure (and/or policies) applicable to any one matter, this will be reviewed by the Screening Panel and they will decide which of the University procedures (and/or policies) should have priority or be the most appropriate in the circumstances and may direct the continuations of some procedures(s) (and/or policies) and the suspension of others pending the outcome of the former. Where a decision is made that not all issues raised in the complaint are deemed to be in scope of the Bullying and Harassment policy and Sexual misconduct policy, that will be shared with an investigator as part of the investigation process.

Decisions made by the screening panel are not a predetermined outcome of the findings of an investigation. An Investigator may also make a finding that a complaint was not in scope having received further information not available to the Screening Panel

Next Steps

- The Screening Panel will outline the reasons in writing for their prima facie decision to the EDI Unit. If the alleged behaviour is deemed to fall under the relevant definition(s) and scope, and informal options are deemed to be inappropriate by the Screening Panel, the Screening Panel will put the complaint forward for formal investigation.
- The EDI Unit will then notify the complainant in writing of the outcome of the preliminary screening and key contacts going forward normally within 10 working days from the date of the complaint being received by the panel.
- If the panel has recommended informal options (in the case of a bullying or harassment allegation) as the most appropriate means of resolving the issue, a meeting will be held with the complainant and respondent separately. The purpose of these meetings is to discuss the informal options available and the reasons as to why informal resolution is considered to be the most appropriate and effective means of resolving the issue(s). The respondent will be notified of the complaint and provided with a copy of the formal complaint form, screening panel decision and these procedures at this point. The complainant and respondent must make their decision around proceeding with informal options within 3 working days of their meeting.

- If informal resolution is proceeding, the formal investigation process will not commence to allow for informal resolution to be engaged with by the parties involved. If informal resolution is successful, then the complaint will be considered to be appropriately dealt with and both parties will be informed accordingly. If informal resolution is unsuccessful, the formal complaints investigation will commence.
- If there are mitigating factors as to why informal options are not appropriate, then the complaint will proceed to a formal investigation.
- If the complaint is put forward for formal investigation, a member from the Employee Relations Unit or Student Engagement, Conduct, Complaints and Appeals (SECCA) Unit, will be appointed as the UCD contact person for the complainant and respondent and they will manage the administration of the investigation process. They will receive the complaint in order for the formal investigation procedure to commence.
- The Respondent will then be notified within 3 working days and provided with the Complaint Form, the Policy, these Procedures and the written decision of the Screening Panel, if informal options were not recommended and therefore the respondent has not been provided with these documents previously.
- If the complaint is deemed not to come within the scope of the Policy, the complainant will be so informed by the EDI Unit and advised on the appropriate procedure for dealing with the matter if relevant. In this instance, the respondent will not normally be notified of the complaint and details of supports.

3. Precautionary Measures

The University may decide that precautionary measures may be required to be put in place following the submission of a formal complaint pending the outcome of an investigation process. A precautionary measure is not a penalty or a sanction and does not indicate that it has been concluded that the person concerned has committed a breach of discipline or a criminal offence. Rather these precautionary measures may be put in place in the best interests of all parties involved including any witnesses. A list of examples of the range of potential precautionary measures is located in [Appendix 2](#).

The screening panel has the authority to make a recommendation to the Chief People Officer and Director of SIRC & Legal Services or the Registrar that precautionary action should be considered, based on the information contained in the complaint form. The Chief People Officer and Director of SIRC & Legal Services or the Registrar will appoint a precautionary measures panel member, which will be a member of UMT, to conduct a precautionary measures risk analysis, ensuring that there is no conflict of interest.

Any decision made in relation to any precautionary measures will be made by a member of the ²precautionary measures panel and will be reasonable, proportionate and only made after due consideration of the circumstances. A member of the precautionary measures panel will make a decision based on information contained in the complaint form (except in the case where neutral suspension is being considered; a neutral suspension hearing will take place as detailed below). The panel member may request further clarification from the complainant or information from the respondent, or any other person as deemed necessary such as a risk assessment pro-forma to ensure that the activity isn't perceived as part of an investigation. The complainant and respondent will be informed of the decision as it relates to them, in writing.

