



# Final Report

## Dignity and Respect Review

DATE: May 2021

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## **APPENDICES (From page 173)**

Appendix I – Review Group Feedback to the IUA in relation to the IUA Guidelines document (January 2020)

Appendix II - IUA Guidance for Universities How to Respond to Alleged Staff or Student or University Related Sexual Misconduct

Appendix III – Examples of other Universities Definitions of Sexual Misconduct

Appendix IV – Dignity & Respect Practices Nationally and Internationally

## **ACRONMYNS (Regularly used in Report)**

D&R – Dignity & Respect

EDI – Equality, Diversity & Inclusion

GA – Governing Authority

HEA – Higher Education Authority

KPIs- Key Performance Indicators

UMT – University Management Team

# Chapter 1: Introduction & Executive Summary of Key Recommendations

## 1.1 Introduction

The Review of the University's Dignity and Respect Policy and Procedure commenced in Autumn 2019. Much of the early work of the Review Group involved researching good practice nationally and internationally. The methodology that the Review Group followed is set out in further detail in Chapter 2 of this Report.

In March 2020 when COVID-19 struck, the work of the Review Group was delayed as the University moved to working remotely. As work continued through summer and autumn 2020 on the Review, there was significant focus on sexual harassment and sexual violence affecting employees and students in UCD. Sexual harassment and violence are a scourge in our society, adversely affecting safety, well-being, equality and attainment, in particular, of women. As the United Nations Development Programme notes, gender-based violence, physical and psychological, is neither acceptable nor inevitable.

As a Review Group, we needed to listen to and learn from experience of employees and students at the University. The Review Group commissioned an independent facilitator to lead discussions at multiple focus groups to get feedback on a proposed set of new draft policies and procedures and on the much broader subject of cultural change. Moreover, the Review Group made the documentation available to all members of the University community through the Equality, Diversity and Inclusion Unit (EDI) website. Detailed feedback from the University's employees and students is contained in this Report (see Chapter 3). In addition, external feedback was also sought from a range of experts from the National Women's Council, the Dublin Rape Crisis Centre, Mens Aid, an experienced investigator and legal advisors.

The feedback led the Review Group to conclude that revising policies and procedures will not of themselves bring about the cultural and organisational change that we need. As a result of this, the Review Group has also set out a detailed set of recommendations organised under themes (see Chapter 4). It is the view of the Review Group that these recommendations need to be implemented as an overall package. Many of the themes overlap and they need to be read in their totality. We believe that if these recommendations are accepted and approved, an implementation plan will need to be developed and overseen by an Oversight Group consisting of key stakeholders to ensure that the recommendations in this report are delivered upon. This should enable the University to drive the required changes in a systematic and transparent way.

Alongside the recommendations in this report, the Review Group is also recommending that the Dignity and Respect Policy be split into two sets of policies, one addressing Bullying and Harassment and the second, for the first time, addressing distinctly Sexual Misconduct (see Chapters 5 and 6). There will be one single formal complaints procedure which should simplify the experience for all involved (see Chapter 8) and the Review Group has set out a suite of flow-charts to assist in understanding of the policies, procedure and supports available. This proposal is one of several informed by UCD's participation in the national 'It Stops Now' campaign (Ending Sexual Harassment and Violence in Third Level Education), led by the National Women's Council of Ireland started in 2017,

and the Government Consent Framework Safe, Respectful Supportive and Positive Ending Sexual Violence and Harassment in Irish Higher Education Institutions, published in 2019. The Review Group also considered the Irish Universities Association (IUA) Guidance for Universities on How to Respond to Alleged Staff or Student or University Related Sexual Misconduct (see Appendix II).

During the consultation phase of this review, the Review Group received some feedback questioning the integrity of the review process. The Review Group has overseen a fully transparent review where extensive consultation has taken place with both internal and external groups/individuals who are expert in the area. The feedback received as part of the consultation phase of this review has been published in this report and recommendations were made and incorporated into the draft policies, procedures and support documents. This report was discussed by the University Management Team (UMT) at their meeting of 2 March and it was agreed that the draft report should be shared with the University community for consideration prior to final approval at UMT and Governing Authority. This feedback has also been incorporated into this report in Chapter 3 and further revisions have been made throughout the report as a result.

It is the view of the Review Group that the recommendations set out in this report if implemented will provide an opportunity to transform the culture of dignity and respect at UCD.

We are grateful to all who, through reflection and engagement, have contributed to the development of this report.

Dignity & Respect Review Group  
April 2021

## 1.2 Executive Summary

The following is a summary of the key recommendations based on research conducted by the Review Group, the outputs of the consultation process and from expert advice.

The Review Group has set out recommendations under nine themes. Detailed recommendations are outlined in Chapter 4 of this document. The nine themes are:

1. Culture
2. Trust and Transparency
3. Support and Roles
4. Training
5. Communications
6. Power Dynamics
7. Language
8. Legal and Technical Context
9. Definitions

### Implementation

Once this report is approved by the University authorities, a detailed implementation plan will need to be prepared in order to ensure that the recommendations under each of these themes are implemented fully and in a timely manner. Due to the complexity involved in implementation of these recommendations ranging from the establishment of an Oversight Group, recruitment and appointment of support roles; development of a comprehensive training strategy and plan; design and delivery of a nuanced communications campaign; external specialist agency engagement and development; and enhancement of IT systems to support data collection, a wide range of stakeholders from across the University will need to be involved and support from many areas required. Therefore, it is recommended that a temporary Project Manager will need to be appointed to project manage the implementation process including the development and co-ordination of a detailed project plan with specific actions, management of logistics, action owners and timelines for completion. The Review Group recommend that this appointment be made for an 18 month period and be subject to review at the end of this period.

The new Dignity & Respect Oversight Committee (as set out below in the recommendations) should monitor the delivery of the implementation plan and it is recommended that a full assessment be carried out 12 months after this report is approved.

### Culture

It is important to note that culture cuts across all themes set out in this report, and therefore, recommendations made under each of the themes will all contribute to culture change.

- The Review Group has proposed a commitment statement that every member of the University Community must sign up to. The UMT should be the first group to sign this statement. The following is draft text for this statement-

*UCD is committed to support the development of a working and learning environment in which bullying, harassment and sexual misconduct are unacceptable and will not be tolerated and where individuals have the confidence and trust in our processes to come forward, in the knowledge that their concerns will be dealt with appropriately and fairly. The University is committed to the provision of an environment of respect for diversity and equality of opportunity where you have the right to be treated with dignity and respect and can work and study in a rewarding and respectful environment and achieve your full potential. The Bullying and Harassment policy and Sexual Misconduct policy assign responsibilities to a range of roles within the University and failure to uphold the responsibilities assigned is taken very seriously and may lead to informal or formal action. In addition, the University wants to create a climate of trust through the provision of a transparent oversight process, to include external membership, and to take a proactive approach to monitoring and publication of statistics and identification of actions to address any patterns of inappropriate behaviour that arise.*

- Demonstrate senior leadership commitment to creating a culture of dignity and respect through the following ways:
  - i. Signing up to the Commitment Statement as described above including upholding the responsibilities assigned to UMT;
  - ii. The establishment of a new Dignity and Respect Oversight Group that will report quarterly to UMT and annually to GA; (See specific recommendations regarding establishment of the Dignity and Respect Oversight group)
  - iii. Investment in supports and training (See specific recommendations regarding investment in supports and training in respective sections of this Report).
  - iv. Ensuring that dignity and respect is a regular item on their meeting agenda as well as the quarterly update reports and is prominent in their communications to the UCD community.
  - v. Proactive involvement in launching a publicity campaign to encourage prevention, reporting and supporting members of the University Community in cases of bullying, harassment and sexual misconduct. This campaign, like many of the other recommendations in this report, should be sustained on a multi-annual basis. See further recommendations below under the communications theme.
- Establish targeted and periodic Dignity & Respect Environmental Assessments to help measure how the new policies are being embedded across all areas of the University and to also help measure impact and accountability.
- Dignity and Respect needs to be threaded into everything that the University does. Consider the promotion of Equality, Diversity and Inclusion (EDI), including Dignity and Respect, and positive cultural change within Schools and Units through processes such as the Faculty Development Framework and through the respective Job Family Frameworks for Staff, Athena Swan and the Quality Review process.
- Incorporate Dignity & Respect into surveys at institutional levels, such as EDI surveys and Exit Interviews, and at College/Vice-President Level through their normal engagement processes such as surveys for Athena SWAN applications.

- If these recommendations are accepted and approved, an implementation plan will need to be developed and overseen to ensure that the recommendations in this report are delivered upon. This plan should include proposed oversight, training programmes, supports that will be available both within UCD and external to UCD, key roles and responsibilities, communications campaign and the key objectives to be reached. A temporary Project Manager should be appointed to assist with this process.

#### Trust and Transparency

- Ensure that appropriate external involvement from outside UCD is visible at each major stage of the Dignity & Respect procedure.
- Establish an Oversight Group for Dignity and Respect in UCD with external representation of experts from outside UCD reporting quarterly to the UMT and annually to the Governing Authority. In addition, the oversight group should include internal stakeholders in the area(s) of bullying, harassment and sexual misconduct including representatives from groups that may be at particular risk of bullying, harassment and sexual misconduct. The Group should also have appropriate senior management commitment and representation. Details on the proposed role of the Group are set out in the Support and Roles section of this report.
- Appoint an external member to the Preliminary Screening Panel to enhance trust and transparency in the screening process.
- Explain more clearly the role of the Preliminary Screening Panel to the University Community.
- Communicate that all formal investigations are carried out by appropriately qualified externally appointed individuals.
- Appoint an external person to hear all appeals of a formal investigation process as appropriate.
- Monitor and publish Dignity & Respect related statistics that will be submitted quarterly to the EDI Group, the UMT and annually to the Governing Authority. The Higher Education Authority is the oversight body that statistics must be reported to externally and a progress report on the Consent Framework which includes broad actions relating to Dignity & Respect.
- Establish Key Performance Indicators (KPIs) to measure impact of the policies. It is recommended that these will be developed in partnership with the proposed Oversight Group for Dignity and Respect.
- Ensure that the topic of dignity and respect is permanently on the agenda for College, School Executive and Unit meetings. This should be the responsibility of the College Principal, Vice-President, Head of School/Unit as appropriate.

#### Support and roles

- Provide a pathway for an external advocacy organisation to support members of the UCD Community who have been involved in issues of sexual misconduct. The detail of this should be considered as part of the proposed implementation plan.
- Within UCD, establish a new Dignity and Respect Report and Support Advisory Service (please note that this is a working title and is subject to change) for all members of the University Community. As part of this, it is recommended that the University should create three dedicated roles of Dignity and Respect Report and Support Advisors (note that this is a working title and is subject to change) who are trained and have experience in this area to hear disclosures and provide support to all parties involved in a bullying, harassment or sexual misconduct related issue. These roles should support the person disclosing up to and including preparing their complaint, throughout an investigation process and also following an

investigation process regardless of the outcome. This service will also support those who have been reported up to and including a formal investigation process and following the investigation – different advisors would support each party involved to avoid any conflict of interest. This service would also be available to others in addition to employees and students who may wish to seek information and support around dignity and respect issues. Further detail on these roles is set out in the Support & Roles section of the report.

- It is recommended that the new Dignity and Respect Advisory Service will be reviewed after 18 months to ascertain aspects such as its effectiveness, scope and if it is adequately resourced.
- Given the quantum leap required regarding training, the Review Group recommend that an EDI training co-ordinator should be appointed (see training theme).
- The Review Group is of the view that the primary area in the future for disclosures and complaints should be via the proposed Dignity & Respect Report and Support Advisory Service. Nevertheless, many other positions in the University have a role to play in reporting and supporting dignity and respect related issues and who may also receive disclosures as people can approach who they feel most comfortable engaging with.
- In addition to the Advisory Service, the Dignity and Respect Contact Persons are a trained confidential peer support panel that are also available as a listening ear and to provide support and information to students and employees so that they can make an informed decision as to how they wish to proceed. For ongoing support or interventions, individuals would be referred to the Dignity and Respect Report and Support Advisors.
- The Dignity and Respect Report and Support Advisor roles are outlined in further detail in the recommendations section and also in the revised policies and support documentation. The Review Group has also developed some initial flow charts to assist with this.
- It will be very important to capture any contacts or reports made to any roles in authority or identified support roles, anonymously or otherwise based on the individuals wishes, and formal complaints of bullying, harassment or sexual misconduct in order to have a complete understanding of the culture of bullying, harassment and sexual misconduct in UCD. It is recommended that a confidential data collection and reporting system will be established in line with GDPR requirements and an electronic system for individuals to confidentially make formal complaints. This should be a priority action.
- Clear guidance and training for bystanders who wish to report needs to be developed. It is recommended that the online Bystander training programme for students in UCD will be evaluated and adapted for an employee audience and incorporated into the overall Dignity and Respect online training programme. There are good examples of active bystander programmes internationally such as the one developed by the University of Cambridge and this amongst others should be considered in the implementation of this recommendation..
- Provide further clarity around the University's relationship with an Garda Síochána (Police) and contact point for individuals in UCD who wish to approach an Garda Síochána. Consideration should be given to engaging with local Garda liaison officers and the role they can play.
- Out of hours contact for support needs to be fleshed out further in terms of what support might be required. This should be considered as part of the implementation and once the Dignity and Respect Report and Support Advisory Service is established.

## Training

- As set out above under the Support and Roles section, appoint an EDI training role to co-ordinate all training requirements.
- In addition to the co-ordination of training, specific investment and supports will be needed to enable the design, delivery and evaluation of training. A short-term training initiative will not instil the commitment to eliminating dignity and respect issues within UCD. There needs to be financial commitment to support training initiatives on a long-term basis.
- It is recognised that training needs to be combined with other actions in order to lead to cultural change. However, training is essential in order to raise awareness of the acceptable behaviours and those behaviours that will not be tolerated and to know where to seek supports and access relevant documentation.
- It is also acknowledged that the various Dignity & Respect related training needs to be combined under a single umbrella and to have flexibility around completion of same such as online training in order to accommodate the many demands on peoples' time.
- Three tiers of training are being recommended:
  - Tier 1 – mandatory Dignity & Respect (online) awareness raising for all employees and students to provide a basic awareness as to the culture of D&R in UCD and the acceptable and unacceptable behaviours, how to seek supports and access documentation and the formal complaints process. This training needs to cover Bullying, Harassment and Sexual Misconduct.
  - Tier 2 – Face-to-face training for key groups that have a role in providing support and assistance in resolving the issue (e.g. Line Managers, Heads of School, Principal Investigators, Module Co-ordinators, Students Union, HR Partners, Trade Unions).
  - Tier 3 – In-depth face-to-face training for dedicated support roles such as the Dignity & Respect Report and Support Advisors, Dignity & Respect Contact Persons and EDI)
- Case studies should form part of training on topical issues such as working/studying from home and cyberbullying.
- It is recommended that the online Bystander training programme for students in UCD will be evaluated and adapted for an employee audience and incorporated into the overall Dignity & Respect online training programme of Tier 1.
- Multi-annual training needs to also occur given the turnover of students, employees and Heads of School on a regular basis.
- Dignity & Respect awareness raising needs to be incorporated into orientation and induction for employees and students and embedded into other existing processes as much as possible e.g. Quality Review process, Curriculum etc.
- Other types of training need to be considered and cross referenced to Dignity & Respect and vice versa. e.g. Unconscious Bias awareness and Cultural & Diversity awareness.

## Communications

- As set out above, the Review Group has proposed a commitment statement that every member of the University Community must sign up to.
- Dignity and respect needs to be on all managers' agendas in their Schools/Units and regularly spoken about and promoted at meetings. This needs to be the responsibility of each manager in the University.

- Develop a communication plan using professional expert support to design posters, flow charts, process maps, videos and to roll out social media and email campaigns in a clear and accessible manner. This needs to occur on a multi-annual basis and will require a budget.
- Ensure communications in relation to D&R policies are clear (including how the formal complaint process will be handled) and accessible (plain English). The Review Group has set out some initial flow-charts to also assist with this.
- The dignity and respect documentation applies to all employees and students, including those that are hourly paid. This should be taken into a consideration as part of the awareness campaign to ensure that everyone is aware that the policy applies to them.
- There needs to be awareness of the other relevant policies and procedures available for incidents that do not fall under the definitions of bullying, harassment or sexual misconduct but are unacceptable behaviours. Examples of this may include discrimination (other than harassment or sexual misconduct). It is recommended that information in relation to procedures for these types of incidents is clearly identified on the EDI website and cross referenced in documentation.
- The appointment of an Implementation Project Manager will play a key role in co-ordinating the communications.

#### Power Dynamics

- The Review Group recognises that power relationships and structures are a significant factor in creating opportunity for bullying, harassment and sexual misconduct and a significant inhibiting factor with respect to reporting and acting on reports of breaches of the policies. Key aspects of power imbalance occur with respect to heads of school/unit and employees and students and others holding positional power as supervisors, mentors, managers and leaders with respect to students, postdoctoral researchers and others in early career and where their positions are temporary with dependence on someone exercising power with respect to assessment, appointment, permanence, promotion and/or other aspects of career development and/or more general well-being. Such power dynamics have the dual effect of enabling those holding power to abuse their authority and to inhibit those affected from making informal or formal complaints - sometimes referred to as 'reluctant complainants'.
- The Review Group considered the issue of a reluctant complaint carefully. A reluctant complainant is someone who does not wish to participate in a formal investigation for their own reasons but wants to notify or disclose an issue to the University authorities. In certain cases, the University may wish to take action by carrying out a targeted Dignity and Respect Environmental Assessment of the area where the individual is experiencing issues. It is recommended that periodic Dignity and Respect Environmental Assessments will also be undertaken across the University where a small number of areas will be randomly selected by the D&R Oversight Sub-Group on an annual basis. These assessments will also help measure how well these policies are being embedded across the University and their impact. Investment will be required in order to support this new process. A Dignity and Respect Environmental Assessment will entail considering the broader cultural issues/prevaling conditions within the area rather than any specific individual complaint. It will consider all relevant data available such as data via the Report and Support Tool highlighting particular statistical trends in an area, anonymous complaints, reports made by individuals who have experienced issues or where witnesses have come forward to the University authorities. An

environmental assessment will not result in any sanctions being issued, however it gives the University the authority to implement action plans aimed at changing culture or behaviours.

It is also recommended that the decision to undertake periodic or targeted environmental assessment will be taken by a sub-group of the Dignity and Respect Oversight Group and will be made independently of any School/Unit/College/Vice-President area. An area will not be permitted to refuse the undertaking of an environmental assessment.

- In certain exceptional situations, the University may instigate a formal investigation where an individual has disclosed an issue but does not want to bring a formal complaint themselves. This would be limited to circumstances where there is grave concern for the safety and welfare of individuals. The individuals involved would be engaged with and afforded all the necessary supports and precautionary measures. The guiding principle must remain however that an individual that reports an issue makes the decision as to how they wish to proceed in relation to resolving the issue and they remain in control of the situation.
- If a Bystander witnesses an incident(s), it is recommended that they report this to a Dignity and Respect Report and Support Advisor who will advise around the different options available in relation to addressing the issues raised.
- The University needs to provide a supportive, confidential environment for reporting parties in which to discuss the issues being experienced. It also needs to support them to make a decision that is right for them and their situation, recognising it is essential to allow the reporting party to take control in making decisions on what to do next.
- In cases of bullying, the Review Group notes that the new Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work (2021) and the Supreme Court case of Ruffley sets a very high threshold for conduct to be considered bullying. The Code sets out very clearly that a prompt and informal problem-solving approach offers the best potential for addressing allegations of bullying effectively. The Code goes on to state that it is good practice that all informal resolution avenues should be contemplated and where appropriate, exhausted before a formal process is invoked. Proceeding to a formal process should not be viewed as automatic and the Code of Bullying 2021 sets this out. The Review Group recognises the importance of the new Code of Bullying, the value it places on informal interventions and the University's Bullying Policy and Procedure needs to recognise this.
- The Code of Practice as set out above does not apply in cases of sexual misconduct. Informal resolution options where sexual misconduct allegations have been raised are more problematic in the view of the Review Group. The key principle to be maintained is that individuals reporting allegations of sexual misconduct, with the appropriate supports, should be the driver around whatever actions should be taken and the possible routes and actions towards informal resolution should be explored when they are engaging with University and/or external supports. Whether informal interventions are appropriate will depend on the nature of the sexual misconduct. Informal resolution options in cases of sexual misconduct and how they could potentially be applied are set out further in the Supports documentation and are defined in the Sexual Misconduct Policy.
- The Review Group is keen to emphasise however, that it has been noted from the feedback, that there are many reasons as to why some or all informal resolution options may not be appropriate for some individuals to engage with in cases of sexual misconduct and may wish instead to proceed to the formal investigation stage.