All or some precautionary measures may potentially be kept in place following an investigation depending on the circumstances.

It is important to note that if an individual reports an issue that has not progressed to a formal complaint and is exploring informal resolution options, precautionary measures may also be considered (excluding

² Details of the members and appointment to the precautionary measures panel can be found at (<https://www.ucd.ie/dignityandrespect/policies/formalprocess/investigationprocess/>).

neutral suspension). An appropriate person in the local structures independent of the situation will determine if precautionary measures are required.

3.1 Neutral Suspension Hearing

- Employees or students may be suspended where there are legitimate concerns relating to a range of issues, such as, but not limited to, the safety, health and welfare of employees/students; the potential for intimidation or interference with witnesses or evidence, the institution's reputation etc. This list is illustrative only, and cases should be assessed on their own merits.
- The process for placing any employee on neutral suspension will be in accordance with the Disciplinary Statute 28 - sections 7 and 8.
- Suspension, where deemed necessary, can occur at any stage during the investigation process.
- Any suspension shall be neutral in nature and not infer any wrongdoing on the part of the suspended employee or student nor shall it influence or infer any finding of the investigation.
- Any employee that is placed on neutral suspension will be paid their normal remuneration for the duration of the suspension.
- In cases where neutral suspension is deemed appropriate in the circumstances, the employee or student will be invited to attend a neutral suspension hearing. In advance of the hearing, they will be informed of the reasons why neutral suspension is being considered and they will be given the opportunity to respond.
- Prior to a decision being made, the employee or student should, where circumstances reasonably allow, be advised of the reasons why neutral suspension is being considered.
- Employees may be accompanied by a work colleague or a trade union official.
- Students may be accompanied in a support capacity by a student advisor/chaplain, by a member of the students' unions or a family member.
- The employee or student will be given the opportunity to respond to the proposed neutral suspension.
- The decision should be kept under review during the investigation and should not be unnecessarily protracted. The decision to neutrally suspend an employee or student should depend on the seriousness of the situation.
- During any period of neutral suspension, an employee or student is 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 neutral suspension decision maker and should ordinarily not be permitted, unless it is considered feasible to have access to the University information technology systems.
- Any employee or student being placed on suspension must confirm their non-UCD email address prior to access to University IT systems being denied.

4. Principles of the Formal Procedure

At all times, the University is committed to conducting a fair and impartial investigation and should be conducted with due regard for the following principles;

- An administrator of the process from either the Employee Relations Unit or Student, Engagement, Conduct, Complaints, Appeals (SECCA) will be appointed as a point of contact for the complainant and respondent. The appointed external investigator is required to update the parties on the progress of the investigation on a bi-weekly basis. The investigator will agree with the parties how they will communicate the progress update, whether by email or telephone update.
- All investigations are carried out by independent trained investigators in Dignity and Respect

complaints.

- Adequate resources will be made available to fund the implementation of the procedure. The appointment of an external investigator is covered by the University.
- Raising and considering a complaint of bullying, harassment or sexual misconduct can be a stressful experience for all parties involved. All parties are entitled to be treated with respect. At all times, a complainant and respondent will be supported.
- The investigation process will be fully transparent for the complainant and respondent and all meetings will be conducted sensitively and with due respect to the rights of all concerned.
- Findings of an investigation will be based on the balance of probabilities. In the absence of any corroborative evidence for either side the case rests on the balance of probabilities which, in turn, depends on the credibility which can be ascribed to each party.
- All parties involved in this procedure, including the complainant, respondent, witnesses and those managing processes, must ensure that they maintain confidentiality in accordance with the policy. Confidentiality is integral to the process. This does not preclude parties to the complaint from accessing confidential support services.
- The principles of natural justice and fair procedure will at all times be afforded to both the complainant and the respondent.
- The passages of time can affect such things as witness memory and evidence preservation which can impact the findings of an investigation. The University would encourage and support complainants to come forward to make a formal complaint as soon as possible. In addition, complainants should do their best to document and record incidents as they happen (or soon after) if possible.
- Every person who plays a role in this procedure has a responsibility to act in accordance with this procedure, to deal with issues promptly and not cause unreasonable delay.
- All parties are obliged to co-operate and make themselves available as a matter of priority to ensure that the investigation can be completed within a reasonable timeframe. It is also important that parties who are not members of the University community co-operate in order to support the resolution of issues in a timely manner.
- The investigation should be completed in a timely manner. Timelines as set out in the procedures /terms of reference should be adhered to.
- The nature of the allegations may mean that it is necessary to notify legal or regulatory authorities, which as a consequence might require the University to comply with an investigation led by a legal or regulatory body, such as the Child and Family Agency, which may take precedence over this procedure. This procedure may continue in parallel or may have to be suspended and continued later.
- Every effort will be made to take precautionary measures that are deemed reasonable and necessary where instances are reported to enable issues to be addressed and to support individuals involved.