- The establishment of a proposed Dignity and Respect Report and Support Advisory Service (as set out in the Support and Roles section) will allow individuals to contact this area directly without having to go through line management/hierarchy structures (in the case of employees) or other student services (in the case of students). The intention is that this service will provide support directly and independently to the person raising an allegation of bullying, harassment or sexual misconduct and is also available to those being reported or a respondent in a formal complaint.
- Separate support documentation has been developed outside of the policies and the formal complaints procedure. The difference between roles is highlighted in the support documentation to raise awareness and understanding that power differentials may exist.
- The University may impose at any stage, precautionary measures (described in the draft Policies) on a student or employee or other who is alleged to have engaged in bullying, harassment or sexual misconduct pending the outcome of a criminal or University investigation process.
- Training and awareness raising is essential for managers to understand the power differentials that may exist and to help create a culture of dignity and respect in their area. It will be important when training materials are being designed and delivered that university specific case-studies and examples highlighting power differentials form an intrinsic part of the programme.
- Linked to the Trust and Transparency recommendations, external involvement will be at every major stage of the revised dignity and respect policies and procedure.

#### Language

- Consider using different terms to refer to “complainants” and “respondents” in informal stages. It is recommended that the terms “*reporting person*” and “*person being reported*” be used in the informal stages (i.e. before a formal complaint is submitted). This language will be used throughout the informal stages from now on.
- Documents must strike a balance between supporting the reporting person while protecting the rights of the person being reported. Arising from this, the Review Group has revised the policies and other documents.
- The Review Group has set out two separate policies (Bullying and Harassment and Sexual Misconduct). The Review Group has followed the University template with regard to these policies. Separately, the Review Group has set out Supports Documents, one for Bullying and Harassment and one for Sexual Misconduct and a further separate formal complaints procedures document. The intention around the Supports document is to provide information to all individuals involved on supports that are available during this process, the details of appropriate options available and the steps the University can take to support individuals.
- The Review Group has endeavoured to ensure the language and tone is consistent throughout Dignity & Respect documents whilst adhering to the standard University template for University policies.
- The Review Group has recommended a stand-alone separate procedure for formal complaints.
- While policies and procedures are by their nature formal in tone, the Review Group has set out a separate document outlining the supports available to members of the University

community. The support documentation is less formal in tone. The Review Group also recommend that supports are set out clearly on appropriately designed websites and posters which will be highly visible around the campus.

- The Review Group has also set out a suite of flow-charts as supplementary user-friendly documentation.
- It is recommended that as part of the implementation plan, further work will need to be done regarding manager, employee and student guides, FAQs, case-studies and short “cheat” sheets.

#### Legal and Technical context

- As set out above under Power Dynamics, the Review Group considered the issue of a reluctant complainant carefully.
- In certain exceptional situations, the University may instigate a formal investigation where an individual has disclosed an issue but does not want to bring a formal complaint themselves (see Power Dynamics above).
- The Review Group recognise that there should be no pressure on a reporting person to make a formal complaint and it is important that they will be supported throughout any informal interventions or the complaints process should they decide to choose any of these options.
- It should always be the preference that complaints not be anonymous as it may not be possible to carry out a formal complaints investigation without a complainant. This is due to the fact that the principles of natural justice need to be fulfilled whilst conducting a formal investigation – a respondent is entitled to know what they are being accused of and who the accuser is.
- The Review Group recommends that a Precautionary Measures Panel be put in place. It is proposed that the panel should consist of at least six UMT members and that one panel member would be called upon on a rotational basis, ensuring no conflict of interest exists. The panel members should undergo training on the principles of fair procedure and natural justice. The panel member should have the authority to make a decision based on the information available to them in the complaint form, except in cases where neutral suspension is being considered. A neutral suspension hearing should be held prior to any decision to place an employee or student on neutral suspension.
- In keeping with the commitment to have as much external oversight through the entire process, the Review Group recommends that any appeal following a formal investigation process should be heard by an external independent appropriately qualified individual.
- It is recommended that a Code of Conduct, focusing on behaviours and expectations of the University should be developed as a separate project to this review.
- More focus on responsibility and accountability on roles to follow and provide correct information in accordance with the policy and procedure has been emphasised in the policies as well as highlighting the procedures for dealing with any breaches of university policy.
- It is recommended that there will be no time limit regarding receipt of complaints by the University. The focus will not be on the length of time to bring the complaint forward but rather the impact of the delay 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.

If the Screening Panel confirm, based on the information they have received as part of the formal complaint, that impact of the delay will not impinge on the likelihood of a fair investigation, an external investigator may be appointed. The external investigator, based on the information received as part of the investigation, can recommend that by reason of the passage of time and taking into account the considerations referred to above, a fair investigation will not be possible.

In the event of the death of a respondent, an investigation will not proceed.

- In response to the concern of how personal information is shared and retained by the University, the Review Group recommends that a data privacy statement be developed, with the support of the Data Protection Office.
- The Review Group recognises the concerns of stakeholders in relation to the role of the Preliminary Screening Panel and this section has been revised to provide a more transparent process by developing decision making criteria and recommending the introduction of an external panel member. A webpage should also be developed to provide up to date and accurate information of how panel members are appointed and who the current members are. It is recommended that, in line with the new Code on Bullying 2021, that the screening panel advise complainants where they are of the view that informal options for resolution are the most appropriate means for resolving issue(s). This would apply to all complainants and not just employees. It is also recommended that representatives from the screening panel are available to meet with complainants where a complaint is not deemed to fall under the definitions and/or scope of the policies so that they can advise as to the reasons for this and also highlight other options available to them for resolution. The screening panel would also meet with the complainant where informal interventions are deemed appropriate.
- A stand alone, single formal investigation procedure has been developed to simplify the process for someone considering submitting a complaint. In support of this, process maps have been developed to outline the steps involved in screening a complaint, the formal investigation process and the appeals process.
- The redraft of documentation has been developed to provide reassurances that it is possible to have multiple complaints by an individual of bullying, harassment and/or sexual misconduct against one person, or others, however there will only be one investigation procedure. This is to avoid unnecessary delays of having parallel investigations. It is recommended that there be one single complaint form and if someone is unsure of which category their complaint falls into, they can submit the form and they can then be provided with support to select the correct one.
- Multiple complaints made by different people against the same individual may also be considered in a single investigation if the complaints are related to the same incident(s) and timeframe. Separate reports will be issued by the investigator.
- The appointment of all investigators is made externally and independently. The Review Group recommends that a separate webpage be developed to host the relevant governance

information pertaining to the process for appointing investigators to employee and student complaints.

- It is recommended that in cases of sexual misconduct, the formal investigation should comprise of two investigators with gender balance.
- A commitment has been made within the procedures to keep complainants and respondents up to date with information that is relevant to them, following the conclusion of an investigation. This includes providing information on the lifting of any precautionary measures that were in place and informing complainants whether a disciplinary process has taken place if a complaint is upheld. A complainant can be informed that a disciplinary sanction has been issued, however they cannot be informed as the level of sanction that has been issued due to GDPR legislation.
- The scope section of the policies has been revised to include incidents that happen off campus and on unofficial university business. There may be instances where members of the University community (be they students or employees) experience an incident(s) in situations unconnected to the University. The scope of the University's policies may well apply in these instances where the alleged incident(s) has a direct impact on the individuals when there is ongoing interaction between the individuals in a working or studying environment. Inappropriate behaviour that takes place online should be included within the scope of the policy.
- Given the potential risk of breaches of the dignity and respect policies via social media, it is recommend that the group responsible for reviewing the University's position on social media usage takes account of issues relating to dignity and respect. It would be important that relevant parties with detailed knowledge of dignity and respect policies and practices in UCD be members of this social media review group.
- Restorative Practice in the context of this report refers to the potential opportunity, following a formal investigation or informal intervention, for a person who has been impacted by another individual's actions or behaviour to voluntarily discuss this impact with that individual and then collectively to work to identify ways to repair the working relationship or relationship between students. The focus is not on punishment or on the bullying, harassment or sexual misconduct issues but providing an opportunity for individuals to discuss the impact of the behaviour and ultimately help to restore the professional relationship. In summary, it covers aspects such as the issues that occurred, how these have impacted and how things can be made better. Further work will be required around this as part of the implementation plan, particular consideration will need to be given to see if this is appropriate around sexual misconduct issues. Engagement with experts in this area will be necessary as part of the implementation of this recommendation.

## Definitions

- There is no legal definition of sexual misconduct within Irish law. The definition in the policy has been reviewed by experts to ensure appropriate sensitivities are given, while taking into account the need for a robust definition.
- The definition of consent has been reviewed based on external expert advice. This reflects the definition used under the Sexual Offences Act.

- The 2021 Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at work includes some important qualifications on the generally accepted definition of bullying and does so by reference to the decision of the Supreme Court in *Ruffley*. Section 2.3 of the Code:

*“In line with the above operational definition, workplace bullying [or bullying in a study environment] should meet the criteria of an on-going series of accumulation of seriously negative targeted behaviours against a person or persons to undermine their esteem and standing in a harmful, sustained way. Bullying behaviour is offensive, on-going, targeted and outside any reasonable “norm”. A pattern and trend are involved so that a reasonable person would regard such behaviour as clearly wrong, undermining and humiliating. It involves repeated incidents or a pattern of behaviour that is usually intended to intimidate, offend, degrade or humiliate a particular person or group of people – but the intention is not important in the identification process.”*

- The example behaviours associated with bullying and harassment have been reviewed in the revised drafts in accordance with feedback received.

# Chapter 2: Dignity & Respect Review

## 2.1 Introduction

UCD is committed to the promotion of a culture which upholds the dignity and respect of the individual and which supports their right to study and/or work in an environment which is free from all forms of discrimination. This is supported in the University strategy “Rising to the Future 2020-2024” through its strategic objectives to “provide an inclusive educational experience” and to “attract, retain and develop an excellent and diverse cohort of students, faculty and staff”. Promoting a culture of dignity and respect and wellbeing is also a strategic objective of the UCD Equality, Diversity and Inclusion (EDI) [Strategy](#).

A Working Group was established in Autumn 2019 to carry out a review of the UCD Dignity and Respect policy and procedure to enhance the existing policy and procedures, which were last reviewed in 2017. As set out in the Review Group terms of reference, the review has been undertaken for a number of reasons:

- To revise the dignity and respect policy and procedures based on feedback and experiences of those who have experience of them to ensure that they are meeting the needs of the University community;
- To ensure the policy and procedures reflects developments at national level, specifically relating to the Consent Framework on Ending Sexual Harassment and Sexual Violence in third level education (visit our [webpage](#) on Ending Sexual Violence for information on initiatives undertaken by UCD in this area) and Codes of Practice on Bullying;
- To be aligned to best international practice;
- To promote a zero-tolerance approach to bullying and harassment and sexual harassment and sexual misconduct and raise greater awareness around supports and options for resolution of issues of this nature.

## 2.2 Review group Terms of Reference and Membership

### **Purpose**

The purpose of the review was set out in the terms of reference as follows:

A major review of the UCD Dignity and Respect policy and procedures was carried out in 2017 and launched in December of that year. As this policy and procedures had been in operation for two years, it was considered good practice from a policy review perspective to review these documents to identify any challenges experienced and enhancements that could be made as a result. Examples included linking this policy to UCD’s new Disciplinary Statute 28, refining the role of the screening panel, adjusting the complaint form with the possibility of creating an online version and raising greater awareness around dignity and respect and the informal and formal options for resolution and the supports available. Also due to a number of developments, both at a national level and internally in UCD, it was considered timely that the policy and procedures be reviewed. These developments as outlined in the terms of reference included the following:

- National Framework for Promoting Consent and Preventing Sexual Violence - it is being proposed that a separate policy to cover sexual harassment and violence/conduct be developed which will also require an amendment to the existing Dignity and Respect policy. This is due to the fact that complaints of a sexual harassment or sexual violence/conduct are managed differently from bullying and harassment including instances where complainants are advised to contact the Gardaí (Police) as the alleged offences may be deemed to be criminal acts. Currently, there is no reference in the Dignity and Respect policy to sexual violence. This National Framework has a specific focus on sexual harassment and sexual violence and the development of a specific policy to address how these instances are prevented and managed is being put forward.
- Development of Anonymous Reporting tool - the development of this tool has highlighted gaps in the Dignity and Respect policy including the fact that there is no reference to sexual violence and also around reporting statistics regarding bullying, harassment and sexual harassment.
- Reporting Requirements around Dignity and Respect – there are now HEA reporting requirements around bullying, harassment and sexual harassment as well as an increased number of Freedom of Information requests in this area. Guidance and standardisation around these reports need to be agreed which will also enhance transparency around the culture of dignity and respect in UCD. This is also linked to the above point regarding the Anonymous Reporting Tool.
- GDPR Legislation – greater clarity in relation to managing complaints of this nature at the various stages is required from a GDPR perspective.

### **Working Group**

It was proposed to establish a Working Group consisting of key stakeholders to support this review. Membership included the following:

- Rory Carey, Director of Culture and Engagement (*Chair*)
- Professor Colin Scott, Vice-President for EDI and UMT member
- Marcellina Fogarty, Strategic Equality, Diversity and Inclusion Manager
- Professor Jason Last, Dean of Students
- Lynn Foster, Student Engagement Manager
- Dr Aoife Duignan, Student Complaints Officer
- Licia Carlesi, Senior Executive Assistant, EDI
- Karen Conway, Employee Relations Specialist
- Aisling O’Grady, Head of Student Advisers
- Julian Bostridge, Director of UCD Legal Services

- Emer Cunningham, Solicitor, UCD Legal Services
- Una Carroll, Student Union Welfare Officer 2019/20
- Ruairi Power, Student Union Welfare Officer 2020/21
- Lorraine Bailey, HR Partner
- Dr Conor Buggy, Dignity and Respect Contact Person
- Gillian Boyle, Research Administration, VPRII Office

## Remit

The remit of this Working Group included the following:

- Review the Dignity and Respect policy and procedures in terms of enhancements that can be made following feedback from key stakeholders including the role of the screening panel and the form for making formal complaints.
- Develop a separate policy to cover sexual harassment and violence/conduct and amendment of the existing Dignity and Respect policy to reflect this.
- Review the Dignity and Respect policy and procedures to take account of any amendments required as a result of the development of the Anonymous Reporting tool.
- Review the Dignity and Respect policy and procedures to take account of any amendments required as a result of the revised UCD Disciplinary statute.
- Consider a range of measures to build confidence and enhance the use of available supports and options for resolution of issues of a dignity and respect nature.
- Provide clarity in terms of data to be collected, recorded, reported and published in line with GDPR regulations leading to greater transparency around dignity and respect issues.
- Run an awareness raising campaign around supports and options for resolution of issues including training, all of which will support a culture of dignity and respect and promote a safe environment in which to disclose issues.

## 2.3 Chronology

The information below outlines some of the key milestone meetings/updates that took place over the duration of the Review.

- i. 22.11.2019 – Terms of Reference for review of Dignity and Respect (D&R) Policy and Procedure agreed
- ii. 13.01.2020 – First D&R Review Group Meeting
- iii. 24.02.2020 – Second D&R Review Group meeting
- iv. 18.05.2020 – Third D&R Review Group meeting (part 1)
- v. 19.05.2020 – Third D&R Review Group meeting (part 2)

- vi. 03.07.2020 – Second Draft of policy and procedure provided to the review group taking into account feedback received in May.
- vii. 10.08.2020 – Chair of the D&R Review Group met with UMT to gather feedback
- viii. 10.08.2020 – Chair of the D&R Review Group met with UMT to gather feedback
- ix. 15.09.2020 – President’s Bulletin # 293 – Highlighting to all employees that the D&R Consultation process beginning
- x. 24.09.2020 – D&R Consultation Period begins:
  - a. 7.09.2020 – Trade Union meeting
  - b. 24.09.2020 - Employee Focus group
  - c. 28.09.2020 – Employee focus group
  - d. 7.10.2020 – HR Legal focus group
  - e. 8.10.2020 – EDI Groups and Subgroups focus group
  - f. 13.10.2020 – Heads of School/Heads of Unit focus group
  - g. 14.10.2020 – Trade Union meeting
  - h. 14.10.2020 – Student focus groups x 2
  - i. 15.10.2020 – Student focus group
  - j. 15.10.2020 – Heads of School/Heads of Unit focus group
  - k. 2.11.2020 – Academic Experts focus group
  - l. 19.11.2020 – Dignity & Respect Contact Persons and Student Advisers focus group
- xi. 7.10.2020 – Consultation update provided to the Review Group
- xii. 8.10.2020 – Governing Authority Meeting
- xiii. 13.11.2020 – Consultation overview document provided to review group
- xiv. 17.11.2020 – President’s Bulletin # 301 – Interim Update on Review Group progress to all employees
- xv. 19.11.2020 – Fourth D&R Review Group meeting – Discussion regarding consultation feedback and initial draft recommendations
- xvi. 15.12.2020 – Fifth D&R Review Group meeting
- xvii. 8.01.2021 – Draft material sent for external review
- xviii. 22.01.2021 – External feedback received (National Women’s Council; Dublin Rape Crisis Centre; Mens-Aid; Arthur Cox and an external investigator)
- xix. 09.02.2021 – Revised Draft Report sent to Review Group for comment
- xx. 19.02.2021 – Draft Report submitted to University Management Team for consideration
- xxi. 02.03.2021 – Discussion of draft Report at UMT and recommendations made
- xxii. 02.03.2021 – Publication of draft report for feedback from the University community
- xxiii. 24.03.2021 – Closing date for receipt of feedback from the University community
- xxiv. 14.04.2021 – Dignity and Respect Review Group meeting to sign off on report
- xxv. 28.04.2021 – UMT Meeting to approve report
- xxvi. 13 May 2021 – GA Meeting to approve report

## 2.4 Summary of Review Methodology

As part of the first phase of the review, the Review Group carried out desk-based research on dignity and respect practices nationally and internationally. This included the following: Trinity College Dublin; Dublin City University; University of Manchester; University of Edinburgh; Cambridge University; Goldsmiths University of London and Universities Australia. The Group specifically focused on the area of sexual misconduct and looked at practices under the following headings:

- Definitions
- Scope
- Supports
- Reporting
- Investigations
- Sanctions

A detailed table can be found in Appendix IV – Dignity & Respect Practices Nationally and Internationally.

Moreover, research and consultation conducted by the University of Cambridge when considering revisions to their approach to Dignity and Respect highlighted some particular challenges facing the Higher Education Sector. These included the following:

- Long hours culture, highly pressurised and competitive environment
- Hierarchy and power structures
  - Students and employees
  - “Status” of different employee groups
- Prized academic staff are perceived to ‘get away with it’
- ‘Old fashioned’ and slow changing culture
- Mix of backgrounds and cultures
- Blurred boundaries: Graduate students and academics. The lack of distinction between ‘work’ and ‘life’
- Technology: open all hours culture may facilitate harassment.

The Review Group also considered all the legislation underpinning bullying, harassment and sexual harassment in Ireland along with Codes of Practice. This included:

- Safety, Health and Welfare at Work Act 2005
- Non-Fatal Offences Against the Person Act, 1997
- Equal Status Acts, 2000 - 2018
- Prohibition to Incitement of Hatred Act, 1989
- Employment Equality Acts, 1998 – 2015
- Data Protection Act 1988 – 2018
- Irish Human Rights and Equality Commission Act 2014
- Criminal Law (Sexual Offences) Act 2017

- Protected Disclosures Act 2014
- Industrial Relations Act 1990 (Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work Order 2020) (SI no 674 of 2020)
- Employment Equality Act 1998 (Code of Practice) (Harassment) Order 2012 (SI No. 208 of 2012).

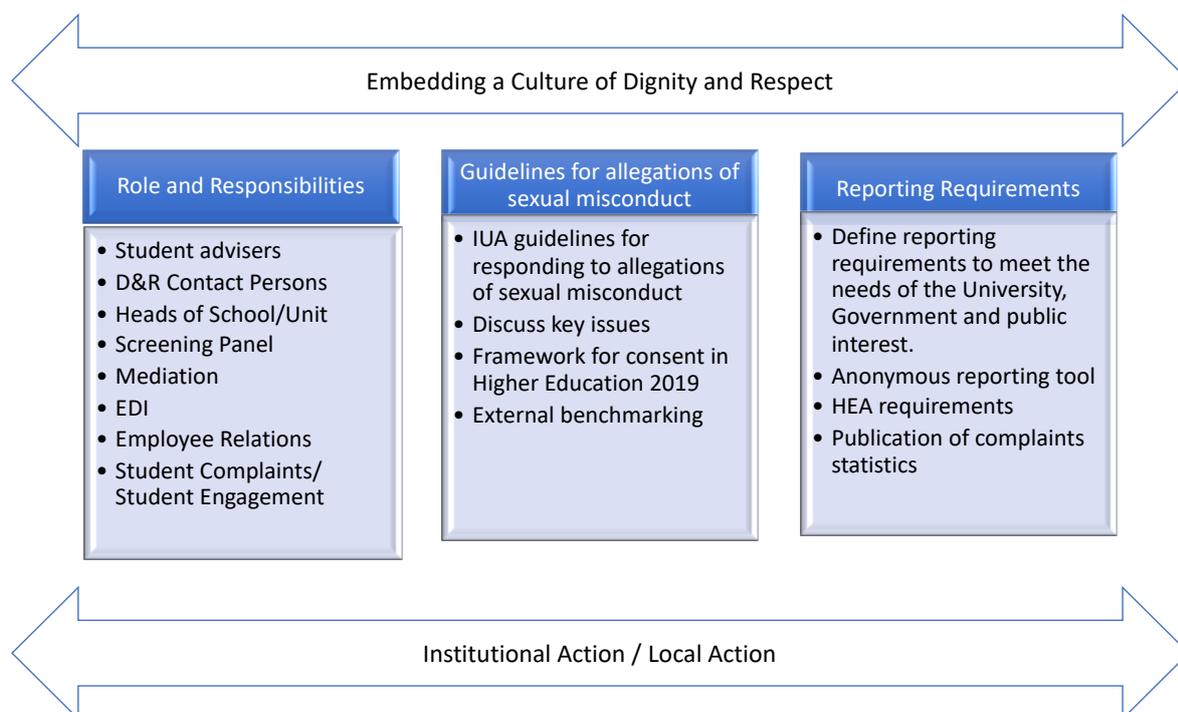
The review of the University’s policies and procedures was already underway when the Irish Universities Association (IUA) circulated a draft Guidance for Universities on *How to Respond to Alleged Staff or Student or University Related Sexual Misconduct* in January 2020. The Review Group gave their feedback to the IUA and this is set out in Appendix I of this Report. The Guidance document itself is set out in Appendix II and the key components of it have been integrated into the revised policies, formal complaints procedure and the enhanced supports that are recommended in this report.