5. Procedures for Investigation

The appointment of external investigators

Independent investigators are appointed by either the ER unit, in employee related cases or SECC in student related cases, to conduct all formal investigations. The objective of the investigation is to ascertain the facts relating to the alleged incidents and to make a finding, based on the balance of probabilities as to whether the complaint is upheld in whole or in part or is dismissed.

Selection of investigators

UCD uses a panel of external investigators that are independent to the University and will only be selected where no conflict of interest exists. Details of the current panel of investigators is detailed on the [Dignity & Respect website](#).

One investigator will normally be appointed to hear cases of bullying and harassment and two gender balanced investigators will be appointed as an investigation team to investigate complaints of sexual misconduct.

ER/SECCA will provide the complainant and respondent with the relevant details of selected investigator(s), which will include a copy of their profile, their contact number, email addresses and details of when the investigator will contact them.

5.1 The Investigation Process

- An officer from Employee Relations or SECCA will be appointed for the purposes of administering the process only and will have no role in the investigation, apart from being a liaison person for the relevant parties and the investigator.
- The investigator will issue a term of reference to the complainant and respondent, which will be developed in accordance with this procedure. The terms of reference will outline notional timelines of the investigation which should be adhered to by all parties. The complainant and respondent are required to sign the terms of reference to indicate their agreement as to how the investigation will proceed.
- An independent minute taker, provided by the appointed investigator will be present during all meetings, unless another method of recording the meetings has been mandated.
- Statements taken during the investigation process including those of witnesses will be provided to both the complainant and respondent to ensure fairness and transparency. The complainant and respondent will be given an opportunity to respond to the statements.
- The investigator will request, collate, and look objectively at all evidence pertinent to the complaint.
- Parties involved in the investigation have the right to be accompanied during a formal investigation meeting. Employees may be accompanied in a support capacity by a work colleague, trade union official or the Dignity and Respect Support and Report Advisor or family member or friend. Students may be accompanied in a support capacity by a student advisor/chaplain, a member of the students' unions or a Dignity and Respect Support and Report Advisor or a family member.
- Witnesses that are called to participate in an investigation, that are associated with UCD may be accompanied by work colleague/trade union official in the case of employees, or student advisor/chaplain/student's union in the case of students to act in a support capacity.
- The University will provide reasonable accommodations during an investigation process to ensure the process is accessible for all parties. A translator will be provided where required.
- During an investigation process, parties should be given 5 working days' notice of the requirement to attend any meetings. Where parties are required to confirm their own statement or respond in writing to another party statement, this should be done within 5 working days.
- In the normal course of an investigation, the investigator will meet with the complainant in the first instance. The respondent will then be provided with a copy of the complainant's statement and will be given a full opportunity to respond.
- Both the complainant and the respondent will be given a fair opportunity to state their position in relation to the allegations made before any conclusions are reached.
- Both the complainant and respondent will be asked to nominate witnesses that are relevant to the investigation. The investigator can call any witnesses that they deem appropriate with a view to establishing the facts.
- The Investigator may proceed with the investigation notwithstanding the non-attendance of the complainant, respondent or witness.
- The Investigator will give the complainant and the respondent an opportunity to comment on the evidence of others, as it relates to them.
- The Investigator will prepare an Investigation Report (normally compiled within 15 working days of the conclusion of the investigation) and make findings based on all relevant evidence

presented. Interview records, including those of witnesses and relevant evidence presented and obtained by the Investigator which are relied on to make findings will be appended to the Investigation Report.