UCD’s participation in the national ‘It Stops Now’ campaign (Ending Sexual Harassment and Violence in Third Level Education), led by the National Women’s Council of Ireland started in 2017, and the Government Consent Framework Safe, Respec tful, Supportive and Positive Ending Sexual Violence and Harassment in Irish Higher Education Institutions has also been carefully considered by the Review Group in help framing the suite of recommendations in this Report.

Prior to consultation, the Review Group had three broad streams of work:

- Examination of current roles and responsibilities in dignity and respect related matters and consideration of possible future ones;
- Development of sexual misconduct policy and guides based on literature and practice;
- Enhancement of reporting cases of dignity and respect based on literature and practice.

**Figure 2.1 – Initial Project Streams**



The outputs from the three streams of work were presented to the Review Group and initial draft Policies (Bullying & Harassment; Sexual Harassment and Sexual Misconduct) and Procedures were then produced, discussed and revised. Subsequently, this documentation was brought forward to the University Management Team for consideration as the consultation process commenced. The consultation phase of the review is outlined in the following chapter and the recommendations of the Review Group are set out in Chapter 4. Revised policies, supporting guidance and the formal complaints procedure are set out in the subsequent chapters.

# Chapter 3: Consultation Process & Feedback

## 3.1 Summary of Consultation Process

Since the establishment of the Dignity and Respect Review Group in December 2019, there has been extensive consultation to support the review process and to ensure that all stakeholders across the University have had an opportunity to have their voice heard. Every individual within the University who wished to contribute to the development of the policies and procedures has had the opportunity to do so. All feedback has been collated and grouped into emerging themes for analysis.

An independent external facilitator was appointed to carry out focus groups. Feedback from these focus groups was shared with the Review Group.

This chapter includes the collated feedback. The feedback received is based on draft documents that were shared with the University community in September 2020. These were:

- Dignity and Respect - Bullying and Harassment Policy
- Dignity and Respect - Bullying and Harassment Procedure
- Dignity and Respect - Sexual Harassment and Sexual Misconduct Policy
- Dignity and Respect - Sexual Harassment and Sexual Misconduct Procedure

**It is important to note that the feedback collated in Section 3.2 relates to the draft documents from September 2020. As a result of the consultation process, these documents have been subsequently revised considerably by the Review Group. The revised documents are contained in Chapters 5, 6, 7 and 8 in this report.**

**Table 3.1: Consultation process**

Stakeholder / Action	Type	Date /Time
<b>Internal</b>		
UMT x2	Meeting	11 August 2020/5 August 2020
Trade Union x 2	Meeting	7 September 2020/14 October 2020
Individuals (those experienced D&R issues)	Meeting	Ongoing - September 2020
Employees x2	Focus Group	24/28 September 2020
Human Resources/UCD Legal	Focus Group	7 October 2020
EDI Groups	Focus Group	8 October 2020

Governing Authority (x2)	Meeting	8 October 2020/January 2021
Heads of School/Unit (x2)	Focus Group	13 October 2020/15 October 2020
Students:		
Students Union Sabbatical officers	Focus group	14 October 2020
Residential Assistants	Focus Group	14 October 2020
Open to all Students	Focus Group	15 October 2020
Dignity & Respect Contact Persons/Student Advisers	Meeting	19 October 2020
Internal Academic Experts	Meeting	02 November 2020
All Employees/All Students	Written submissions	23 October 2020

Further consultation with the Dublin Rape Crisis Centre, National Women’s Council National Advisory Committee, Mens Aid, an experienced expert investigator of D&R complaints and external legal review has taken place as part of the consultation process. This feedback is presented later in this chapter (section 3.3). Following revision of the documents and discussion of the report by UMT on 2 March 2021, further feedback on the draft revised documents was invited from the UCD community. This feedback is captured in Section 3.4.

## 3.2 Feedback Themes from Internal Consultation (A – I)

There are 9 themes which emerged from the stakeholder feedback:

- A. Culture
- B. Trust & Transparency
- C. Support/Roles
- D. Training
- E. Communications
- F. Power Dynamics
- G. Language
- H. Legal & Technical context
- I. Definitions

**Some themes have subgroups created within them as the feedback was vast and complex. The themes include all collated feedback. Individuals and groups that were met by the facilitator are not identified in order to protect confidentiality and feedback has been summarised in some cases where the same point was raised multiple times. However, where possible, the language and tone of the feedback has been presented as received by**

**the external facilitator and through written feedback. Many of the statements are quotes taken by the facilitator from the feedback sessions.**

## A. Culture

The following are the key points made as part of the consultation process around the culture of dignity and respect in UCD. Whilst culture was categorised as an individual theme for the purposes of reviewing the feedback, it is the view of the Review Group that the recommendations made across the themes will all contribute to culture change.

### 1. Culture

- “It is important that individuals come forward with the issues that they are experiencing so that steps can be taken to support the individual and for the issues to be resolved.” This sentence should be deleted. If support is provided, the individual will report.
- Initiating new policies and procedures, while helpful and welcomed, will not of themselves bring the necessary cultural and organisational change. Without such organisational cultural shift in the leadership and of the University, new Dignity and Respect Policies and procedures will prove futile.
- As well as moral obligation to ensure a culture of equality, diversity and inclusion, based on principles of dignity and respect, universities have legal obligations to create safe environments that are devoid of bullying, harassment, sexual harassment, sexual misconduct and sexual violence.
- Policies reflect a deficit model and are not premised on the importance of identifying a core set of values and standards. There is a need to stress the importance of proactive rather than reactionary approaches. In the current draft of the policy, significant emphasis is placed on what happens after an incident has taken place, with the focus on 'procedure'. It should centre around changing the university environment which should become more welcoming and safe for students, staff, and faculty of various backgrounds and differentially positioned within the university hierarchy.
- Fear to speak out may be generated from multiple perspectives some of which are unique to higher education institutions for example fear of not being believed, a fear of how it might impact their career and further job opportunities or worse that the University will simply not take their disclosure seriously and the status quo continues. Victims need a clear strategy on how their disclosure will be managed by the University and be kept up to date on all progress and outcomes of their case.
- UCD culture has a tendency to minimise issues and consider EDI inconsequential; need a campaign to change culture.
- Leadership is critical. UCD needs to lead by example. Manchester University is a good reference for best practice. They have an independent ‘Internal Affairs Department’ manned by former police.
- Need to conduct proper, formal, exit interviews.
- The college is so hierarchical and invites bullying.
- There was a lot of reference to, and huge concern about a “toxic” culture, which has gone unchecked for many years. The policies do not address the “toxic” culture.
- There is little support for people managers who wish to create a better culture.

- Unease about the ‘major emphasis’ on informal complaints. There is no whistle-blower protection programme – this reinforces a culture of silence “Every School has a serial bully”.
- The ethical and cultural tone is wrong. We need to make this fair to all – complainants, respondents and bystanders. Enough people are “othered” – this sets the tone for how little we can change the culture.
- Counterproductive to not inform the complainant of the outcome of their complaint. Barrier to improving the culture of dignity and respect and UCD; will prevent the victim/survivor from achieving closure.
- The policy does not include any warning against those who actively try to dissuade people from making a complaint, which has emerged as a very real cultural problem.
- Regarding the question of reputational damage for the institution, the surest way for the institution to suffer long term and severe reputational damage is to not put the victim or alleged victim at the centre of this process.
- Everybody should be well-educated not to bully others, therefore, considering more educational aspects could be useful. This policy needs to choose humanity and an individual's right to dignified treatment, over another's right to education.
- Anonymous surveys and audits should be generated, reported and responded to at regular intervals in each College as part of the systemic and cultural change process.
- There could be cultural differences around how people express (e.g.) intention - which could be misinterpreted (e.g. Irish tend to be very polite and friendly. Direct feedback could be seen as threatening.) If someone’s intention is positive, but misinterpreted – what are they guilty of?
- Sometimes people are aware of problems, but the problems are ignored. We have a high-profile example of how this is not working. We do not have faith that UCD will enforce these policies. UCD thinks people are wrong to go to the media. We are cynical and sceptical and do not trust (some) senior UCD personnel. UCD needs to actually have the attitude of no tolerance rather than just saying it.
- The documents seem very policy led, and culture and people are secondary concerns. We need to move from policy to developing a culture and understanding of the complexities, nuances, and sensitivities in this area, so that we have a more developed insight and appreciation.
- Covid restrictions means that the UCD work environment is reaching directly into people’s homes and that potential incidences of bullying are open to observation and scrutiny by third parties. How do UCDs interactions and etiquette align with best practice and culture elsewhere?
- Ultimately, all this is about character (the review process), and to get a real solution, that will involve character being part of the narrative. E.g. if you are kind to a brute, they'll see you as weak and try to victimize you, whilst if you are genuinely kind to a citizen/gentleman/gentlewoman, they'll feel obliged to repay that many times over. The brutes and brutish behaviour is the problem and we need to deal with that. I believe that there is a significant narrative risk here, because the problem is being set out in a story that is only adequate to merely make a description of it, rather than being set out in a story that has sufficient depth to not only describe the problem, but also in which a progressive solution is attainable. Essentially the narrative and the description of the issues by UCD is too shallow and that prevents a realistic solution being possible. I also think there is a huge lack of care. And that is why the narrative is so shallow. E.g., when asked what the outcome of the 27

complaints was, the answer was they were brutally tabooed because nobody wanted to take responsibility and could get away with not doing so. From a cultural risk perspective that is a dangerous red flag.

## 2. Restorative Justice

- It has been suggested that restorative justice should be offered voluntarily, especially in relation to student issues, delivered by suitably qualified team at the appropriate time if the case warrants.

## 3. Restart the review process from the beginning

- There are some viewpoints stating a lack of confidence in the on-going revision of associated policies and procedures due to the fact that areas involved in the review have been involved in managing the current D&R process. Some want the review to begin again, drawing upon research and clinical expertise within UCD and more of a complainant- led approach.
- It has also been suggested that an external organisation with professional knowledge of sexual harassment should draft a new policy.

## 4. Consultation Process

- There is concern that this is an extremely rushed process without giving due time and consideration to allow all employees to engage in the review. Would UMT/EDI consider staging the review from this point forward with a second opportunity for a broad review of revised drafts open to input from across the wider UCD community including students and employees?

## 5. Specialist expertise

- It is suggested that the review committee should include clinical, academic and people who have lived the experience. The victims/complainants need to be able to tell their story by use of actors reading out people's accounts.
- There is a viewpoint that expertise within UCD has not been used to develop the policies, and that these experts can help to shape the documents to be more inclusive of the concerns of complainants and victims.
- While it is clear how to make a complaint, it is overwhelming, having the option to speak to Women's Aid would be helpful.

## 6. Proactive measures

- Proactive measures are not listed within the policy.
- Anyone found to have breached the dignity and respect policy should be required to attend a mandatory D&R briefing.

## 7. Funding

- The cost of an external investigation should be covered centrally, not by the school or unit so that the head of school does not have a reason to dissuade complaints.

## B. Trust/Transparency

Feedback has shown a lack of trust in the University's structures. A lot of feedback is calling for more information and transparency in the processes and how they are carried out. As trust and transparency are closely linked, the feedback has been grouped together to allow further analysis.

### 1. Trust and Transparency

- The final draft of these policies and procedures should be reviewed by an independent, external, expert review group. The National Advisory Council (NAC), established by the NWCI, and with representation from the DRCC and HEIs, are in a position to do this in a short-term, interim capacity and should be contacted by UCD in this regard.
- A formal assessment should be undertaken, by an external agency, to ascertain the scale of bullying, harassment, and sexual harassment within the University. Such a base-line assessment should establish the views of students, employees (including those on short-term contracts) at UCD. There must also be a commitment to publish the results of this assessment and to respond to it in a timely and proportionate manner.
- There should be an independent panel responsible for investigating complaints, we need an external mediator.
- There was a distinct lack of trust about the whole process from beginning to end: with (this) consultation process as well as the policies and procedures. Involving independent people was mentioned again and again – on the working group, providing training, auditing schools and units, auditing policy/procedures, supporting complainants, supporting those who support complainants. Outsource the whole process.
- Hand over the whole development of the policies to an external organisation, one with previous success in industry.
- Welcome section 11 on Monitoring and Reporting but we are well past the point where we can credibly do this internally. The monitoring and reporting should be led, with suitable terms of reference, by appropriate experts outside the University.
- An independent investigation into historical cases and cover-ups is needed to restore confidence.

### 2. Data/Reporting

- Have an effective and transparent monitoring, analysis and reporting of statistics process that supports this Policy. Anonymous reporting will not suffice in this regard as it offers no protections for the victim. With robust and transparent disclosure and reporting mechanisms that are trusted by students and employees, the need for anonymous reporting should be removed.
- There is an absence of a comprehensive set of data to inform these policies and procedures. and that there needs to be greater investment in the gathering of data and greater transparency in its reporting. How does the University hold itself accountable to ensure these policies are implemented effectively?
- We are subject to external review in so many other areas - which enhances the University.
- Important to include how many people have been sanctioned in the data publications, to show that the policies are having an effect.
- Other sectors within the University should receive information/ data that is derived from this report and not simply UMT. Representatives from the University should have access to

anonymised data in order to safeguard that change is evolving all the time in line with the complaints being brought forward. An independent review of the annual report should occur to ensure checks and balances are in place and that there is an independent review outside of University management who has oversight provision of such data.

- Concern that the College encourages complaints through the Student Union as these are outside FoI and HEA statistics? All employees can make a protected disclosure about UCD to the HEA – that information should be made available.
- Data needs to be reported to the GA (not just UMT)
- Statistical data could be shared more broadly, e.g. with the Department of Further and Higher Education, Research, Innovation and Science.

### 3. Other

- Silence, lack of accountability, legalism and an atmosphere of institutional self-protection must be replaced by an open, dialogical, respectful environment. University leaders must do a better job in committing to the difficult work of meaningful change.
- Who is screening the information? There needs to be more transparency for the person reporting, there is a lack of transparency on who collects and reports data?
- Victim should have control of the situation, that is really important in relation to making a complaint
- In general, the idea of sending a complaint to an anonymous mailbox (edi@ucd.ie) was felt to be inappropriate. How many people can read our email? More transparent processes are needed (e.g. who is on each panel or committee, who receives complaints, etc). Complainants should be able to identify potential conflicts with members of the panel.
- The policy states that the investigation is done by an independent body. It would inspire more confidence if more, if not all, of the process from the screening to the conclusion was done independently and so outside of UCD's hierarchies.
- The screening panel and appeals panel are chosen by UCD Legal, UCD HR, and the Registrar. It should be an independent panel. Independent panels should be involved in the screening and appeals process - senior officers of the University should not be involved.
- Transparency over the amount of the University's central budget being allocated to this process would serve to enhance confidence in the process and the structures that are being put in place.
- The relationship with HRPs was discussed – there is a concern that levels of trust have been eroded. Sometimes advice has not been forthcoming or has been very delayed.
- Accountability is missing on several fronts: e.g. what happens to those who fail to act within given timeframes?

## C. Supports/Roles

Roles and supports was a major topic of conversation in the consultation process. The feedback has been broken down into a number of sub-categories for ease of analysis.

1. Existing Support Roles in UCD  
Dignity and Respect Contact Persons

- Being “known”/visible as the D&R contact person may be an advantage in encouraging employees and students to come forward in cases of harassment. D&R contact persons should be trained and present and visible in all Schools/Units;
- Too much emphasis is on roles such as D&R persons, these are voluntary positions. They do not have skills to deal with serious sexual harassment/assault cases. Should be referred to DRCC instead. If they are to be trained specifically in this area, students should be encouraged to go directly to them.
- D&R Contact Persons need to be seen to be independent from HR in particular. Need for more meetings, twice per trimester.

#### Student Union/Student Advisers/Chaplains

- Not all SU Officers may not have the skills to advise a student in distress.
- Need to make a clear distinction that the SU is not the formal avenue to handle a complaint for a student. Responsibility for dealing with complaints lies with the University. The primary function of the SU should be referral to appropriate support services.
- Why chaplains as contact persons? Could information be added about the role of the Chaplaincy?
- The role of the Student Adviser is to support a student during their academic journey. Part of that role includes advising students on various University policies. The expansion of the SA role as outlined in the draft documents is not appropriate.

#### Student Clubs/Societies

- Student Club and Society Activities (for students) - should be titled ‘Student Societies and Sports Clubs’. The initial statement in the policy implies that the Chair of the society/group should be the first to be informed of a complaint. This could impede a person from coming forward and should not be implied within the policy. The chair should receive Bystander Training, Consent Training, and training in sexual violence and sexual harassment. The role of the Chair should include directing students to other pathways to disclosing and reporting their complaint, as well as signpost and provide advice on other services.
- All Auditors and relevant committee members of all UCD Societies and groups should be required to participate in Bystander Training and Consent Training. These personnel should also be familiar with the updated policies and procedures.

#### Heads of School/Unit

- Concern over whether leaders (e.g. Heads of Schools) have the capacity, skills and support to deal with complaints. There is too much focus on the responsibility of Head of School and Line managers. Should reference reporting to HoS “or other person” where such a person has responsibility for both the victim and perpetrator or where the issue is with the Head of School.
- The policy should be updated to reflect line managers responsibilities, such as acting with urgency to resolve the issue and provide an accurate and rolling timeline of when and how to expect updates on the issues reported.
- From the perspective of Heads of School, they feel their roles are very unclear in terms of support.
- No details on what line managers or HoS obligations are when they get a complaint.

### UMT

- In relation to roles and responsibilities, I do not feel that the University Management Team have 'led and championed a positive culture of dignity and respect,' rather the lack of leadership in relation to recent disclosures of sexual harassment is stark.

### Governing Authority

- The Governing Authority have a role to play in promoting UCD values around dignity and respect.

### HR/EDI

- Support from HR is inadequate. HR/EDI work to protect the institution, not the complainant. A lot of power is given to HR and Legal in the policy and process.
- If we are to be victim-centred then we need to be cognisant of the fact that the victim may not have told family or friends of their experience. It is further traumatising and humiliating to expect a person who has experienced such a crime to write about their experience without having an opportunity to meet with someone from the EDI unit to support them in the process.
- There is a suggestion that EDI School representatives should be trained to assist colleagues with making formal complaints so they would become Dignity and Respect champions. College Principals could point a complainant to EDI reps to help them make their case.

### Screening Panel

- The document names a number of people who are involved in the screening panel, however the complainant at no time has had an opportunity to have a face to face interaction with a representative from the dignity, respect and inclusion unit or the screening panel. It makes the process very difficult for the victim to outline in full detail the nature of events that have constituted the crime they are reporting. We are talking about sensitive information relating to sexual assault/rape, are we to expect victims to write an essay about the traumatic event/s and submit to a screening group without so much as a conversation or meeting with these people?

### Other

- The roles and responsibilities of the complainant and respondent are not specified.
- Dignity and Respect email address is generic and not appropriate - who screens it?
- Roles should be clarified to ensure no victim/complainant is required to disclose their experience twice and to minimise the risk of re-traumatising any victim. All personnel referenced as points of contact should be uniform throughout the policy and procedures.
- Gardaí and SATU should be listed within the supports (and uniformly throughout the document).
- All policies and procedures must recognise the importance of a timely, confidential, and sensitive response to all individuals who make a disclosure or complaint.

## 2. Existing and Proposed External Roles

- There should be an external support agency such as the DRCC who are impartial and experts, especially when harrowing material is involved. They can signpost the person to relevant 'next steps' within UCD should they wish to make a formal complaint and follow up with

complainants and keep anonymous records of complaints to share with UCD. Can also advise people managers if required.

- Where appropriate, this external designated contact could also be responsible for liaising with the relevant people in UCD to initiate an initial investigation and take the onus of further engagement with regards to the case from the complainant.
- Service Level Agreement with Dublin Rape Crisis Service or One in Four who will accept referrals from UCD for students or employees in crisis following disclosures of sexual harassment, misconduct, or sexual violence.
- There should be an appointment of at least one Designated Psychotherapist with relevant expertise in the UCD Counselling Service.
- The University requires the guidance and insights from individuals who have already a track record in driving such systemic change processes. Recommend that the University Management Team and the Governing Authority would engage with and be mentored through this change process by such a Mentor. Names are suggested in the feedback.
- The DRCC centre currently has a waiting list of almost a year for individual counselling service so what mental health support service is available to those most impacted by sexual violence within the University?
- EAP use a triage type system and if a person scores highly on their questionnaire and particularly at risk from a mental health perspective then the person will fall outside the scope of the EAP programme.
- Student counsellors - waiting times are too long to get an appointment.

### 3. New and Additional Roles

- An independent person should be assigned to assist the complainant from a supportive perspective as they go through the process of submitting a formal complaint.
- There needs to be an official person to deal with complaints who is obliged to act.
- The list of possible supporting people is very long, which is confusing and suggests that the responsibility is being spread out due to the underfunding of proper supports.
- Complainants should also have a properly trained advocate throughout the process. The advocate should be assumed to be just that; it is not this person's role to judge whether or not the complainant should go forward, but to explain the process to him or her and to support them throughout it. The advocate should also, in any case when laws may have been broken, encourage the complainant to bring this to the attention of the appropriate authorities outside the University. The respondent also requires support.
- Why are people encouraged to contact Estate Services and not the Gardaí (Police)?

### 4. Bystanders

- How do we support bystanders – if the (alleged) victim is not ready to make a complaint?
- This policy states that one 'should report' as a bystander; it is not entirely clear if that is regardless of the consent of the alleged victim.

### 5. Following submission of complaint/investigation

- More reassurance for a complainant, following an investigation (even if no allegations are upheld) that support/measures will be put in place. Should enhance policy more in line with IUA guide re: requiring assistance after an investigation e.g. through sabbaticals, etc. when cases are successful.

- Strengthen victimisation section for someone if their complaint does not get past the screening panel (i.e. not investigated).
6. Other
- Need contact details for out-of-hours notifications.
  - Regarding bullying, the policy kicks in too late: other supports are needed (e.g. structural/cultural) so that we do not get to this place.
  - Feel there should be more of a presence of campus security - would make you feel safer on campus.

## D. Training

The feedback in relation to training has been broken down into a number of sub groups for further consideration.

1. Mandatory for All
  - Bystander programme should be rolled out for all employees and students.
  - Consent workshops should be rolled out for all employees and students.
  - All employees and students should be trained in D&R to allow for culture change.
  - Need compulsory training (e.g. system where you need D&R training in order to use the UCD gym).
  - We need to provide ongoing training - which is regularly updated. Depending on roles, some training should be mandatory/some voluntary. Some will be general awareness, some in-depth, expert training.
  - The importance of training – for a variety of cohorts – was emphasised several times.
2. Mandatory for Employees
  - Training at employee induction (to cover positive behaviours as well, not only action when problem occurs).
  - Mandatory, cyclical e-training for essential IT, H&S, Privacy, Sexual Harassment, Bullying and Harassment.
3. Mandatory for Students
  - Bystander training should be part of orientation week.
  - Consider mandatory training for 1st-year students to include report and support tool, campus services number – focus on behaviours so that people know how to recognise the signs.
  - We need mandatory D&R training for students.
4. Leadership
  - There is a gap in training at Senior level.
  - Need bigger commitment to D&R training and resourcing.
  - HoS may not have the skills to support someone reporting SH.
  - Managers need D&R training.
  - D&R training should be available to all in positions of power or responsibilities (committee chairs, line managers).

- Train people in best practice e.g. how to run meetings, how to ensure engagement.
  - Need specialised training for HR, for Heads of School, for all to whom a person might disclose.
5. Point of Contacts
- All those who are named as points of contacts should receive appropriate training in sexual violence and misconduct; such training should be referred to in the policy.
  - Training in BH, SH and sexual violence and misconduct should be provided to all who are involved in administration and delivery of services in this area at all levels.
  - SU officers should receive training and recommend students to professional supports.
  - HRPs should be provided with D&R training.
  - Untrained parties may have unconscious bias or conflict of interest.
  - UCD societies and clubs need more training and guidance on how to handle SH.
  - There should be a dedicated fully trained independent team to deal with complaints.
6. Support for Complainants
- We need clear supports for management of disclosures.
  - Complainants need support and assurances from trained people at the outset and through the process.
  - Complainants need help filling the form.
  - Timescale and expense can be a deterrent to potential complainants who may take the easy option of staying quiet or leaving.
  - Reconsider mandatory mediation training for complainants who know they do not want mediation.
  - In-depth support for complainants (of Sexual harassment or assault) as they come forward is very specialised and requires high levels of training. Providing appropriate ways to access this – e.g. phone, web chat – is critical.
7. Cultural Diversity
- People need to be aware of cultural issues – UCD is diverse.
  - Need intercultural approach to training as well.
  - Training in diversity, including race is required.
  - Specific areas where training may be required including: building cultural understanding, diversity and inclusion, unconscious bias and behaviour-focused training, e.g. looking at the impact of words.
8. Awareness Raising
- Need training and awareness raising on mediation.
  - Need videos and surveys.
  - Need highly visible comms e.g. posters, quotes, key points.
  - Use social media to spread the message.
  - All should be trained in D&R to have clarity on policies and procedures.
9. General
- Clarify how training is going to be provided.

- Training should be mentioned in the policy; this should be specific on level of training and should ensure consistency in all colleges.
- There should be fixed training points within the calendar – regular, repeated, refresher.

## E. Communication

The feedback shows that it is not enough to just have policies and procedures, the commitments and expectations of the University in relation to dignity and respect need to be advertised and promoted on an ongoing basis. There are a number of subheadings in relation to the theme of communication.

### 1. Awareness Raising

#### **Visual Displays:**

- Use signage to highlight support points.
- Posters in all UCD toilets with definitions of Bullying, Harassment, Sexual Harassment.
- Posters on campus with list of contacts.

#### **Examples of good and “bad” behaviours:**

- Need to raise awareness on what good behaviour is and what behaviours UCD values (via videos, role-plays, posters etc.)
- Awareness raising (e.g. videos, social media) about what behaviours are not okay.

#### **Implementation:**

- There needs to be clear information on the process available to both students and employees. If the student has to meet with several people to explain their situation, this leads to duplication which may be triggering and may lead to feelings of a lack of safety.
- Learn from Athena SWAN on how to raise awareness e.g. School meetings, annual meetings.
- UCD should develop a D&R Framework Policy, and every school and unit should be actively engaged to take a proactive approach to education about the policy.
- Need a clear plan on how the policies will be implemented.
- Awareness of full definition of bullying needs to be heightened in the whole University.

#### **Ongoing awareness raising:**

- Regular seminars should be provided.
- Schools should be encouraged to present policies to employees and students annually (e.g. during meetings and induction).

### 2. External and Internal examples/supports:

- Link in with external organisations like Women’s Aid for a campaign.
- The materials for dealing with bullying and harassment/sexual harassment and misconduct are shallow and confusing. The School of Mathematics and Statistics has developed materials which are suitable for students and will make them available. There is much more needed on education and communication – a ‘whole of system’ response. We need to invest resources in preventing all types of bullying and harassment.

3. New employees and students
  - All employees and students need to be made aware of how to report a formal complaint, particularly new joiners.
  - Information on D&R should be included in student welcome email.
  - Encourage to add Campus Security to mobile phone from the beginning.
4. Complainants
  - Complainant should be made aware of outcome of any disciplinary process, particularly in cases of sexual violence, complainants should know if the person is suspended, if they are on campus etc. (this can be done in a confidential manner).
  - Implications of disciplinary procedures should be communicated to complainant by HR or relevant trained person in a way that both reflects personal data of the respondent and the wellbeing of the complainant.
5. Respondents
  - Reference the fact that respondents can also contact D&R Contact Persons.
  - There is a need to achieve the balance between complainant and respondent, currently the documents are focused more on the complainant and a potential innocent respondent could be tarnished from the outset.
  - There seems to be a light touch support for the respondent and there needs to be a way to restore the good reputation of respondent who comes out innocent (e.g. based on academic policy with regard to research).
6. Reporting/Monitoring
  - Annual reports should also be made externally (such as to HEA) on number of cases, trends and outcomes.
  - It would be helpful to collate anonymous data on disclosures and assess if/why these are not brought to a formal complaint.
  - Use exit interviews to monitor issues.
  - We could use anonymised reports of someone who went through the process to raise awareness.
7. Accessibility
  - Policies must be clear and accessible, or we risk excluding vulnerable people.
  - Simple version for non-native speakers.
8. Separate Policies
  - Some believed that there should be separate policies for students and employees (structure).
  - It should be clear to people who are going through both BH and SH which policy to invoke.
  - Now that policies are separate, we should ensure that BH is not diminished and they are not tiered.
  - Confusing to make the distinction between policies while accommodating both (e.g. being able to make a formal complaint of BH).
  - Having two policies could be problematical, given that the issues are intertwined.

- The question has been raised as to whether it is helpful to have students and employees grouped together.
- Good to separate the policies.
- A concern has been raised regarding splitting the policy/procedures into two separate sets of policy/procedures for two main reasons:
  - (1) It provides an opportunity for 'abusers' to delay or even evade sanction and
  - (2) complainants who are traumatised may not have the resources to discern which policy is most appropriate and could choose the wrong forum. One suggestion was to have one policy with a general introduction, which then splits into several routes, depending on the nature of the complaint.

#### 9. General

- More emphasis needed on confidentiality.
- Could phrase better - a person can make a complaint both to UCD and Gardai.
- Need to be crystal clear on the boundaries between behaviour that UCD can address and those behaviours that cross into criminal acts.
- Clarify who is responsible for what, timelines and actions.
- Need follow-up after consultation to show how feedback was incorporated.

## F. Power Dynamics

The power dynamics between levels of management has come back as a matter of concern for many stakeholders, particularly for early career or those in postgraduate roles.

#### 1. Power Dynamics

- There should be no reference to mediation in any cases of sexual harassment or misconduct and these should be removed from the policy.
- Key flaw across the documents is the lack of recognition of a potential power differential between complainant and the alleged offender, which should be identified and unequivocally addressed in an institution which historically is based on the existence of a hierarchy.
- Perhaps the most serious potential power differential is that between a Head of School and the members of their School. Given the Head of School's role as both the 'first port of call' and the manager of any informal resolution process, we feel that the policies do not address the fact that a Head of School could be engaging in bullying and harassment.
- The examples of bullying and harassment should include 'abuse of position of power'. The hierarchical structure of the University, the inordinate levels of esteem, status and prestige accorded to professorial positions, and the concentration of power in the figure of the Head of School all make it far more likely that 'bullying' will come from top down, rather than bottom up.
- Policies must be designed specifically to protect complainants who have much less standing within the institution than respondents.
- 'Abuse of position of power' has many elements that must be safeguarded against, including imposition of views, will or wishes on more junior members of staff; the repeated off-loading of more onerous, less rewarding administrative and teaching work onto junior members of staff; the exclusion of junior members of staff from decision-making on matters that affect them (and the presentation of decisions as a *fait-accompli* that must be simply accepted);

generally domineering behaviour that is presented as above the law/cannot be challenged. These should all be acknowledged in the document.

- Should be noted that the same power imbalances that characterised or enabled the original bullying/abuse of power are likely to be present in informal attempts to address the situation.
- It is also often difficult for individuals to contact HR, so the suggestion that this is a bridging mechanism is over-simplifying the complexity of the issue.
- Complainants may need additional support in cases where it is their line manager who is accused of misbehaviour.
- Decisions (e.g. regarding appeals) are in the hands of senior males – e.g. HR, Registrar.
- The balance of power is a key consideration in defining and interpreting the extent of bullying/harassment. For example, an isolated incident is noted to not be seen as grounds for bullying, but if the power differential is large, then this could be a significant case.
- We need to be explicit that this policy applies to all in UCD. There is a need to spell out the route to the Governing Authority should a case involve senior management.
- The Procedure suggests that the complainant talks to the person bullying them as a first step. This could trigger anxiety and should be positioned as an option.
- There is no sanction for, or mechanism to address, the covering up of misconduct within the policies. The University cannot condone complicity in either bullying or sexual harassment in the workplace and if the University is serious about the procedures it is proposing here it needs to make those in positions of management and responsibility accountable for their role in ensuring that reported incidents are not hushed up or covered up.
- It should outline how the University will deal with harassment and bullying cases where the complaint is against a member of the UMT.
- Does not mention research postgraduates and the way they may be bullied by their supervisors. If you fall out with your supervisor you fail everything, lose all your funding, and have wasted years of your life. So, if your supervisor tells you to teach their course, or build a table for them, or correct scripts for them, you're going to do it. UCD generally ignores students who work in staff positions and affords them none of the rights or respect that full time staff would expect.
- The group felt that the documents reflect a lack of understanding as to the issues of power and coercive control. There are multiple power networks all over UCD that are not reflected in the document: students, early career academic, Ph.D. students and their supervisors, etc. There is no mention or race of racism – even the mention of ‘bullying, harassment and sexual harassment’ sends a clear message that racism is not in the picture. UCD wants to be international. Cultural mismatching could become a source of bullying (or the perception of bullying)? The documents assume that a power imbalance is always top down. But junior people can bully senior people. Students can bully each other, or their lecturers, etc. Concern about the (B&H policy): ‘once off’ is not bullying?

## G. Language

A number of subgroups in relation to the language used within the documents have been developed to allow further analysis.

### 1. Style

- Unhelpful to blend legal and lay language throughout documents.

- Style should be consistent.
- Language is vague (e.g. ‘signposted towards internal and external supports’ and ‘relevant support services.’).
- Language seems idealistic, no mention of repercussions; misunderstanding is overemphasised.
- The language around ‘trivial and vexatious’ complaints is threatening.
- Language overly legalistic, dehumanising.
- Policies read like manuals for managers.
- Language use (e.g. declarative statements on UCD values) do not reflect the lived experience.
- The use of ‘feel’ (‘If you feel you have been a victim...’, etc.) is jarring and not victim-centred. It is also gendered: men ‘think’ and women ‘feel’.
- Use of ‘believe’ dilutes the intention - it is not that we believe certain behaviours are unacceptable, it is simply that they are.
- Policies must be written in a clear, simple, logical manner in order to be more accessible Lack of supportive language; reads with a bias towards UCD and law.
- Replace the word “our” definitions. The definitions should be based on legislation not UCD culture.

## 2. Length

- Policy documents are too lengthy.
- Documents should be shorter, clearer and include infographics.
- Document needs a ‘pathway’ summary.
- It is felt that the Information for victims should not be buried in the legal material and that his should be supplementary to the policy.
- A lot of information contained in the documents, a landing page or one central helpline with links to appropriate supports and information would be helpful.
- The documents seem designed from a HR perspective and are not sufficiently user-friendly for potential complainants.
- The document is very long and needs a user-friendly quick starter guide.
- The document is intimidating in its length, terminology, and quasi legalistic tone.
- Flow charts are required.
- Suggestion to combine into one document and have one good flow diagram.
- User friendly suite should be developed to include, road maps, flow charts, examples, case studies etc.
- Section 4 of the procedures document should only look to connect a victim of sexual assault with direct support. It goes into details which do not belong to this document e.g. about preserving evidence. What to do on foot of sexual assault is (and should be) outside the competence of the policy. The important action is to connect the individual with the direct help they need.

## 3. Clarity

- Disclosure paragraph is confusing (interchanging of “they” and “you”).
- Definitions and implications of formal and informal are not clear.
- 2.5 “information will never be shared with or reported to UCD or management team or anyone else” – this point needs to be re-worded.

- Informal approach – ‘without risking a breach in confidentiality’ – reads ambiguously.
- 4.2.2 The use of the word ‘senior’ nominees is vague and suggests a power differential.
- There should be more emphasis that sexual harassment/sexual misconduct is criminal offence.

#### 4. Complainant Point of View

- Should be re-written from point of view of complainant – how do they experience the process?
- Documents should place the complainant at their centre.
- There should be no pressure on complainant to make a complaint but it should be noted that they will be supported throughout the complaint process (reference to “at all times, a complainant will be supported to bring forward a formal complaint”).
- The language should reflect primarily support for those subjected to BH or SH.
- On the emphasis on “not using language of harassment/bullying” etc. – the onus should not be on the victim to ‘sugar-coat’ information.
- Language should not add to survivors’ sense of powerlessness, it should give them agency.
- Survivor of SH may be put off by language and think they suffered a “lesser” incident.
- Need to show empathy to victims of toxic work environment.
- Onus is put on the complainant in how they refer to the matter - focusing on how it made them feel, while critical, misses the point that the problem is the behaviour of the respondent.
- There is too much emphasis on distrusting complainants - 'if you feel', 'if you believe', etc. This, and the composition of the screening and appeals panels, will deter legitimate complaints.
- Do the documents offer comfort to somebody who is in a vulnerable position? Or could they retraumatise them?
- Does the language reflect the life-changing nature of the issues?

#### 5. General

- All incoming first-year students should be given an explicit direct line of communication for submitting formal complaints of SH.
- Concern that many people (like PhD candidates) leave rather than make a complaint.
- Concern that document is written to protect UCD.
- Need to re-write, e.g. ‘child sexual abuse images’ (rather than ‘child porn’) and ‘rape’ (rather than ‘attempted and unwanted sexual intercourse’.)
- Need to name higher risk groups – e.g. LGBTI, lower socio-economic groups.
- Coercive control should be mentioned.
- Concept of zero tolerance suggests premeditated verdicts; concern over a shift to accusation equals guilt.

## H. Legal & Technical context

The draft informal and formal procedures documents were developed in keeping with employment legislation and the fair procedure. A lot of feedback is in relation to why the procedures are drafted a certain way.

### 1. Relevant Legislation

Legislation that should be considered within the policy include:

- The Children's First Act (2015) to include the six reporting obligations and duties of care when working with children and young people.
- Consumer legislation in relating to some of the University's activities involving financial transactions.
- Employment Equality Act 1998 (Code of Practice) (Harassment) Order 2012.
- Employment Equality Acts 1998 – 2015, Equal Status Acts 2000-2004.
- Ensure Health and Safety and Welfare at work Act is on page 1.

### 2. Standard of Proof used in a formal investigation

- There is a viewpoint that the standard of proof used in an internal investigation should be based on beyond all reasonable doubt rather than on the balance of probabilities.

### 3. University instigating an investigation without a formal complaint

- In the case of the University instigating an investigation without a formal complaint, what protective procedures will be put in place for victims/complainants in these cases?
- Suggestion that formally investigating someone on the basis of an informal complaint could be legally fraught and breach the principles of natural justice.
- The question was asked if it would be legal to carry out an investigation if there is no complaint, whether it was an anonymous or a reluctant complainant.
- It has been suggested that the full section 3.12 from the IUA guide in relation to instigating investigations be included within the procedures document.
- More information is required on how the University will investigate a complaint in the absence of a formal complaint.

### 4. Third party complaint / anonymous complaints

- What would happen in the case of a third-party complaint.
- Uncertainty of how a head of school will address a third-party complaint and whether initiating a complaint is akin to taking on the role of the screening panel.
- More information is required on how third party or anonymous complaints will be addressed, i.e. how will a complaint be submitted, how will it be investigated, how will the parties be informed.
- What would a complaint form for an anonymous complaint look like?
- What is the obligation on witnesses to come forward?

## 5. Precautionary Measures

- “Any decision made in relation to precautionary measures will be made by a senior member of the University such as the Human Resource Director/the Registrar, or their nominee and will be reasonable and proportionate and only made after due consideration.” Complainants should be notified by a designated person in charge of the case if this occurs and for how long it should occur for.
- Under precautionary measures, it would be far preferable if the person causing offence was re-allocated duties that moved him/her away from the complainant, rather than suspended from all duties. Suspension of all duties is likely to cause additional stress in already over-stretched schools as other staff will be asked to take on extra teaching or admin duties to compensate. This is likely to act as a deterrent for complainants coming forward - or they may be 'blamed' by others for the outcome where it involves the distribution of work away from the person causing offence.
- Section 4.3 If a ‘neutral suspension’ is recommended, then perhaps another term could be used to describe the meeting at which this is discussed, rather than a ‘hearing’.
- In the point regarding ‘proportionate measures,’ it is stated that ‘there are a range of precautionary actions that can be put in place and any action taken will be reasonable and proportionate’ yet reasonable and proportionate according to whom? The use of the phrase ‘the decision to take precautionary action will be made at an appropriate senior level’ is unclear and the use of the word senior suggests a power differential.
- With regard to zero tolerance, neutral suspension is already in place – has that been strengthened in the new policies?

## 6. Findings of an investigation

- There is a view that the findings of an investigation should only refer to whether the respondent has a further case to answer or not and should not refer to an allegation being upheld or not upheld.

## 7. Withdrawal of a complaint

- More information is required on how an investigation would continue if the complainant withdrew their complaint.