- The complainant and respondent will be given the opportunity to comment on the findings before the report is shared with the Chief People Officer and Director of SIRC & Legal Services /Registrar.
- The investigator will provide the final report to the appointed administrator of the process, who will in turn provide it to the Human Resource Director/Registrar or nominee. The Human Resource Director/Registrar or nominee will then provide a copy of the final report to the complainant and respondent and such other persons as deemed necessary.

Potential Outcomes

- The investigation will consider all material and evidence before it and a decision will be made by the investigator, on balance of probability, as to whether (i) the matters complained of have occurred in whole or in part, (ii) the matters complained of have not occurred or (iii) that there was insufficient evidence to make a finding.
- Where the investigator finds that the matters complained of have not occurred or that there was insufficient evidence to make a finding then the investigator will note this in the findings of fact and will outline the reasons for this in the report.
- Where there is a finding that the matters complained of have occurred in whole or in part and the investigator has established that there has been a breach of the Policy then the matter will proceed to consideration under the University's Disciplinary Statute or Student Discipline Procedure (as appropriate). The investigation report may be relied upon during a subsequent disciplinary procedure.
- Where the complaint relates to a member of a University Club, then any subsequent disciplinary process will be in accordance with the University's Disciplinary Statute the Student Discipline Procedure) and/or under the AUC Procedures (as appropriate).
- Where the Investigator makes a finding that the complaint is malicious or vexatious, the complainant may be subject to the applicable disciplinary procedures. The University recognises that such a finding would generally arise in exceptional circumstances and complainants are supported to come forward with their complaints.

Following an investigation

- Where an investigator has made a finding that the matters complained of have occurred in whole or in part, the University may in appropriate circumstances and at an appropriate time in the process take action to support and protect the complainant to ensure a similar situation does not arise in the future. Appropriate action can include but is not limited to separating the parties to different office/classroom locations or ensuring that common areas are not occupied at the same time.
- Following an investigation, the respondent and the complainant are likely to continue to require assistance and support. Some or all of the precautionary measures or different measures may still be necessary and will be assessed on a case-by-case basis, but can include changes being made to academic, living or pastoral arrangements, consideration of steps that could be put in place to seek to ensure that both parties do not come into contact with each other, as well as access to the relevant support services such as Health, Counselling and Employee Assistance Programme (employees only).
- The Chief People Officer and Director of SIRC & Legal Services /Registrar or nominee and the local management team, will consider how best to manage the relationship between the complainant and the respondent and where possible and appropriate, ensure a return to normal practices/and a professional working or study relationship. This will be done in consultation with

the complainant and respondent and will be case specific depending on the nature of the complaint.

- The complainant will be informed and provided with the necessary supports when precautionary measures are lifted.

5.2 Withdrawal of Complaints

From time to time, complainants may seek to withdraw their complaint after initiating a formal investigation. Withdrawal of a complaint must be made in writing to edi@ucd.ie. The University reserves the right to investigate a claim that has been withdrawn and/or the reason for which it has been withdrawn.

6. Appeal

A complainant or respondent has the right to appeal the outcome of the investigation on the following grounds:

- There has been a material procedural irregularity which has demonstrably affected the outcome. In this instance, the appeal will focus on the conduct of the investigation in terms of fair process and adherence to procedure. It should be noted that an appeal is not a re-hearing of the original issues.
- or
- There is material new information which one of the parties was unable, for valid reasons, to provide when the matter was being investigated and which would have significantly affected the outcome

The appeal must be in writing and it must set out the grounds for seeking the appeal in sufficient detail. The appeal must be submitted to the Chief People Officer and Director of Legal and SIRC/Registrar or nominee, within 10 working days of the notification of the outcome of the investigation. The Chief People Officer and Director of Legal and SIRC /Registrar or nominee will appoint an external appeals person to conduct the appeal within 15 working days of the receipt of the appeal. The appointed appeals person will be an independently appointed third party. The appeal should be heard by another party, of at least the same level of seniority as – but preferably more senior than – the original investigator. This party should have had no involvement in the investigation. The complainant and respondent will be notified in writing with details of the appointed appeals person.