## 8. Appeal of the findings of an investigation

- The question is raised as to why an appeal ground should be limited to a procedural irregularity. Reference made to a publicised case in Cambridge University where a complainant had their case dismissed, the fact there was no appeal mechanism attracted criticism. There is a strong risk that legal errors of this type would not be regarded as ‘material procedural irregularities’ for the purposes of appeal under this Draft. The absence of more widely defined grounds of appeal would leave judicial review as the victim’s only remedy; that route, in light of the expense of that process, is unacceptable.

## 9. External legal review

- There is a suggestion that the four documents should be reviewed by Senior Legal Counsel.

## 10. Work experience

- Where does the duty of care lie in the case of an individual on work experience in UCD?

## 11. Disciplinary Action

- It is felt that the documents avoid disciplinary sanctions and that this is unhelpful in changing perspectives within the UCD community.
- The policy should make it clear that anyone who covers up abuse will also face serious sanctions.
- Should consider including a sanction or mechanism to address the covering up of misconduct within the policies and place more emphasis on people who hold positions of management and responsibility accountable for their role in ensuring that reported incidents are not covered up. This should include the moving of individuals against whom an allegation has been made to different units or locations within the University.
- It has been requested that consideration be given to the inclusion of a demotion and/or prevention of promotion to the range of measures available under any disciplinary process if an allegation is upheld.
- It is felt that there should be a separate code of conduct for employees which focuses primarily on behaviours. This should be signed and kept on the employee file.
- Consideration should be given to issuing a “not fit to practice” certificate in the event of a sexual harassment/sexual misconduct complaint being upheld for student enrolled in a courses such as, social work, social care or professions associated with vulnerable people.

## 12. Witnesses/ Whistle-blower Policy

- Could the need to name witnesses/people interviewed be perceived as off-putting?
- The policy seems to imply that every Head of School/unit/line manager will comply with these guidelines and avoids addressing how a Head of School/unit/line manager who is engaged in bullying harassment will be dealt with. This calls into question the validity of the statement ‘If you witness behaviour that is considered to be in contravention of this policy, you should report it to a Head of School/Line Manager.’
- There is a feeling that there should be more focus on protection for witnesses within the policy. It has been suggested that the protected disclosures act/whistle-blower policy should be referred to within the policy and that the points of contact for who a witness can make a disclosure should be expanded beyond management as listed in the policy.
- Suggested that the protected disclosures policy should be developed alongside the dignity and respect policy and explicitly incorporate that those who witness an act of sexual violence (including harassment and misconduct) or those who have knowledge of mishandling of complaints within the University can report it.
- The question was asked if there are any consequences for bystanders who do not report incidents they witness.
- We need to protect all of those involved in the process, including witnesses, investigators, line management

### 13. Time limits

- Question if the 6-month time limit to submit a complaint after an employee or student leaves the University is helpful or necessary?
- Need to manage expectation in regard to timelines.
- Further clarification is needed in regard to how an incident which may have happened a number of years ago will now be addressed in accordance with the zero-tolerance standard.
- Some mechanism must be established as a matter of significant importance to respond to students and employees and former students and employees who are still suffering from grave personal hurts, compounded by inadequate policy and institutional responses in the past.
- We need to acknowledge that, due to its intimate nature, sexual harassment disclosure is often reported later than other types of harassment. Also, that some complainants may not be in a position to make a complaint if their mental health was affected by the issue. There is a concern that respondents could use methods to delay the process.
- Should reconsider the 6-month time limit for submitting a complaint.
- A contrasting viewpoint feels that the removal of the time limits risks malicious, unsubstantiated accusations.

### 14. Court orders

- When a person is subject to a court order (e.g. barring or restraining order) what requirement does UCD have to uphold this.

### 15. Gardai (Police) Investigation

- It needs to be made clear that a Garda investigation will take precedence over an internal investigation.
- A complainant has the right to involve the Gardaí, they do not have to go through the University procedure if they consider that they need garda assistance.
- Investigations by An Garda Síochána (mentioned in both policies/procedures) – could the University’s option to suspend its own investigation while a Garda investigation is taking place, be used as a delaying mechanism? Garda investigation can take years – there needs to be parameters around this. The policies/procedures need to contain clarity around time-limits (even if these are indicative). The College needs to commit to moving through the process quickly.
- The provision that the ‘University will only in the most exceptional circumstances, make report to the Gardai should make reference to the University’s awareness that there are cases where disclosure to the Gardai is required under the Criminal Justice (Withholding of Information) Act 2012 and the Offences Against the State Act 1998. In these cases it is a criminal offence not to make disclosure in the case of serious offences.

### 16. Malicious complaints

- The word “belief” that a malicious complaint has been made should be changed to where there is “evidence” that a malicious complaint has been made.

## 17. Disclosures

- Where somebody discloses something, is there a procedure for the person receiving the disclosure to report it, and could that person be held liable for not reporting.
- The concept of a disclosure should be included in both policies.
- A dedicated email address is required, this should be advertised.
- The individual should also be informed how to make a formal complaint and offered supports to do so. This may be done in an advocacy role and suitable points of contacts may be named in this regard.
- More information is required as to what happens to the information that a person discloses, whether they decide to proceed or not proceed with a formal complaint. Does this information get saved on an employee file and could someone see this information if the individual was for example, applying for a career change?
- Will there be an opportunity to make a disclosure to a person independent to the University? It is felt that having the option to make a disclosure to an independent person is core to this policy.
- It is felt that it is fundamentally wrong and not victim centred to not provide the facility of an independent person to hear disclosures.
- Advising a complaint to make a disclosure to someone who may not be trained is not appropriate.

## 18. Informal resolution

- In the case of sexual harassment, the procedures do not recommend informal resolution and there is a view that this could prevent someone from coming forward.
- Suggestion to change the wording when approaching someone informally to “if you feel comfortable doing so”.
- The advice to 'approach the person causing offence' is extremely unhelpful in the context of a serious asymmetry of power, as noted above, and is likely to dissuade the complainant.
- Mediation is seriously problematic in the context of a serious asymmetry of power, between a Head of School or professor and a junior member of staff. Mediation implies wrong-doing or at least misunderstanding on both sides, which is unlikely to be the case in many instances of bullying. In addition, the option for the 'person causing offence' to claim wrong-doing or misunderstanding on the part of the complainant may potentially be used cynically or in ill faith.
- The procedures to address a complaint include an 'informal' process which envisages the complainant have a facilitated discussion with the perpetrator. This is not appropriate to include as a stage in the process of addressing complaints. It may be included as a possible option but only if the complainant agrees.
- It may be wholly impossible for a complainant to approach a respondent hence the suggestion that 'if you feel that you have been subjected to bullying or harassment, you should approach the person causing the alleged offence to inform them that their behaviour is unwelcome and request that it stops or changes' is inappropriate and unfair. I would also suggest that the following line minimizes the obvious stress and anxiety any complainant will likely experience 'It may be the case that the person causing the alleged offence does not realise that they are

perceived to be behaving in a manner which is negatively affecting someone else and this approach can often resolve the situation.’

- Mediation is an inappropriate approach in sexual harassment cases. In the past, issues have emerged that the mediators did not have the skills to deal with the and this sometimes made things worse.

#### 19. Screening panel

- Consider introducing the concept of the screening panel earlier in the document as there is an assumption that everyone knows and understands their role.
- Is the screening panel gender balanced?
- This section needs more detail on how this process will be carried out e.g. How soon after receiving a complaint will the screening be done? Is this an anonymous process? If not, why not? If the purpose of the screening is to check the complaint falls within the policy, this should be the case.
- The preliminary screening will be carried out by a panel comprising senior nominees from HR, UCD Legal Office and the Office of the Registrar who will decide if it is appropriate to progress the complaint under the policy and who may direct that the complaint be progressed under another University policy/procedure. The screening panel can also make recommendations to the Director of HR or Registrar as appropriate that precautionary measures should be taken.” It is not appropriate that those without relevant training in sexual violence be part of this process.
- If the complaint is deemed not to come within the scope of the Policy, the complainant will be so informed and advised on the appropriate procedure for dealing with the matter. In this instance, the respondent will not normally be notified of the complaint. “
- If the preliminary investigation finds there is not enough evidence to proceed further, the anonymity of the complainant should be protected.
- If there is evidence to proceed further, a risk assessment for safety on campus may need to take the form of an all-campus approach.
- Minimum three-person Preliminary Investigation Team with specialist knowledge/ training, including one internal and one external member and a suitably qualified Chairperson.
- Investigates the complaint within 24 – 48 hours and reports back to the complainant.
- Purpose of Preliminary Investigation: to establish if there is evidence of a credible case to proceed further If as a result of a preliminary investigation it is believed there is a credible case to proceed to a full hearing / investigation a number of immediate actions need to be taken:
- When accused and complainant are employees:

Depending on the gravity of the complaint the employee is asked to either:(a) have no contact with the complainant in any way, or (b) step aside on full pay without prejudice for the period of the investigation.

- When the accused is an employee and complainant a student:  
Depending on the gravity of the complaint (and whether the student is undertaking a module or course delivered by the accused) the employee is asked to either (a) have no contact with

the complainant in any way, or (b) step aside on full pay without prejudice for the period of the investigation.

- When the accused is a student: Depending on the gravity of the complaint the student is asked to either (a) have no contact with the complainant in any way or (b) work on the course modules from home and not come onto the University campus, without prejudice, for the period of the investigation.
- The point stated that ‘the screening panel can recommend that informal pathways be followed up on in certain circumstances if they feel based on the information received, that not all informal resolution pathways have been exhausted’ would appear to contradict an earlier point that it is up to the complainant to decide whether to try to resolve the issue informally and move immediately to the formal stage.
- The statement that an individual’s complaint will be subject to ‘preliminary screening which will decide whether the alleged behaviour falls within the definition of sexual harassment or sexual misconduct as defined in this policy’ will likely act as a deterrent for someone considering making a formal complaint. It is implied in this language that a judgement is being made against the complainant.
- The 5-day response time (following complaint to EDI) is often breached. The process is stressful and quick response is key. We need to benchmark standards

## 20. Formal complaint

- It is not clear what happens in formal complaints. What does “deemed” formal mean and who deems it to be formal.
- How do we separate the support complainant and respondent (who may work side by side) while a case is going through the system?
- The policy must state that the University will ensure that there is no retaliation against a person making a complaint.
- Complainants should have the option of submitting their formal complaint to an independent person, partnered with the University on these matters, who may forward on the complaint to the EDI unit.
- Should include details on who can support a claimant in writing and submitting a form should be included in this section.
- Details of who receives the complaint and who deals with following it through should be outlined. It should be outlined that it is this person’s responsibility to maintain regular contact with the complainant and keep them updated on the progress of the complaint.
- If ‘the person against whom a complaint is made (the Respondent) is being notified and provided with the Complaint Form,’ shouldn’t the complainant be made aware of this when asked to fill out details of the complaint?
- There was a concern that the formal complaint procedure is not coherent – it is a mix of information/legalistic and “tips”. There is no sense of comfort – “I feel that this will protect me”.

## 21. Procedures for investigation

- The point suggested that ‘All parties are required to maintain professional interactions and to continue to work/study as normal, unless directed otherwise’ when a formal complaint is in process appears unrealistic and unfair.
- It appears inappropriate to request that both parties participate in a mediation briefing at this point if mediation has not been sought at an earlier stage.
- All parties are required to maintain professional interactions and to continue to work/study as normal, unless directed otherwise. I’m completely baffled by this line. How is this in any way victim centred? If a person has been raped/harassed by another employee, the very nature of such a crime is not something a person can put to the side and forget. It has enormous implications for that person’s ability to engage with friends, family, work and study. This line needs to be removed.
- Complainants are not kept up to date with the progress of their complaints – and can find themselves in awkward situations. Who is told what, when? And by whom?
- Transparency regarding all investigation processes must be a key principle.

## 22. Investigators

- More information is needed on the procedure on how an investigator is chosen.
- Recommendations in light of the case and relative to UCD’s policies and procedures should also form part of the outcome. This should form part of the Investigator’s report (Note: This can follow the UCD Student Complaint Policy, 2016, directive where investigators actions “includes preparing a written report, including any recommended procedural changes to service delivery” (page 5))
- Minimum five person Investigating Team (different from Preliminary Investigation Team) with specialist knowledge/ training including two internal and two external membership and a suitably qualified Chairperson.
- The composition of investigation boards is key to the successful implementation of policy and only personnel with the requisite training and expertise should sit on these committees and boards. Training should be also provided for all board members

## 23. Potential outcomes of an investigation

- “The HR Director/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, ensure a return to normal practices/and a professional working relationship. This will be done in consultation with the complainant and respondent.” This should be proceeded with “where appropriate” as it may not be appropriate in cases where the local management team has responsibility for both the complainant and respondent.
- Part 5 proposes that when the complaint is upheld, the matter will be dealt with in the case of employees under the statutes and in the case of students under the code. There is a risk of duplication here. Where the alleged perpetrator denies the allegation, all the evidence will be discussed in the presence of the respondent and the Registrar or their nominee (para. 6 of the Student Discipline Procedure). The person against whom the charges are alleged may have

the entitlement to cross-examine the complainant. A more efficient alternative could be, in the case of students, to delegate to the Investigator the power to impose the sanctions which are given to the student Disciplinary Committee; and in the case of employees, the sanctions in the Statutes.

#### 24. Disciplinary Action

- “The complainant will not be made aware of the outcome of any disciplinary process as this is confidential to the individual involved, however the University will take appropriate action to support and protect the complainant to ensure a similar situation does not arise in the future.” This is not appropriate. The complainant should be informed if the respondent undergoes disciplinary action, if they are suspended, if they are not on campus, if they are returning to campus etc. Confidential details need not be shared but the complainant has the right to know what the outcomes are to assuage their fears for their safety.
- ‘The complainant will not be made aware of the outcome of any disciplinary process as this is confidential to the individual involved’ appears unusual. Isn’t the complainant entitled to find out the outcome of any disciplinary process they have been involved in?
- The penalties and sanctions for upheld complaints need to be clearly spelled out in the relevant policy documentation.
- Failure to act on the part of all employees to whom complaints are made need to be clearly spelled out in the relevant documentation.

#### 25. Data Protection/GDPR / Privacy Notice

- Does the EDI email address require a data privacy notice.
- The formal complaint form should be compliant with GDPR.
- In the case where the HRD or registrar is fully informed of details of a complaint due to the risk of repeat behaviour or a potential risk, this should be changed to say serious risk.
- More detail is required on what records are kept.
- The nature of data needs to be defined in relation to annual reporting. Would this include informal, preliminary investigations, who has access. Further information is required on who decides the recommendations based on this data.
- There is no data on informal complaints or people who decided to not go formal with their complaints.
- Does there need to be reference to compliance with GDPR processes and the role of the data protection person.
- Clarity must exist with regard to the management of notes and documents regarding complaints, including such details as, where compliant documents are to be filled, who has access to them, which person(s), in which role(s) from the moment the complaint is formally made to the time the complaint process is fully completed.
- Clarity must exist with regard to the recording of outcomes of complaints process and whether such outcomes will be recorded on the HR files of complainant and the accused.
- A policy regarding the use of records of complaints and their outcomes in the provision of references for employees against whom complaints have been successfully upheld must be clearly outlined and defined.

- A policy regarding the use of records of complaints and their outcomes in the provision of references for students against whom complaints have been successfully upheld must be clearly outlined and defined.
- Will the annual report be anonymised?

#### 26. Legal representation

- There is the view that a respondent can engage a solicitor.

#### 27. Scope

- It is felt that the policy is not clear on what would happen in the case of an incident that arises off campus.
- Off campus university activities, groups and societies should all be governed by the same policy. It has been reported that some societies and clubs have dealt with issues themselves and have not engaged with the University process.
- Question if the policy applies for unofficial university events, e.g. meeting up in town.
- It should be clear that all university activities, both work and social are governed by these policies.
- The policies should specifically address online as well as in person unacceptable behaviours
- The scope of the policy states that it applies ‘to any area of university activity.’ This is too narrow an interpretation of sexual harassment and sexual misconduct. Harassment and misconduct can have its genesis in the UCD-relationship between the complainant and the respondent but can occur both outside of UCD and in relation to issues which appear to be peripheral to university business.
- There is a high degree of sexual abuse at conferences – how does the policy respond to that?
- The scope of the policy states that it applies ‘to any area of university activity.’ This is too narrow an interpretation of sexual harassment and sexual misconduct. Harassment and misconduct can have its genesis in the UCD-relationship between the complainant and the respondent but can occur both outside of UCD and in relation to issues which appear to be peripheral to university business.

#### 28. SFI Grant Funding

- The terms and conditions for grant funding from SFI has been updated to include the following clause: The Research Body must ensure that it, or the Principal Investigator on its behalf, notifies SFI ... subject to compliance with Applicable Law, if there are reasonable grounds for believing there has been an act of Misconduct or Research Misconduct.

## I. Definitions

The feedback shows dissatisfaction with a number of elements of the definitions used with the documents. They have been sub-grouped by definition within the policies.

1. Zero tolerance
  - The definition of zero tolerance is not what the students agree zero tolerance means. It should mean clear penalties and complete lack of tolerance if issues arise. It needs to be defined properly.
  - The definition of zero tolerance reads weak and is like a get out clause. Zero tolerance has to be about doing something and not just saying/informing people and running communication campaigns.
  - The term zero tolerance must be enforced with consequences for any unacceptable behaviour when the complaint is judged to have merit, regardless of the stature of the perpetrator.
2. Precautionary measures
  - The decision to take precautionary measures will be made at an appropriate senior level, the senior level should be defined as a role that does not have direct responsibility for both the complainant and respondent.
  - Listing employer reputation higher on the list of reasons for suspension than the welfare of employees or students send a very poor message.
3. Sexual Harassment
  - The use of the terms “unwanted” in the sexual harassment definition is inappropriate. The emphasis on this “unwanted” term implies that the person who is being harassed has the responsibility to designate an advance or an action as unwanted.
4. Sexual Misconduct
  - The definition of sexual misconduct and sexual consent should be taken from legislation
5. Consent
  - It is felt that the inclusion of “nonverbal communication” within the definition could create a loophole for a perpetrator.
  - Outlining that there is no consent if the person is drunk, unconscious, physically disabled, threatened or detained compounds the problem. Silence or a lack of struggle should not be taken as consent. The criminal law (sexual offences) Act of 2017 recognises this.
  - Consent should be ongoing.
  - The issue of consent is not adequately dealt with (SH&SM policy/procedure)
6. Gender
  - The definitions of harassment and gender need to be revised.
  - Misgendering, intrusive questioning about sexuality, gender identity and gender expression should be explicitly named as types of sexual harassment.
  - The definition of intersex as a sexual orientation is incorrect. Gender could instead contain language that acknowledges intersex people – e.g. gender, identity and sex characteristics: a person’s gender identity including male, female, other, or sex characteristics, including any and all intersex variations and traits.
  - There needs to be reference to sexual orientation, homophobia and transphobia.
  - It is felt that the policy is not written in a gender balanced way, that men suffer from sexual harassment too and there should be the involvement of a group of men.

## 7. Bullying / Harassment

- Reference is made within the policy to health and safety legislation and the duty of care not to endanger yourself or any other individual. The appropriateness of this within the policy has been raised.
- It is felt that the definition of bullying and harassment represent explicit forms of these behaviours, failing to capture the more common, implicit forms.
- One isolated incident of inappropriate behaviour is unacceptable, and a complainant should be entitled to make a claim of bullying before waiting for a second inappropriate incident. This would imply adherence to a zero-tolerance policy.
- The policy defines bullying and harassment but suggests not naming behaviours as bullying or harassment. The policy should be calling out the behaviours exactly as they are.
- There is a link between harassment and discrimination, there is a feeling that you can be harassed while not falling under the discrimination grounds.
- It is not clear why harassment is linked only to discrimination.
- Jokes around stereotyping should also be included.
- Good definition and good point of different harassment types. These could be made into some sort of graphic to publicise these documents more easily. Limit wording that is open interpretation.
- Definition of bullying is not as clear.
- The examples outlined in bullying and harassment should include groups and cohorts, not just individuals.
- Visual displays, such as posters, emblems or badges, should also refer to harassment as they could be discriminatory.
- Include subtle forms of bullying, such as polite obstructionism.
- The removal of the phrase D&R would enhance this work against bullying and harassment and would allow a separate piece of work to be done on defining and embedding D&R. We need definitions and better understanding of dignity and respect (not just absence of bullying).
- The phrase "could be reasonably regarded" is used with regard to both sexual harassment and bullying but is absent from the harassment definition: "Harassment is defined as any form of unwanted conduct related to any of the discriminatory grounds under the Employment Equality Acts which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment." This appears to allow a situation in which the judgement of harassment becomes purely subjective, namely that a person can be considered harassed because they feel harassed. This is particularly important when intent is irrelevant- I can imagine many contexts which have the "effect" of making a member of staff or student in UCD feel intimidated which should not be considered harassment.

## 8. Constructive Criticism

- Concern about the use of the term 'constructive criticism' – it is too vague. Would need clear definitions of what constitutes 'constructive criticism'. It ignores the power differential between faculty/staff and Head of School.

*“Bullying at work does not include reasonable and essential feedback or constructive criticism or discipline arising from the management of the conduct or performance of an employee at work or actions taken which can be justified on grounds such as safety, health and welfare at work. For example, an employee whose performance is justifiably signalled in a proper and reasonable manner as being below required standards may feel threatened and insecure in their work but this in itself does not indicate bullying”.*

9. Written harassment

- Need clearer and more specific guidance on written harassment, which should include communication outside of email correspondence (e.g. text message to private phones). There should also be clear direction on the mode and timing of communication, stating clearly that no contact should occur outside of core working hours or during any entitled leave.

10. Appeals

- It is felt that there is not a clear enough definition for the appeals process.

11. Placement of Complainant and Respondent

- Suggestion to move the definitions of complainant and respondent to the top of the document.

12. Victim centred

- The procedures should minimise the number of times a victim should have to repeat their disclosure.
- The complainant needs to be informed of the outcomes, in a way that does not compromise the confidentiality of the respondent.
- A victim has to be very careful not to endanger themselves, for fear of the respondent retaliating for making a complaint).
- The University must never under any circumstances enter into a nondisclosure agreement. All consequences should be publicly communicated to the complainant and to the unit/school with which the respondent was affiliated.
- There was concern that the University is ‘scrambling around’ to try to respond to recent scandals, rather than genuinely engaging with the opportunity to get this right. Because we are starting in the wrong place, we cannot hope to arrive at the right process/system. In terms of change theory, the University is adopting a ‘nudge theory’ approach – making small, incremental changes (e.g. new documents), when what is needed is a major ‘overhaul’. UCD has not genuinely taken ownership of the issue and apologised. Therefore, people do not trust the institution. A restorative justice process is needed. A spin is being put on the whole issue. “this is a historic moment to demonstrate leadership” – rather than “we need to open the whole issue up”. Is there a genuine wish to address the issue, or is this a tick box exercise? Will our involvement in this process be used to legitimise it? Initiatives like The Athena Swan system are ‘used and abused’ – we manipulate the figures to get the money. Since this issue has hit the news, many more people have come forward with incidences of bullying and sexual harassment. UCD needs to collect much more data. The Irish Human Rights and Equality

Commission could be invited to audit the current situation in UCD (as has been done in Maynooth and other institutions).

- Overall, there was a question as to whether the whole process (review, documents, etc) is more about protecting the University rather than addressing the issues. There is a fear that the system will protect itself – and those who make a complaint become part of the problem. Should HR/EDI/Legal/Registrar be leading in the process? Their purpose is to defend the institution.
- There was concern about the theoretical underpinnings of the documents and felt that issues were dealt with in a shallow way. In addition, most victims who go through the justice system are disappointed because justice systems are setup to try wrongdoers, not support victims. The focus is more on the process/systems, rather than engaging with equality through dialogue and resolution. UCD is “individualising” the issue, leaving it up to individuals to make a complaint/take a case – rather than addressing broader issues. We need to debate what is equality and what version of equality is at play? UCD plays an ‘everyone gets treated equally’ version of equality. A ‘giving everyone an equal chance’ version could be adopted. There is big pressure to make a complaint – rather than addressing the issues. How do we empower students and instil a sense of solidarity? A deeper understanding of the conceptual underpinnings of the policies/procedures is needed.
- The section [in the draft report] on the 'Starting Point' primarily conveys simple criticisms or jabs, rather than the rich and compelling analysis- and evidence-based contributions made towards providing direction re: how this process etc needs to be reworked. The suggestion that UCD invite IHREC to do an institution-wide 'audit' (as other universities have done) and possibly recalibrating this whole infrastructure according to the grounds of the Equality Legislation, was linked to this, and the 'overhaul' vs 'nudge', substantive vs 'performative' organisational self-protection response as an essential element - not a casual suggestion. Similarly, it was not simply questions around whether EDI/HR/Legal/Registrar should be leading this process, or just the question 'who should be leading this?' - but the fundamental issue that this infrastructure needs to be thoroughly and critically reviewed - both in terms of the individual units but their roles and relationships - rethought and restructured, etc. The latter articulation conveys these points as analytical interventions, not just simple criticisms which would simply be brushed off as such. The report also does not include our concerns re: our involvement in this consultation process - which is only one of countless such 'engagements' that many in the group have born the burden of - does little more than co-opt, implicate and use us to legitimise a process and project that is set on reproducing the violations of the system that they claim to be 'fixing'.

### 13. General

- It is suggested that there should be a better distinction between behaviour directed towards an individual versus statements made publicly (Should probably be more clear that it refers to where such issues are directed by one person towards another specific person. As it stands a politics lecturer could be pulled up if they say something like "universal suffrage means that every person - all men and women - has the right to vote". This sentence could be deemed sexual harassment as it infers that all people contain only two genders. There is quite a different setup when someone is talking to 300 people than when they are interacting with someone one-on-one.)
- Stating that intention is not important is not consistent with the wording.
- Procedures (including potentially key definitions e.g. re acceptable/unacceptable behaviours) are based on those experiences. There is a possibility of tension between that and any challenge raised by recourse to outside solutions – most obviously legal.

### 3.3 Feedback from External Experts

Following the completion of the internal consultation process and incorporation of the feedback into the draft policies, procedures and supporting documentation, the revised draft documents were then circulated to external expert organisations as per the Review Group's project plan (January 2021). The following external organisations/individuals were consulted with:

- Dublin Rape Crisis Centre
- Mens's Aid
- National Women's Council
- External Investigator
- External legal advice - sought throughout the drafting of the documentation.

The following is a summary of the feedback received which have been categorised under the themes identified in Section 3.1. This feedback, together with feedback following internal consultation, has been addressed in the recommendations in Chapter 4.

#### Overall Comments

The draft documents show the extensive work and thought that has gone into dealing with the significant difficulty that arises in dealing with issues of bullying harassment and sexual misconduct/harassment. The process leading to this draft is to be commended and it is clear that peoples' feedback was listened to.

#### A. Policy and Supporting Documentation

##### Culture

- The most important thing is that the policies and procedures form part of a wider set of principles focused on a culture of dignity and respect throughout the college, embedded in the actions of its entire community. Further elaboration in documents and processes on how training etc will feed into supporting this culture will be useful.
- The document specifically and correctly calls out the issue of power dynamics, and its potential abuse. This means that there needs to be concrete efforts to build a more psychologically safe environment. We would expect to see this initiative followed up through discussion into how EDI plan to build and sustain a preventative and supportive culture, including how training and communication will be incorporated into induction and leadership training.
- In general, reporting of abuse/violence is quite low in Ireland. Approximately 70+% goes unreported. In domestic abuse cases, only 5% of men report, only 29% of women report domestic violence. Shame, stigma, fear of not being believed, what will people think - being the main reasons.
- Whilst these policies are really important, it is how they transfer to encourage a victim to report is what will really count. So getting a victim to speak is key, to feel safe, confident and trust those they are disclosing to is imperative.

## Trust and Transparency

- Bullying and sexual and other harassment will always remain under-reported for fear of the consequences, thus the ways of collecting information are key. There will be HEA and other reporting obligations and they are clear from the draft. However, if UCD really wants to understand what it is dealing with, it will go further and is through the anonymous reporting tool and the D&R environmental assessment which are good initiatives. But quantitative statistics are unlikely to give a full picture and it is suggested that there should also be a programme of qualitative research to identify issues that will never be reported, but which remain harmful.
- Could a process to formalise inputs of disclosures to D&R Contact Persons be drawn up using this (Report and Support) tool?

## Support and Roles

- A substantial concern relates to the many-faceted role of the new Dignity and Respect Report and Support Adviser. This very small team is expected to be available to provide support to the person making the report and the person reported. They are expected to receive formal complaints on behalf of UCD/ EDI but may also provide support during the process. It is not clear whether they are to provide a 24/7 service. This is a massive task and also risks reducing everyone's trust in it, particularly if they are seen to be part of the formal complaint process. In addition, if a person reports, they may distrust that they are reporting to/ seeking advice from someone who has previously assisted a person against whom the report is made. Undoubtedly, an adviser role is great to have and setting up such a team will be a great step forward but would have to consider having further thought about this as the multiplicity of roles, together with role reversal within a small team from time to time, could lead to suspicion and breakdown in trust.
- While the DRCC may be helpful, it is essential that there is a solid, confidential, trusted, expert advisory service available to all those who need it within the institution to deal with matters which are truly difficult to discuss and where resolution (including the innovative restorative practice proposal) is essential for the health, safety and welfare of all within the UCD community.
- Adequate recognition and credit needs to be given to those undertaking roles such as the D&R Contact Persons panel
- Students Union - it provides a valuable peer support for students and can provide a valuable source of information. It should be equivalent to the role of the trade unions.
- Role of HR – complaints must be also submitted to the HR Department for their information so as to enable them to keep track of the progress of any such complaint.
- In relation to employees where a conflict arises in the context of reporting to a Line Manager, there should be a clearer directive to employees that they need to report to a higher Manager but they should also be able to go directly to the HR Department. Also, all Line Managers, if they are to receive complaints, need to be appropriately trained in how to deal with any approach from their employee. This is to protect both the Employee and UCD as the Employer if any case turns up in the WRC or the Courts.
- Victimisation - if an employee reports such victimisation then the HR Department should also be informed of this by the D and R Report and Support Advisor.
- Broaden out supports they may contact to include other personal supports. Family will not be appropriate or helpful for some cases and people may feel obliged to make contact if they are singled out in the principles

- It might be handy to display other Helplines. If we wait until the sexual violence happens, the victim may have been subjected to coercive control for months before violence starts/happens.
- Senior Management should be represented on the D&R Oversight Group
- Responsibility for a promoting a culture of Dignity and Respect should also include the Governing Authority and Academic Council as it is a fundamental governance matter.
- Consider expanding external supports to include other support services such as Women’s Aid, Men’s Aid, Akidwa, Pavee Point,
- Question on the diversity and expertise of the advisors, disability, race, ethnicity, gender, LGBT informed
- Clarification required on “out of hours” support available
- Who is responsible for key aspects of implementation e.g. training etc?

## Training

- In terms of training, it is our strong recommendation that anyone with any authority or support role who is people facing within UCD may receive a disclosure and know how to deal with it in a way that is supportive to the person making the disclosure and not traumatic for the person receiving it. This would lead us to suggest that there needs to be specific training, regularly repeated for any such persons.
- In reality, disclosures are likely to a very wide range of people who, if properly trained and briefed, may refer the reporter to the new Service. People don't tend to know about this kind of service until such time as they need it!
- Campus Security - could this be re-worded to require the security company personnel to know and to act in accordance with the updated policies
- Important to have plans for campaigns, stickers for Helplines on the back doors of toilets, lockers etc

## Power Dynamics

- One concern is the dismissal of an informal procedure for dealing with sexual harassment. Other processes, including that set up in the standard code of conduct published initially by the Equality Authority and now adopted by the Irish Human Rights & Equality Commission and, like many others, it provides for informal processes. The reality is that if there is no informal processes, many people who are harmed by sexual harassment will not report it. As a result, the problem will continue because those carrying out the abuse will not be checked. As that code says, many people who disclose sexual harassment just want it to stop. This is regarded as a significant gap in the document.
- Restorative Practice – mixed feedback in relation to the suitability of this practice for cases of sexual misconduct. It was commended by one expert but felt it was generally not considered suitable for sexual misconduct by another expert.
- Reluctant complainant - suggest this could be expanded to 'for fear of the consequences or for other reasons'

## Language

- Useful change in language in terms of not using the words “complainant” and “respondent” outside of the formal complaints process

- Consider using the terms “reporting party” and “responding party”
- Use sensitive language to recognise the potential impact on the person making the initial disclosure and understand that impact
- Highlight sexual violence more throughout the documentation
- Use the words “non-consensual” as well as unwelcome
- Consider using remedies rather than “informal options”

#### Technical/Legal

- D&R also needs to be considered in the context of health and safety
- Consent – add to the definition that “this is not an exhaustive list” as per the Act
- This says – “*An isolated incident of the behaviour described.....is not considered to be bullying*”. Concern with this assertion as a number of the examples cited could have serious consequences for an employee or student. Also an offender being aware of this exclusion may then “physical abuse” – “stalking” – “misuse of power” etc and feel confident that their behaviour cannot result in a formal complaint.
- Further elaboration on some aspects referenced in the policy such as preliminary screening.
- Scope was commended where it not only relates to UCD connected activities

#### B. Formal Procedure

- It has been recommended that members of the Screening Panel and the Precautionary Measures Panel that will be dealing with sexual misconduct complaints should receive trauma informed training and specific training in sexual harassment and violence. This has been included in the training recommendations section.  
A further recommendation was made for external investigators to have this same training. The University should consider engaging with the Irish Universities Association and THEA to ascertain if they would be interested in establishing a panel of external investigators specifically for the Higher Education Sector for employees and students.
- It was recommended that in order to reduce distress that can be caused to a complainant if contacted unexpectedly during an investigation, that the medium of communication should be agreed with the investigator from the outset. This has been reflected in the procedures.
- It was suggested that where incidents fall under the sexual misconduct policy, that complainants and witnesses should have immunity/amnesty from violations of other institutional policies related to consumption of alcohol and or drugs in the context of the incident(s) of sexual misconduct. Rather than including this derogation within the procedures document, each case should be assessed on its particular circumstances. Full supports will be offered to victims of sexual misconduct, and likewise to anyone who may witness an incident of sexual misconduct.
- To encourage reporting and to avoid any misconception that a reporting person will be victimized for bringing a complaint forward, it has been suggested that where the procedure refers to a finding of malicious, frivolous or vexatious complaints, that it is clarified that disciplinary action will be considered in exceptional cases. The University recognises that this type of situation is the exception rather than the norm and each case will be assessed on its own merits.

- It has been suggested that a complainant should be informed of disciplinary sanctions in the case of sexual misconduct investigations, however the privacy laws are the same regardless of the type of complaint. In order for the formal procedure to be compliant with applicable legislation, this suggestion cannot be implemented.
- The victimisation/Penalisation section has been reviewed and enhanced to ensure that it is clear that the section applies to all members of the community, not just those covered by employment legislation.
- Based on feedback in relation to criminal cases concluding through the court system, the procedures document has been amended to clarify that the University can proceed to a disciplinary procedure without having to conduct an internal investigation where a respondent has been found guilty.
- It was suggested to consider the inclusion of appealing the outcome of the investigation to the Workplace Relations Commission (WRC). Given the role that an independent appeal person will play in investigating any appeal received, an additional appeal stage could be viewed as prolonging an already lengthy process. This does not affect an employee's statutory right to make a referral to the WRC should they wish to. The procedure is applicable to both students and employees, students in this case would not have recourse to the WRC.
- Based on feedback on use of language, with the aim of encouraging complainants to come forward, the section on outcomes following an investigation has been revised to provide reassurances that support will be made available, even in cases where the respondent has no case to answer. No pressure should be put on a victim of sexual misconduct to make a report to the Guards and this has been reflected in the relevant section. Highlighting that there are limitations to an internal investigation, such as lack of forensic evidence has been omitted and more information on the civil process will be provided in the supports section on the webpage. This is to avoid inadvertently putting off a complainant coming forward.
- Where the University invokes the right to suspend an internal investigation pending the outcome of a Garda investigation, the procedures have been revised to allow both the complainant and respondent put forward their objections to this, which will in turn be taken into consideration by the University.

### 3.4 Feedback Period with University Community (March 2021)

The draft report on the Dignity and Respect review was submitted to the UMT for discussion at their meeting on 2 March 2021. It was agreed to publish this report in order to be fully transparent and to provide an opportunity for the University community to review the feedback received following consultation internally and externally, and to input further into the recommendations and revised documentation. The draft report was published on 2 March 2021 for a period of three weeks where written submissions were invited. Meetings were also held with key stakeholder groups, namely, the EDI Group and Trade Unions. As with the initial consultation process, there was significant engagement from the UCD Community which was very much welcomed. A total of 43 written submissions were received broken down as follows:

- Students – 13
- Employees -26
- College/School Submissions - 3
- Trade Union Submissions – 1

- Legal Review by external legal experts

On the whole, the draft documentation was well received but there were a number of areas requiring further consideration. Some of the positive comments received included:

- *Well written document.*
- *Great to see UCD taking action*
- *Important and well documented*
- *Great, easy to read and follow. Well done UCD*
- *Executive summary is good*
- *Training aspects are very good*
- *If the steps outlined are taken in the next year and cemented in college processes and structures then this will be a very good process and a significant improvement on the lack of anything prior to this.*
- *External involvement is welcomed*
- *Emphasis on support is very welcome and overall the feedback is positive on the content of the report.*

The following section summarises the main themes that arose as part of the feedback on the various sections of the report requiring further consideration. As was the case in earlier steps of the review, the Review Group considered all of this feedback and revised the recommendation, policies, procedure and supporting documentation accordingly.

#### **Chapters 1-4**

- Commitment Statement required to be signed by all students and employees is positive step but need to consider how best to implement this in practice. Needs re-wording. Too oriented towards performance and achievement and should be anchored primarily to safety.
- Need to ensure that mainstreaming of Dignity and Respect/EDI into existing practices such as the Faculty Promotions Framework and is not a tick box exercise but meaningful. Should also be mainstreamed into the Quality Review process as part of EDI.
- Whilst training is important, it needs to be recognised that various people and roles are undertaking a lot of training already and therefore need to ensure that training is as streamlined as possible and that there is flexibility in terms of how it can be undertaken. It also needs to be considered how any “mandatory” training is monitored or enforced. It is important not to have an over-reliance on training however as the purpose of most training is to dodge accountability. Bystander training, especially for students, is the exception here. That should be mandated for all incoming students. Key roles that require training include campus security, residence assistants, screening panel members.
- Accountability – the requirement for mechanisms to be in place for individuals to be held accountable for their actions and in-action, including the cover up of complaints, especially for staff and leadership of the university was feedback that came through strongly. It was felt that culture change is likely to remain aspirational, and implementation of even the best of written policies will fall foul to power relations if accountability is not addressed in the documentation. It was felt that accountability mechanisms were not called out in the documentation and that this needs to be addressed and that it is impossible to change the culture without imposing accountability. The problem of the reluctant complainant will be substantially reduced if the university addresses accountability. Training also needs to be

balanced with a greater sense of accountability and consequences for those who do not respond appropriately to such disclosures, in order for these policies to be effective.

- The Governing Authority should have formal responsibility and authority for this policy and the senior leadership team of the university, led by the President, should be accountable to the Governing Authority directly for their work regarding the implementation of the revised policies and the change of culture, within their respective areas of responsibility. The Dignity and Respect Oversight Group should also be directly accountable to the Governing Authority and feed directly into the Governing Authority.
- If the Dignity and Respect Oversight Group is to have responsibility for environmental assessments, it needs to have independence akin to internal audits.
- Clear information about procedures and policies should be easy to find on the university webpage.
- While every case is different, UCD should establish clear step by step paths outlining how to deal with different types of complaints, and these paths should be available online so that potential complainants can see that speaking up will actually make a difference for their situation. The emphasis on these paths should be ensuring that the complainant feels listened to and heard, and that the university wants to resolve the issue fairly.
- The burden of proof should also be addressed clearly in the document, as so many situations are a "he said/she said" type of thing, it's difficult for complainants to come forward, because if they don't have hard evidence then what's the point.
- Couldn't find anything specific about reporting racial discrimination?
- Key criticism of this policy is that there appears to be no provisions made for a situation in which multiple individuals come forward about the same person. It appears that the policy in respect of these cases, remains the same i.e. to deal with each individual complainant separately, and an external investigator will be assigned to each complainant.
- Need to identify how can to support individuals where there may have been a negative impact as a result of this behaviour which resulted in hampering promotion prospects and other opportunities. People need to be encouraged and see a benefit in reporting/making a complaint
- Hypothetical case studies may encourage people to come forward.
- Requested that the material be shared with the Academic Council for noting when it's ready.
- More clarity is needed around how the proposed Dignity and Respect Oversight Committee fits into existing power structures and who they answer to, particularly if they are to be responsible for environmental assessments.
- Mechanism of reporting on statistics and data – how realistic and reliable are they?
- We would suggest somewhere in the policy there is reference to academic freedom. (Acknowledging that academic freedom does not allow anyone to get away with inappropriate behaviour.)
- Including D&R in the promotions framework is the inescapable result of embedding a new D&R culture in the University. However, this risks "mission creep" in the job description of an academic. It also risks overloading already-overburdened academics. A suggestion then would be that some of the rubrics in the existing framework could be expanded, thus enabling applicants to give a broader account of their contributions to the University.
- Expected to see more reference to race and intercultural dimensions with respect to bullying and harassment

- If it is accepted that UCD is hierarchical and that hierarchy is a key source of challenges with bullying, in particular, what steps is the University taking to tackle the culture of hierarchy?
- Very little about employment practices, especially with respect to precarious – temporary and short term – staff. Such staff are likely to be reluctant to make formal complaints.
- References to behaviours ‘known to be unacceptable’ should be called out as criminal acts.
- Insufficient reference to sanctions in the document, recognizing that formal sanctions require referral into Student Code and Staff Disciplinary procedures. It would be useful to refer directly to the sanctions available in those procedures.
- Query whether financial implications of new policies and procedures are accepted
- Executive summary should do more to acknowledge what people have been through and repeat the apology made previously in September [Perhaps this could be done in the context of launching the commitment and could be referenced in a revised document].
- Need to ensure victims are put at the centre
- Language of complainant/respondent should be replaced with person making a complaint and person responding to a complaint
- Language of disclosure should be more fully referenced in the documents.
- Does this harassment/bullying etc. include homophobia, transphobia, racism, other forms of discrimination based on religion, country of origin ("where are you really from"), all the microaggression which people face on a daily basis? Discrimination based on a disability.
- Good to have new support roles in place, but how do 3 people lead to cultural change across an entire university community >30,000 people? I think it is asking too much of the role.
- Individuals undergoing complaints procedures (in professional bodies) are more likely to suffer from suicidal ideation and act on it. How is UCD going to support the individuals? Are the new D&R advisors enough- it sounds like they already have a large workload.
- Surely dignity and respect towards one another is the baseline default on which we all treat one another. As such it should not be "reward based" to act in a dignified and respectful manner. You should not have to incentivise people to behave in a decent manner.