The appeal will take place in the form of a review of the investigation process, including the investigators report, complainant, respondent and witness statements and any other evidence gathered as part of the investigation process. The appeals person reserves the right to meet with any party they deem necessary for the purpose of considering the grounds of appeal. The appeals person will communicate their decision in writing to both the complainant and respondent normally within 20 working days from the commencement of the appeal.

The appeals person can make one of the following decisions:

- Dismiss the appeal
- Uphold the appeal in whole or in part
- Uphold the appeal and direct that a new investigator be appointed to conduct a new investigation

The decision of the appeal's person is final and may not be further appealed within UCD.

7. Disciplinary Action

- The University takes breaches of the Policies very seriously. Any individual found to have breached any of the Policies will usually be subject to disciplinary action. This is applicable for all levels of seniority within the University.
- Every situation is different, and the response of the University will depend on the particular circumstances of the case. Each case will be dealt with sensitively and on a case-by-case basis. The range of sanctions for breaches of the Policies will vary according to the seriousness and circumstances of the offence and in line with the Student Code of Conduct and the Disciplinary Statute but may include suspension and expulsion from the University in the case of students, or termination of employment in the case of employees. Sanctions that can be imposed are specified in the University's Statutes, the Student Code of Conduct and/or under the AUC Procedures.
- At all times, the principles of natural justice will be adhered to and a disciplinary sanction will only be issued following a fair disciplinary procedure in accordance with the Student Code of Conduct and the Disciplinary Statute.
- In cases where the behaviour complained of is admitted by the respondent, an investigation to gather the facts as set out in this procedure will still take place. Following this and depending on the outcome of the investigation, the relevant disciplinary procedure may ensue.
- A complainant will be kept up to date with information that is relevant to them in relation to action taken following an investigation process. This can include, being informed as to whether a disciplinary process has taken place, whether a sanction has been issued and information on any precautionary measures that are to be lifted. Any information shared will be in accordance with the principles of natural justice and fairness for the complainant and respondent.

8. Victimization/ Penalisation

The University is committed to addressing dignity and respect issues equally and consistently for all involved. Members of the UCD community are encouraged to come forward and report incidents of inappropriate behaviour so that the University can respond and address issues in accordance with its commitment to provide a safe environment for all.

- A complainant will not be victimised or penalised for making a complaint in good faith, for giving evidence in proceedings, or by giving notice of intention to do so.
- The Employment Equality Acts, 2012, (s74(2)) protects employees who, for example, seek redress or give evidence in proceedings, by prohibiting their being victimised by dismissal or other penalty for doing so no matter the seniority of the respondent.
- The Safety, Health and Welfare at Work Act, 2005 (the "2005 Act") prohibits employers from penalising employees for making complaints in respect of health and safety matters in the workplace. Penalisation under the 2005 Act is defined as any act or omission of an employer which affects a term or condition of employment of an employee to their detriment. Penalisation could include suspending, demoting, dismissing an employee or reducing their wages.
- Witnesses who participate in an investigation will be protected against victimisation or penalisation. Where a witness reports any issues of victimisation, this will be investigated separately.
- No assumption of guilt will be made towards the respondent during the investigation process. They are entitled to a fair investigation process.
- Complaints of victimisation or penalisation are taken very seriously by the University, if any individual has any concerns in relation to negative treatment, they should speak to their line

manager/Head of School/Programme Manager, Associate Dean or alternately contact the D&R Support and Report Advisor.

- Complaints of victimisation or penalisation will be investigated in accordance with section 4. A formal complaint form should be submitted in accordance with section 2.1.
- The University takes complaints of victimisation or penalisation very seriously. Any individual found to have victimised or penalised a member of the UCD community will be subject to disciplinary action no matter the seniority of the respondent. This is applicable for all levels of seniority and members of the UCD community.

While there is no specific legislation referring to victimisation for students, the same principles will apply.