### **Bullying and Harassment/Sexual Misconduct Policy (Chapters 5 and 6)**

- In the examples of harassment, it currently says "Isolation or exclusion from social activities". A rephrasing is necessary to cover the full extent of these very harmful conducts, especially by people in a position of power over younger staff who depends on them as mentors and as PIs. Suggest "Non-cooperation, non-response, repeated unavailability, and isolation in the workplace or exclusion from activities"
- The definition of the UCD community (section 2) does not include reference to those engaged in club activity in the other category. This is only clarified in the scope section. It is important from the outset that the other category is clearly defined to include those engaged in club activity who may not be students or staff of the University. This includes graduates (player, committee member, coach/manager), those volunteering to coach/lead/manage, those being employed by the club to coach/ lead/ manage.
- The idea that you will personally approach the person “carrying out the alleged bullying and harassment,” even when accompanied by others may be entirely inappropriate, particularly if you have been harassed.
- Strongly suggest the three new roles being created have a distinctive title so that they are not easily confused with Student Advisers or DRCPs

- Again, an issue that jumps out here is proof. If the bully/harasser only bullies/harasses in person, and when there are no witnesses, how can the victim provide sufficient evidence for a formal investigation and penalization?
- There may need to be an alternative form of resolution - where there is insufficient proof of harassing etc, but the victim/complainant is resolute that it happens, that the University provide the supports necessary for the complainant to avoid situations where they would encounter the bully.
- The Report and Support Tool is welcome, but still very little known about, perhaps due to Covid. It would be good to involve more students and staff with promoting its use. How this will feed into addressing environmental assessments and how the environment will be assessed could be made more clear and involve a participatory element of staff and students.
- There is a failure to take into account different ethnicities in the document.
- The document needs to be updated with more legislation. Disability Act 2005 and Equal Status Act and other Irish language legislation.
- There should be no possibility of victimisation if there is no further action post an investigation, this needs to be emphasised further.
- Important that the documentation is balanced – takes account of the rights of the respondent as well as the complainant.
- Time limit of 12 months for those who are not current employees or students needs to be reviewed. For ex-employees or ex-students, a time-limit of “normally 12 months post leaving the University should be put in place”. This latter policy is problematic particularly if the subject of the complaint is still a member of the university. This policy could only be enforced in fairness after an extensive campaign in which former students or staff are encouraged to come forward if they have complaints that they wish to report, but that in itself is a challenge. In any event this policy of limiting complaints to 12 months post leaving needs to be seriously reviewed and revised. It often takes people who have suffered sexual violence or misconduct longer than 12 months to overcome their fear to make a complaint.
- The scope of the policies were questioned – “all who interact with the University”. Question – all students rather than just all registered students.
- The policy/ies need to make some references to steps/actions UCD will take (+timelines & a named contact) where the harasser or bully is encountering mental health difficulties.
- Roles and Responsibilities. Dignity and Respect Report and Support Advisors. Who are these? Are they full time positions? UCD employees? What scale will they be on? Also in Roles and Responsibilities, does it need to be clarified that a By-stander is a member of the UCD Community?

### **Dignity and Respect Support Documents (Chapter 7)**

- It should be spelled out here that the costs of mediation will be absorbed by the central administration. Otherwise, heads of school/unit will continue to have a strong incentive not to undertake this. The same should be true in all cases where an external investigator is hired. It is unclear what the distinction is (in function) between Report and Support Advisors on one side, versus D&R Contact persons on the other side. Need to define these groups/roles and to give guidance on which to contact in different situations.

- Cannot imagine any circumstance in which it would be appropriate or not intimidating to “approach the person carrying out the alleged bullying and harassment behaviour and potentially engaging with them if requested.” Would suggest changing ‘if requested’ to ‘if wishing to do so’.
- Restorative Practice - while this may help change behaviour, it can also be traumatic for the victim, so it should never be imposed. It is far less likely to be appropriate in cases of sexual misconduct but may be in some instances of bullying.
- The Mediation Document needs to be updated there was no reference to the Mediation Act. Sometimes it might be challenging to capture and track informal contacts (depending on who you are talking to) – to feed into trends regarding environmental assessments.
- Consider calling out specific student roles for students to reach out to – e.g. the Student Welfare Officer. The people supporting people coming forward also need support themselves.
- Look at Restorative Practice phrasing around “proactive”. Need to clarify to ensure people understand it is not an intervention to resolve the issue but rather an option afterwards. Important that there is good understanding as to what restorative practice is about and expert advice is required in implementing this.
- The document pays insufficient attention to the detail of informal process for reporting and resolution of harassment, bullying and sexual misconduct and seems almost by osmosis to be preferring more formal reporting mechanisms and complaints. This is a mistake, particularly in cases of sexual harassment and misconduct. Most people in these circumstances want the harassment to stop and they want peace and safety in the work place. They rarely want to be entering into formal complaint processes that add stress and further trauma to their existing pain. Informal reporting and options for the informal resolution of sexual harassment and misconduct cases should not be closed off. While the document talks about the support for individuals reporting, it is very weak on the informal mechanisms for resolving these situations, and for peace, redress, and safety to be restored to the person harmed. Restorative justice can help here [not mediation – that is an entirely different skill and mechanism]. The key is that it needs to be victim focused and victim centred – the individual reporting with the appropriate supports should be the driver around whatever actions should be taken and the possible routes and actions.
- Don't see a detailed section on Trade Unions. This should be provided with contact details.

### **Dignity and Respect Formal Complaints Procedure (Chapter 8)**

- Concern here is that the complaint may be dismissed/accepted merely on the basis of a form. The complainant should have the opportunity to meet/talk to the screening panel, and describe their situation more thoroughly, as a written form may miss important details, and the panel can ask questions specific to the situation to further tease out if the situation is relevant to the EDI department.
- How will the preliminary screening committee act, is it just to review the initial complaint or more information? Who will provide administrative support? Will the committee write to the individuals and get more information
- Access to IT services, especially e-mail, should not in general be removed as it may impact a person's career / research very severely -this may be appropriate AFTER the conclusion of a procedure, but not as part of a "neutral" suspension where the importance rests in separating complainant and respondent. IT/e-mail removal looks like a sanction/punishment, while at this stage it is too early for that.

- Chapter 8 Section 7 Disciplinary action

Last item on keeping complainant up to date: The wording of "This can include" is not good enough and must be made stronger, it should be: "This includes being...": the complainant should/must be informed, not can be informed.

Chapter 8 Section 10 Ombudsman for Students

While students have a further possibility for appeal, this seems not to be available for staff. What could an employee do? Appeal to WRC/LC? Perhaps mention this here!

The procedure document does not specify clearly an overall timeline for achieving an outcome, that should be stated (allowing for each side the usual 5-10 days for reverting back with their input/comment on the previous step). Perhaps this information should also be added to ALL (not just some) boxes in the various process maps.

How long the overall process and individual steps take, should be monitored as part of the statistical analysis.
- Although the addition of an external panel member is to be welcomed, the membership of the screening panel is still weighted towards people who may have a stake in preventing powerful members of the UCD community from being sanctioned.
- Include a section on stalking and repeatedly asking someone out on dates too.
- Bystander complaints – the permission of the person that experienced the incident would need to be sought before an investigation could commence.
- It is not clear in the document who a graduate or third party involved in a club should go to if they wish to make a complaint under either policy about a student, staff or graduate member or third party involved in a club. It is very clear who the student or staff should go to but not the other members of the community. It is fully appreciated that the flow charts have not yet been developed for the policies and perhaps these might bring clarity for all members of the community as to the process.
- Generic e-mail for receipt of formal complaints: [edi@ucd.ie](mailto:edi@ucd.ie) can be off-putting.
- Research misconduct policy allows for a preliminary investigation which would entail interacting with the respondent. It was questioned why the Screening Panel couldn't undertake this task under the D&R procedure and why an investigation can proceed on the basis of a complaint without any interaction with the respondent.
- The matter of 'Forced Complaints' to the police, without the consent of the complainant. This is a hugely problematic recommendation and it should be well known by the legal advisers to the Review Group that without a complainant – who becomes a witness in the State's case – it is difficult for the Garda to investigate a crime. This idea of 'Forced Complaints' to the police will cause untold trauma to individuals who make an informal or formal report of harassment, bullying or sexual misconduct to the university, and in my view will have the effect of further deterring students and staff who are suffering such behaviour from reporting to the university at all, were this 'forced complaints' recommendation to become practice in the university.
- The 'beyond reasonable doubt' evidential threshold required for success in criminal proceedings is a higher evidential threshold than the 'on the basis of probability' threshold in civil matters and while the document recognises this fact it must be made crystal clear in the document that lack of 'success' in terms of a criminal conviction will not mean the university will not investigate the same complaint against a staff member or student.
- Sub-section v says that "anyone who covers up sexual harassment should be subjected to disciplinary action." Absolutely!

- But it also says that anyone who “fails to follow the correct reporting procedure” in relation to same should also be subjected to disciplinary action. This is too harsh and fails to recognise the intent of a person who fails to follow the correct procedure.
- Following on from that, the document uses “Gardaí (police)” and “Gardaí (local police authorities) interchangeably. This is clearly well-intentioned, for international students and the like, but it is confusing – it is not clear if “local police authorities” is a translation of “An Garda Síochána” or is it an instruction for our students in Singapore and Beijing.
- Following on from do these policies apply to staff in BJUT in China? I presume they do? If so, how will interactions between this document and the “local police authorities” be managed? This is very confusing.
- “Balance of probabilities” seems reasonable. But the last part seems very strong. I think the part of the decision-making process that decides on sanction should be obliged to take into account any situation where a finding is made against a respondent on the basis of hearsay evidence alone. The sanction could still end up being harsh, but the strength of the evidence should still be a factor.
- “Parties involved in the investigation have the right to be accompanied”. Examples given of UCD parties. What about non-UCD parties?
- Malicious complaint making: This section needs to be more developed. What are the consequences. Malicious complaint making needs to be deterred, in part so that genuine complaints can be focused on.
- “A translator will be provided.” What about sign language? The language in the document is supposed to be inclusive.
- How will the preliminary screening committee act, is it just to review the initial complaint or more information? Who will provide administrative support? Will the committee write to the individuals and get more information
- No clear statement that an investigation WILL NOT go ahead if the person subjected to inappropriate behaviour does not want to be involved in an investigation.
- Appeal: A timeframe needs to be set where either party can appeal a decision- e.g. is it 2 weeks, 2 months, 2 years. There also needs to be an ability to appeal the sanction by either party (too lenient/not taking mitigating circumstances into effect).
- The Code of Practice on Bullying 2020 contemplates that the role of the screening will be to decide whether the matter should be the subject of a formal investigation or if some other informal approach should be taken. The Screening Panel may have a broader function in endeavouring to have matters addressed informally where possible as distinct from sending every formal complaint into a formal investigation.
- The 2020 Code of Practice includes some important qualifications on the generally accepted definition of bullying and does so by reference to the decision of the Supreme Court in *Ruffley*. Section 2.3 of the Code:

*“In line with the above operational definition, workplace bullying should meet the criteria of an on-going series of accumulation of seriously negative targeted behaviours against a person or persons to undermine their esteem and standing in a harmful, sustained way. Bullying behaviour is offensive, on-going, targeted and outside any reasonable “norm”. A pattern and trend are involved so that a reasonable person would regard such behaviour as clearly wrong, undermining and humiliating. It involves repeated incidents or a pattern of behaviour that is usually intended to intimidate, offend, degrade or humiliate a particular person or group of people – but the intention is not important in the identification process.”*

## Chapter 4: Recommendations

There are 9 main themes under the recommendations chapter which mirrors the structure of the feedback chapter of this report.

- A. Culture
- B. Trust & Transparency
- C. Support/Roles
- D. Training
- E. Communications
- F. Power Dynamics
- G. Language
- H. Legal & Technical context
- I. Definitions

There are overlaps between some recommendations in that they relate to more than just one theme. This has resulted in some repetition of recommendations under various themes but the Review Group is of the view that this highlights the holistic approach required in addressing the recommendations and the interlinkages that will be essential in helping drive cultural change.

The feedback received from the internal consultation process, from external experts and the subsequent feedback period with the University community on the draft Dignity and Respect report in March 2021 (all set out in Chapter 3) has been incorporated by the Review Group into the recommendations in this chapter and the subsequent chapters in this report including the draft policies, formal complaints procedures and the supporting documentation. The remaining recommendations will form part of the implementation of the policies, procedures and broader supporting framework.

As indicated in the Executive Summary, a detailed implementation plan will need to be prepared in order to ensure that the recommendations under each of these themes are implemented fully and in a timely manner. Due to the complexity involved in the implementation of these recommendations ranging from the establishment of an Oversight Group, recruitment and appointment of support roles; development of a comprehensive training strategy and plan; design and delivery of a nuanced communications campaign; external specialist agency engagement and development; and enhancement of IT systems to support data collection, a wide of stakeholders from across the University (and beyond) will need to be involved and support from many areas required. **Therefore, it is recommended that a temporary Project Manager will need to be appointed to project manage the implementation process including the development and co-ordination of a detailed project plan with specific actions, management of logistics, action owners and timelines for completion. This role should be for an 18 month period and subject to review at the end of this time.**

The new Dignity & Respect Oversight Committee (as set out below in the recommendations) should monitor the delivery of the implementation plan and it is recommended that a full assessment be carried out after 12 months. Further annual assessments should continue beyond this period. As set out further in the Report, it is specifically recommended that an assessment of the new Dignity

and Respect Report and Support Advisory Service be carried out within 18 months of its establishment.

## A. Culture

Changing the culture in relation to dignity and respect was a topic that consistently came through in the consultation process. The main message was that whilst the revised/new policies and procedures were needed, these alone will not make the necessary changes to the culture that exists in the University. The feedback indicates that people believe that measures are too reactionary rather proactive, that EDI is not seen as priority, and that there needs to be greater engagement from leadership in the area of dignity and respect. There were also suggestions that surveys need to include a detailed section on dignity and respect to better understand the culture in UCD in this area. Closely linked to this is transparency through monitoring and reporting and oversight which is covered in detail in Section B below.

Changing culture will be achieved through a number of different mechanisms including enabling improvements to transparency and trust, oversight with a reporting line to the Governing Authority, accountability in terms of roles and responsibilities and implications where there are breaches, rolling out training and awareness raising, ensuring that full-time dedicated supports are in place and having clear and supportive policies and procedures - all of which are recommended throughout this document. Culture change is a long term process so investment in the area of Dignity and Respect needs to be in-depth, top-down, bottom up and sustained by ongoing engagement of all members of the University community.

If these recommendations are accepted and approved, an implementation plan will need to be developed and overseen to ensure that the recommendations in this report are delivered upon.

The following are the detailed recommendations relating to the culture theme:

### 1. Commitment Statement

The Review Group has proposed a commitment statement that every member of the University Community must be required to sign up to. The UMT should be the first group to sign this statement. The following is draft text for this statement:

*UCD is committed to support the development of a working and learning environment in which bullying, harassment and sexual misconduct are unacceptable and will not be tolerated and where individuals have the confidence and trust in our processes to come forward, in the knowledge that their concerns will be dealt with appropriately and fairly. The University is committed to the provision of an environment of respect for diversity and equality of opportunity where you have the right to be treated with dignity and respect and can work and study in a rewarding and respectful environment and achieve your full potential. The Bullying and Harassment policy and Sexual Misconduct policy assign responsibilities to a range of roles within the University and failure to uphold the responsibilities assigned is taken very seriously and may lead to informal or formal action.*

*In addition, the University wants to create a climate of trust through the provision of a transparent oversight process, to include external membership, and to take a proactive approach to monitoring and publication of statistics and identification of actions to address any patterns of inappropriate behaviour that arise.*

2. Proactive and multi-annual training and awareness raising campaign  
A proactive and multi-annual training and awareness raising campaign should be introduced to all members of the University Community. The recommendations in the training and communications sections of this report elaborate further on this.
3. Dignity & Respect Surveys  
Incorporate Dignity & Respect into surveys at institutional level such as EDI survey and at College/VP level such as Athena SWAN surveys. Take actions that arise out of the survey results and report progress of these actions. Oversight of this should be assigned to the proposed new Dignity and Respect Oversight Group (see Trust and Transparency section B below for further information).
4. Highly visible external involvement  
Increase trust and transparency in Dignity and Respect policies from the University Community by ensuring that there is highly visible external involvement in each major step of the dignity and respect process. (see recommendations in B, Trust and Transparency below for further information).
5. UCD Dignity and Respect Oversight Group  
Engage with external experts and appoint a UCD Dignity and Respect Oversight Group (see recommendations in B, Trust and Transparency below for further information).
6. Dignity & Respect Report and Support Advisory Service  
Establish a new Dignity & Respect Report and Support Advisory Service (name may be subject to change). Ensure that 3 full-time professional supports are put in place as part of this service that can contribute to culture change (see section C , Roles and Supports below for further information). Given the level of training that will be required, it is also proposed that an EDI training co-ordinator will be required.
7. Investment in supports and training  
Investment in a three-tiered system of training is required to ensure that there is a level of awareness and understanding as to the behaviours that are acceptable and unacceptable in the University and that key roles are fully equipped to providing support to individuals.
8. Visible support from Senior Leaders  
Demonstrate senior leadership commitment to creating a culture of dignity and respect through the following ways:
  - i. Signing up to the Commitment Statement as described above including upholding the responsibilities assigned to UMT and accountability where responsibilities of any roles are not upheld;

- ii. The establishment of a Dignity and Respect Oversight Group with independent co-chairs that report annually to the UMT and Governing Authority;
  - iii. Investment in supports and training (See specific recommendations regarding investment in supports and training in respective sections of this Report).
  - iv. Ensuring that dignity and respect is a regular item on their meeting agenda and is prominent in their communications to the UCD community.
  - v. Proactive involvement in launching a publicity campaign to encourage prevention, reporting and supporting members of the University Community in cases of bullying, harassment, sexual harassment and sexual misconduct. This campaign, like many of the other recommendations in this report, should be sustained on a multi-annual basis. See further recommendations below under the communications theme.
9. Environmental Assessments  
Establish targeted and periodic Dignity & Respect Environmental Assessments to help measure how the new policies are being embedded across all areas of the University and to also help measure impact and accountability.
10. Employee and student networks and peer support groups  
Emphasise proactive measures taken by the University including broader initiatives such as employee and student networks and peer support groups for example.
11. Transparency for the complainant and the respondent  
There is a need for more transparency for the complainant and the respondent as they go through the formal complaints process. It needs to be clear that there are outcomes following an investigation.
12. Review exit interview material  
Colleges/VP areas should be required to review exit interview material to ascertain if a Dignity & Respect theme exists within their areas.
13. Embedding Dignity and Respect in other Processes  
Dignity and Respect needs to be threaded into all aspects of university life. Consideration that promotion of positive cultural change, EDI and dignity & respect within Schools and Units should be reflected as part of the promotion criteria framework for faculty and the job family frameworks for staff and the Quality Review Process.

It is important to note that culture cuts across all themes set out in this report and therefore recommendations made under each of the themes will all contribute to culture change.

## B. Trust and Transparency

Closely linked to culture (it could be argued that it is part of culture), there was a lot of discussion and feedback around trust and transparency in the University relating to the reporting, supporting and investigating of dignity and respect and the requirement to have external involvement.

Given the strong views that emerged from the consultation process, the Review Group felt that the theme required its own heading in this report.

The following are recommendations under this heading.