9. Investigations by An Garda Síochána (Police Authority)

Where an employee/student identifies a breach of this policy which constitutes a potential criminal offence or an immediate threat to safety, they have the right to report the matter to the Gardaí or local police authority. Individuals should also inform the University through their line manager, so that appropriate steps can be taken, and support provided.

Should a complaint submitted to the University be investigated by An Garda Síochána, the University reserves the right to suspend its own investigation, based on the individual facts of the case, until the investigation by An Garda Síochána has come to an end. Once the University is notified of the completion of a Garda investigation by the complainant, the University investigation will commence. An Garda Síochána may also request that the internal investigation be suspended until they confirm that it can resume. The University will keep the situation under review. The complainant and/or respondent will have the right to contest this decision, which will be considered by the University.

In the instance that a complainant does not wish to make a complaint to An Garda Síochána, but does wish for the University to formally investigate the complaint, an internal investigation can proceed.

The University will only in the most exceptional circumstances, and with the benefit of specific legal advice, report a complaint to the Gardaí contrary to the wishes of the complainant. The circumstance in which a report by the University may be justified if the complainant is a minor, vulnerable person or if there is considered to be a clear and imminent risk to the safety of the complainant or of third parties. If the University does decide that it is necessary to report the allegation to the Gardaí, then the reasons for taking that action will be explained to the complainant so that they understand what is happening and they can be prepared if/when the Gardaí contact them. Further details are located in the Dignity and Respect Procedures.

If a student or an employee is acquitted of a criminal offence, then an investigation can still be taken under this Procedure and the Policy. The standard of proof for a civil investigation is on the balance of probabilities and not beyond all reasonable doubt as applies to a criminal case.

When the criminal process has concluded, UCD may refer the matter for consideration under its disciplinary procedures. Where the respondent has been convicted, this can be relied upon to establish a disciplinary offence without requiring internal investigation.

For jurisdictions outside of Ireland, advice will be sought by UCD Legal on the relevant legal system on a case-by-case basis.

10. Office of the Ombudsman (for Students)

If a student has exhausted the University's internal complaint process and remains dissatisfied with the handling of their complaint, they may complain to the Office of the Ombudsman who may consider the case and make a decision on whether to investigate. Students under the age of 18 should refer their complaint to the Office of the Ombudsman for Children.

Information on how to complain to the Office of the Ombudsman and its processes of investigation can be found on the [Office of the Ombudsman website](#). Information on how to complain to the Office of the Ombudsman for Children and its processes of investigation can be found on the [Office of the Ombudsman for Children website](#).

11. Role of State Agencies (as per the Code of Practice on Bullying 2021)

There are a range of State and non-State agencies which have a function in the area of workplace bullying as per the Code of Practice on Bullying 2021. Different pieces of legislation also have a bearing in preventing and managing bullying cases, some before the event, others in the management of cases as they arise and others still, after the fact. As this Code has been developed by two State agencies, only the roles of these two agencies are outlined here. However, interested parties can also seek information on the varying roles and scope of other organisations elsewhere.

Role of the Health and Safety Authority

The HSA operates under the statutory powers of the 2005 Act. Its purpose is to provide protection for employees in all places of work in the Republic of Ireland. The overarching tenet of the 2005 Act is to oversee the employer duty to ensure everyone at work is provided with a workplace and system of work which is, as far as is reasonably practicable, free from risk to health and to safety. There are, within the 2005 Act, specific duties on employers and others on employees, to uphold and promote this standard, as well as a healthy and safe culture. There are provisions within the 2005 Act which are relevant to the issue of workplace bullying, both directly and/or indirectly. Section 8 2(b) directly references 'improper conduct' and the employer duty to ensure the workplace has an adequate system in place to prevent such conduct. Section 19 (Hazard Identification and Risk Assessment) and section 20 (Safety Statement) reference the employer duty to have in place adequate systems of work and to record these actions in written form. Section 13 (Duties of Employee) includes the employee duties to cooperate with such employer activities.

Role of the Workplace Relations Commission

The WRC's objective at all times is to achieve harmonious working relations between employers and employees. The Commission would always encourage local discussion on, and resolution of, disputes and issues which arise in the workplace including cases of alleged bullying. The Workplace Relations Commission delivers several services which may assist.

- Individual and collective workplace mediation focus on seeking to resolve the matter at an early stage locally before a formal process is initiated. This is dependent on the agreement of the parties concerned to participate and is provided by the WRC on an ad hoc basis.
- Workplace mediation provides a confidential, professional, efficient and effective process to assist all parties in reaching a mutually acceptable agreement or outcome to a dispute or claim. This approach often helps to avoid more formal processes.
- It is particularly suited to disputes involving individuals or small groups of workers who find themselves dealing with situations which may involve the following interpersonal differences, conflicts, difficulties in working together, breakdown in a working relationship.
- Reviewing overall workplace relations generally in organisations and assisting with the implementation of positive engagement measures. The provision of Adjudication services under Section 13 of the Industrial Relations Act 1969 following the exhaustion of internal procedures (note: the grounds of a referral to an Adjudication Officer is around the conduct of an investigation in terms of fairness and adherence to fair process and procedure).

Procedure Revision History

| Version | Date | Description | Author |
|---------|---------------|---|-----------------------------|
| 1.0 | July 2020 | Sexual Harassment & Sexual Misconduct Procedure | D&R Working group 2019/2020 |
| 2.0 | February 2021 | External Review of Formal Investigation Procedure | Project team |
| 3.1 | April 2021 | Final review | Project Team/Review Group |
| 4.0 | March 2022 | Internal Review | EDI Unit |

APPENDIX 1. Criteria Assessment for Screening of Complaints

| | | |
|--|--|--------|
| 1. Scope | a) Is the alleged behaviour within the parameters of the scope section | Yes/no |
| 2. Bullying (Definition) (must answer yes to b-d to progress to formal investigation) | b) Is the alleged behaviour repeated? | yes/no |
| | c) Is the behaviour complained of direct or indirect (verbal, physical or otherwise), conducted by one or more persons against another or others? | Yes/no |
| | d) Does the complainant consider the alleged behaviour to be undermining their right to dignity at work/study | Yes/no |
| 3. Harassment (definition) (must answer yes to e-g to progress to formal investigation) | e) Is the alleged behaviour related to one or more of the discriminatory grounds | Yes/no |
| | f) Does the complainant consider alleged behaviour to be unwanted conduct? | Yes/no |
| | g) Does the complainant consider the behaviour to have the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment? | Yes/no |
| Sexual Misconduct | h) Does the complainant consider the alleged behaviour to be inappropriate and unwanted behaviours of a sexual nature including sexual harassment and sexual violence | |

APPENDIX 2: Precautionary Measures Examples

Below are examples of precautionary measures that can be put in place for a student, employee, contractor or non-employee of UCD. This list is not exhaustive, and other precautionary measures that are deemed reasonable in the circumstances may be put in place on a case-by-case basis.

| Students | Employees | Non – employees |
|--|--|---|
| <ul style="list-style-type: none"> ● Voluntary no contact agreement. ● Require the respondent not to contact the complainant and/or certain witnesses. ● Require that the respondent remains out of certain libraries, restaurants, bars, clubs and societies, social spaces, appropriate accommodation arrangements within the University etc. ● Alternative study arrangement, such as remote learning. ● Neutral suspension of a respondent from their studies or implementation of alternative tuition arrangements and exclusion from the campus. Suspension means that the student is prohibited from participating in the academic activity of the University and the student’s registration on their course is put on hold. ● A qualified or partial suspension may be put in place where appropriate. ● Excluding/restricting the respondent, for example, prohibiting the person concerned from going to certain accommodation blocks, using University facilities or from attending a placement. A qualified or partial exclusion may be put in place where appropriate. | <ul style="list-style-type: none"> ● Voluntary no contact agreement ● Require the respondent not to contact the complainant and/or certain witnesses. ● Require that the respondent remains out of certain common areas at certain times, such as the break room and common areas. ● Alternative working arrangement, such a remote working, agreed change in working hours. ● Neutral suspension from work. ● As an alternative to suspension, an employee may be given the option of taking voluntary leave. | <ul style="list-style-type: none"> ● Access card temporarily revoked ● Suspension from attending the premises |