### 1. External Involvement

- i. It is recommended that, whilst the University will manage the dignity and respect process and take on the responsibility of building a culture of dignity rather than outsourcing its responsibilities, there is a requirement for external involvement throughout all major aspects of the dignity and respect process. It is recommended that this should be done in the following ways:
  - a. Establish an Oversight Group for Dignity and Respect in UCD with external representation from key groups outside UCD and with internal stakeholders from the University at various levels including representatives from groups that may be at particular risk of bullying, harassment and sexual misconduct. This group will submit reports to the EDI group and UMT on a quarterly basis and the Governing Authority annually. The Group should also have appropriate senior management commitment and representation on the group. Further details on recommendations about this group can be found in the Support and Roles theme below.
  - b. Develop deeper links with external bodies such as the Dublin Rape Crisis Centre (DRCC) as discussed in section C (Supports ) below to support students and/or employees of the University.
- ii. It is important that there is enhanced transparency in the Preliminary Screening Panel Process. Appoint an external member to the Preliminary Screening Panel – see screening panel in section C below. In addition, the membership of the Screening Panel needs to be known by the University Community and clarity around its role and decision making. This should be published on an appropriately designed website.
- iii. Continue to use external investigators. The University currently uses the Office of Government Procurement Panel (OGP) of investigators for cases involving employees. Based on recent OGP advice, the University cannot procure investigators for investigations involving students through the OGP. An alternative procurement mechanism should be established for student cases.
- iv. The University should consider engaging with the Irish Universities Association and THEA to ascertain if they would be interested in establishing a panel of external investigators specifically for the Higher Education Sector for employees and students. The need for this specialist panel specifically for this sector is further emphasised by the feedback from the National Women’s Council where they advised that investigators of sexual misconduct claims should have trauma-informed training and have experience of sexual misconduct investigations.

- v. Appoint/Have an external person involved in appeals of dignity and respect formal investigations.
2. Data/Reporting
- i. Monitor and publish Dignity & Respect related statistics that will be submitted to UMT and Governing Authority. This should be overseen by the proposed new Dignity and Respect Oversight Group.
  - ii. Develop a data system to confidentially capture contacts and reports made by individuals and formal complaints in line with GDPR legislation in order to ensure that there is a complete picture of the culture of Dignity and Respect in UCD. This is in addition to the data captured through the Report and Support tool. This will also be important for environmental assessments. The Review Group recommend that this be considered as a matter of priority.
  - iii. The HEA is the oversight body that statistics must be reported to externally and a progress report on the Consent Framework which includes broad actions relating to Dignity & Respect.
  - iv. Establish Key Performance Indicators (KPIs) to measure impact of the policies which should be developed by the proposed Oversight Group for Dignity & Respect as outlined above. These KPIs should relate to training, general awareness levels of the policies, procedure and supports and tracking the numbers that sign the proposed commitment statement as set out in the report. It is important that KPIs are not developed with the aim of reducing the number of complaints raised. The aim is that individuals come forward and raise complaints and have confidence in the University's response to issues raised. These KPIs should be developed as part of the implementation plan.
  - v. Dignity & Respect should be a standing item on College/School /Unit Executives. Colleges/Schools/Units should consider D&R under a number of headings including health and safety, reporting and supporting. This needs to be the responsibility of College Principals, Vice-Presidents, Heads of School/Unit as appropriate.
  - vi. Include a substantial section on Dignity and Respect in EDI surveys and other relevant locally run surveys such as those for Athena SWAN. Consider running EDI surveys annually rather than every two years (see recommendation under Culture section A).
  - vii. Expand and monitor exit interview surveys for themes that may arise relating to Dignity and Respect (report currently being developed)
  - viii. It is important to include how many people have been sanctioned in the data publications, to show that the policies are having an effect.
  - ix. Timeframes around the process need to be communicated and clear to all parties involved.

## C. Support/roles

Following analysis of the feedback, very clear themes emerged in the area of support and roles. There was a consistent call for a relationship to be established with an external advocacy organisation to support members of the UCD community who have experienced issues of sexual misconduct in particular.

Whilst it was recognised by some that there are supports in existence, it was felt that it needs to be clear as to the limitations of the roles and that these roles are not experts in the area. It was strongly suggested that dedicated roles should be appointed where people can disclose issues of bullying/harassment and sexual misconduct that they are experiencing and where individuals will be guided, supported and kept abreast of developments throughout the informal and formal processes. It is also important that roles can also support individuals that have been reported.

The role of the Head of School/Unit was also a major theme in terms of the conflict that can exist if they are the line manager to the individual who brings forward an issue and also the person being accused, and also if the Head of School/Line manager is the accused.

The following are key recommendations from this section.

1. New and Additional Roles
  - i. Dignity & Respect Report and Support Advisory Service (working title that is subject to change)

It is recommended that the University create three dedicated roles – Dignity & Respect Report & Support Advisors (working title that is subject to change), and that the new Dignity and Respect Advisory Service will be reviewed after 18 months to ascertain aspects such as its effectiveness, scope and if it is adequately resourced. These roles will form the basis for a new service in the University – the Dignity & Respect Report and Support Advisory Service and it is recommended that the service report to EDI. The roles will support both students and employees. These advisors should be trained and have experience in the area to hear disclosures of bullying, harassment, and sexual misconduct (including sexual harassment and sexual violence). The roles should not be of an advocacy nature but should support the reporting person/complainant or the person being reported/respondent. In supporting a reporting person or person being reported, this will include working through the issues in a supportive, confidential environment so that parties can make a decision that is right for them and their situation, taking the safety of all individuals into account at all times. This support will also be provided up to and including assisting a reporting person prepare a formal complaint (if they choose to do so), throughout any investigation process and also following an investigation process regardless of the outcome. This service is also available to individuals being reported up to and including a formal investigation as well as after care following an investigation. They will work with designated link persons, in particular the D&R Contact Persons to work towards a culture of dignity and respect.

The Dignity and Respect Contact Persons are a trained confidential peer support panel that are also available as a listening ear and to provide support and information to the students and employees so that they can make an informed decision as to how they wish to proceed. For ongoing support or interventions, individuals will be referred to the Dignity and Respect Report and Support Advisors.

Following feedback from the external experts, formal complaints will be submitted to the EDI Unit and not the Dignity and Respect Report and Support service in order to enable these roles to focus on the provision of supports to those experiencing issues of dignity and respect.

The Review Group considered the number of new roles required carefully. Three D&R Report and Support Advisory roles are initially recommended based on benchmark information (one

Advisor per 10,000/15,000 students). One of these roles should head up the new service (so will need to be at a higher level). In addition, it is important that there will be no conflict of interest in individual cases (one advisor may need to support a complainant/reporting person, it would not be appropriate for the same advisor to support a respondent/person being reported). The Review Group believe that three roles will have scale and bandwidth to deal with dignity and respect matters on a proactive and operational basis working with a range of others such as the D&R Contact Persons, University leadership, student services, EDI, line managers, HR, the Students Union and trade unions. The Review Group envisage that the D&R Advisory roles will provide support during normal working hours, however in an emergency, contact can be made with the Duty Manager in Estate Services who is available 24/7 and externally by contacting the National 24/7 Rape Crisis Centre Helpline. Further engagement with expert agencies such as the Dublin Rape Crisis Centre is recommended (see below) as part of the implementation plan once this report is approved by the University authorities.

The key responsibilities of the service and the roles will include:

- Providing impartial information and support around options in relation to resolving issues of a bullying, harassment and/or sexual misconduct nature.
- Supporting engagement in informal interventions if there is a desire to do so including the provision of information on mediation and liaising with the external mediation provider in the event that mediation is proceeding (in cases of bullying and/or harassment only).
- Accompanying a reporting person to approach the person carrying out the alleged bullying and harassment behaviour and potentially engaging with them if requested.
- Supporting and guiding the reporting person in making a formal complaint if they wish to do so.
- Accompanying complainants and respondents to investigation meetings (if requested) and providing after care support following a formal investigation process regardless of the outcome.
- Signposting and referring individuals to other appropriate support services both within the University and externally.
- Keeping accurate records to a safe, professional and ethical standard and monitor and report statistical data.
- Providing specialist advice to University and College employees on individual cases of dignity and respect, including possible actions to ensure that employees and students feel safe and protected.
- Providing key support for the panel of Dignity and Respect Contact Persons and guide and advise as appropriate ensuring a high standard and consistency in delivery of support as well championing of the panel.
- Liaising closely with other key Dignity and Respect supports such as Student Advisers, EDI, HR and the Dignity and Respect Oversight Committee.
- Supporting the delivery of dignity and respect training to employees and students.
- Monitoring informal contacts and disclosures which will feed into the overall data reporting system that will support the Dignity and Respect Oversight Sub-Group make decisions around the more targeted environmental assessments.
- Keeping abreast of best practice developments in this area nationally and internationally.

Once this service is established, it will be promoted widely including details on how to make contact with the service.

As an interim measure, the University established a dignity and respect email address in September 2020. The Review Group is of the view that the Dignity & Respect Report and Support Service (as outlined above) will replace this email address once it is established.

Following the establishment of the Dignity & Respect Report and Support Service, it is recommended that the Report and Support tool be reviewed to consider enabling individuals that are reporting through the tool, to also have the option of contacting a Dignity and Respect Report and Support Adviser through the tool. This will be an additional pathway into the Dignity and Respect Report and Support Advisor and may encourage individuals to seek support as they report anonymously. This option was recommended for further consideration as part of the external feedback.

ii. EDI Training Co-ordinator

Given the quantum leap required regarding training, the Review Group recommend that an EDI training co-ordinator should be appointed. See training recommendations.

iii. Dignity & Respect Oversight Committee

It is recommended that a new Dignity and Respect Oversight Committee be established reporting to the UMT EDI Group and UMT on a quarterly basis and reporting on an annual basis to the Governing Authority in order to ensure independence around governance. This Committee should consist of key stakeholders from across the University at various levels including those most at risk of bullying, harassment and sexual misconduct, have both student and employee representation and external members who are expert in the area of dignity and respect. The Committee will have responsibility to provide oversight and guidance and enhance transparency around dignity and respect. The core components of the Dignity and Respect Oversight Group are set out below and a terms of reference for this group and will be developed as part of implementation.

- Provide guidance and direction in relation to the implementation of the Dignity and Respect policies and supporting framework to support a culture of dignity and respect; The Oversight Committee should also have responsibility for overseeing the implementation of the recommendations as set out in this Report;
- Monitor progress in relation to the implementation of the Dignity and Respect Framework and Consent Framework and measure against established KPIs;
- Monitor statistical data relating to reports made under the Report and Support tool, formal dignity and respect complaints and contacts and reports/disclosures with designated supports roles such as the Dignity and Respect Contact Persons and the Dignity and Respect Report and Support Advisory Service, Student Union roles and others;
- Instigate periodic as well as more targeted Dignity and Respect environmental assessments arising based on available data in School/Units/Colleges and Vice-President areas which will be mandatory once instigated and therefore must be facilitated in areas identified;

- Ensure there is transparency in relation to Dignity and Respect in UCD through the publication of statistics and actions to address themes arising;
- Advise on best practice nationally and internationally;
- Act as champions for a positive culture of dignity and respect and trust in the process;
- Report on a quarterly basis to the EDI Group and UMT and annually to the Governing Authority.

iv. External Roles

- Develop a deeper relationship with the Dublin Rape Crisis Centre (DRCC) whereby there is a contact established for UCD students and employees to engage with and where they will accept referrals. UCD and DRCC need to work together to support these individuals so there needs to be regular communication and updates from DRCC. It is recommended that this is considered further as part of the implementation plan.
- Build relationships with other support organisations such as Men’s Aid, Women’s Aid, Pavee Point and others and reference these supports in the documentation.
- Provide further clarity around the University’s relationship with the Garda Síochána (Police) and contact point for individuals in UCD who wish to approach the Garda Síochána. Consideration should be given to engaging with local liaison officers in the Garda Síochána and the role they can play.
- External investigators are appointed once a formal complaint has been screened. Reaffirm that the cost of an investigation is covered by the University rather than by a School/Unit.

2. Existing Internal Roles

The recommendations relating to existing internal roles should be read in conjunction with the training recommendations in section D. In addition, whilst it is evident that there are a significant number of existing roles that support dignity and respect in the University, it is very important that clarity is provided in the documents around roles that one can approach for support and the role that individuals can approach for disclosures rather than causing confusion with multiple points of contact.

As with all policies and procedures, these policies assign responsibilities and accountabilities to a range of roles within the University. Failure to uphold the responsibilities and accountabilities assigned is taken very seriously and may lead to informal or formal action, including, in the case of students, under the Student Code and Student Discipline Procedure, and in the case of employees under the Disciplinary Statute (Statute 28). Formal sanctions available for breach of university policies and procedures are graduated by reference to the seriousness of the breach, for students ranging between a written reprimand to permanent expulsion from the University, and for staff ranging between a verbal warning to dismissal. This paragraph is applicable to all policies.

The Review Group is of the view that the primary area in the future for disclosures should be via the proposed Dignity & Respect Report and Support Advisory Service. Nevertheless, many other positions in the University have a role to play in reporting and supporting dignity and respect related issues and it is recognised that different individuals will report to different people depending on who they feel

most comfortable with, and they can make these individuals aware of the D&R Report and Support service.

- i. Governing Authority  
The revised policies have been updated to reflect the leadership role of the Governing Authority.
- ii. UMT  
The revised policies have been updated to reflect the leadership role of the UMT.
- iii. Head of School/Unit  
The revised policies have been updated to reflect the role of the Head of School/Unit
- iv. Dignity & Respect Contact Persons  
It was clear to the Review Group that these voluntary roles provide an essential service and should therefore be maintained. These roles need to be nurtured and developed further and given due recognition and credit. The intention is that the Dignity & Respect Report and Support Advisors (as recommended above) will work closely with this group to enhance and develop their skills, visibility and value. These roles are appointed through an expression of interest process on a voluntary basis and receive training from the DRCC. They provide a listening ear on a confidential basis and provide information on options so that students and employees can make an informed decision as to how they would like to resolve the issue. For more ongoing support and interventions to help resolve the issues, individuals should be referred to the Dignity and Respect Report and Support Advisors. It is important however that the D&R Contact Person roles are promoted as they are a valuable support to individuals as they are considering their options. These roles will receive the detailed training under tier 3 (see training section D below)
- v. Students Union  
The Students Union is not the formal avenue to handle a complaint for a student. Responsibility for dealing with complaints lies with the University. However, it provides a valuable peer support for students and is a very important source of information.  
  
All officers of the Students Union should also be familiar with the updated Dignity and Respect policies, the formal complaint procedure and the support services available. It is important that appropriate training be given to Student Union Officers on a multi-annual basis (see Training section D below).
- vi. Trade Unions  
The trade unions are a partner in supporting a positive dignity and respect culture in the University. It is important that trade union representatives and officials have access to appropriate level training in order to support them in carrying out their roles.

- vii. Student Advisers  
The UCD Student Advisory Service is a point of contact, support and referral for all UCD students throughout their studies. Every academic programme in UCD has a dedicated Student Adviser who offers students time and space to explore issues of concern to them. The Student Advisers can assist students in finding pathways to deal with personal, social and emotional issues and can advise of and support students through the appropriate UCD policies, procedures and services for their circumstances.
- viii. Student Clubs and Societies  
All Auditors and relevant committee members of all UCD Clubs and Societies will have participated in Dignity and Respect training as they will undertake it as an employee/student of the University. These personnel should also be familiar with the updated Dignity and Respect policies, the formal complaint procedure and the support services available.
- ix. HR & Registrar's Office  
The revised policies have been updated to reflect the role of HR and the Registrar's Office
- x. EDI  
The revised policies have been updated to reflect the role of the EDI Unit. EDI School representatives should be trained to assist colleagues with making formal complaints in order to become Dignity and Respect champions.
- xi. Preliminary Screening Panel  
The revised policies have been updated to reflect the role of the Preliminary Screening Panel.
- xii. Bystanders and Witnesses  
Clear guidance and training for bystanders and witnesses who wish to report needs to be developed (see section D below). The online Bystander training programme for students in UCD will be evaluated and adapted for an employee audience and incorporated into the overall Dignity and Respect online training programme. There are good examples of active bystander programmes internationally such as the one developed by the University of Cambridge and this amongst others should be considered in the implementation of this recommendation.
- xiii. Campus Security  
The appointed campus security company needs to know and to act in accordance with the updated policies and the support services available. It is very important that the Campus Security company's training is aligned with the University values regarding dignity and respect.
- xiv. Out of Hours  
Out of hours contact for support needs to be fleshed out further in terms of what support might be required out of hours. This should be considered as part of the implementation

plan and particularly after the proposed Dignity & Respect Report and Support Advisory Service is established.

xv. Other Roles

Reports can be made to trusted people in wide variety of circumstances. It is important to recognise that they also have a role to play in supporting and signposting individuals to the supports available.

## D. Training

Internal and external feedback highlights the commitment that is needed for continuous and mandatory awareness raising and training in all areas of dignity and respect across the community. Specific supports will be needed to be able to co-ordinate, design and deliver training in this area. Research also highlighted to the Review Group that without the financial commitment to heavily invest in both internal and externally provided training, policies will not be as effective as intended. Training combined with other measures as outlined in this report will support awareness raising and a change in culture. It is important that D&R related training is covered under the one umbrella in order to streamline it as well as ensuring flexibility in terms of how the training can be undertaken (e.g. online for level 1 training) taking into consideration the time pressures on people. There are three levels of training identified depending on the roles involved.

1. Tier 1: Mandatory Training for all

All students and employees, across all levels within the University need awareness level training in dignity and respect. At a minimum, every individual in the University should be aware that there are two policies – Dignity & Respect Bullying & Harassment; Dignity and Respect Sexual Misconduct. They should also be aware of the informal resolution options, the formal complaints procedure and understand the support structures that are in place if anyone requires them. This training will also help to ensure that all individuals understand the behaviours that are expected whilst studying and working in the University and support a cultural change. This awareness raising programme will potentially be an online programme and will incorporate Bystander training. As part of the online programme, individuals may be required at that point to sign the Commitment Statement which will be evidence of completion of the training.

2. Tier 2: Role Specific Training

Additional training is required for anyone who is in a role that students and employees may approach for advice or report issues to. This may include Heads of School/Unit, Line Managers, Principal Investigators, Module Co-ordinators, Student Advisers, Student Union sabbatical officers, in particular the Student Union Welfare Officer, Residents Assistants, HR and other roles. It is essential to ensure that the correct information is provided and that they know how best to support the individual and where to signpost to other supports and specialist services that can assist the individual with resolving the issue in a manner that is suitable for them.

### 3. Tier 3: Specialist Dignity and Respect Supports

Specialist roles include those roles that people are signposted to for further support and detailed information in relation to options for resolving the issues being experienced. These roles include the Dignity and Respect Report and Support Advisors, Dignity and Respect Contact Persons and the EDI Unit. These roles will require in-depth training in receiving disclosures and providing proactive support and assistance in resolving issues in order to ensure that they feel equipped to carry out their roles and support people that approach them.

Without commitment to training, there will be a disjointed and inconsistent approach to tackling the issues of dignity and respect and a lack of faith in the structures that are put in place to protect the welfare and wellbeing of the members of the UCD community.

### 4. Other training

- i. Case studies should form part of training on topical issues such as working/studying from home and cyberbullying.
- ii. D&R awareness raising needs to be incorporated into orientation and induction for employees.
- iii. Build on the ongoing programmes for students (Bystander programme and Consent workshops) and look at mirroring the Bystander training for employees and incorporate into the overall Dignity and Respect online programme.
- iv. Other types of training need to be considered and threaded into D&R including Unconscious Bias awareness and Cultural & Diversity awareness.
- v. Consideration should be given to linking mandatory D&R training with any investigation that makes a finding against a respondent.

### 5. Training Resources and Budget

- i. As set out above under the Support and Roles section, appoint an EDI training role to co-ordinate all training requirements. This role will not only support the provision of D&R training but will also assist with the management of a broad range of EDI related training and awareness raising, all of which are inter-connected and complementary.
- ii. In addition to the co-ordination of training, specific investment and supports will be needed to enable the design, delivery and evaluation of training. A short-term training initiative will not instil the commitment to eliminating dignity and respect issues within UCD, there needs to be financial commitment to support training initiatives on a long-term basis.
- iii. Multi-annual training needs to also occur given the turnover of students, employees and Heads of School on a regular basis.

## E. Communication

The research carried out by the Review Group and the feedback received from multiple parties has highlighted that it is not enough to just have policies and procedures. The commitments and

expectations of the University in relation to dignity and respect need to be advertised and promoted on an ongoing basis.

1. Commitment Statement

As set out in the Culture section, the Review Group has proposed a commitment statement that every member of the University Community will be required to sign up to.

2. Awareness Raising

- i. Develop a multi-pronged communication plan to raise awareness of the new policies, formal procedure and supports available (including posters, videos, social media, email campaigns) and to be rolled out in a clear and accessible manner. An external designer may need to be engaged to assist with development of these. This needs to occur on a multi-annual basis. The first campaign should be rolled out prior to the new academic year 2021/22.
  - ii. Regular seminars at a University level should be provided to employees and students with a blend of internal speakers and external experts.
  - iii. Schools and Units should be encouraged to present policies and supports to all employees and students annually.
  - iv. EDI and dignity and respect should be a standing item at all College/School/Unit Executive meetings. This should be the responsibility of the College Principal; Head of School; Head of Unit.
  - v. There needs to be clear information on the supports and processes available to both students and employees. The Review Group has developed an initial set of flow charts and further work will need to be done at the implementation stage regarding manager, employee and student guides, FAQs and short “cheat” sheets (see language recommendations also).
  - vi. The revised policies, formal procedure and supports with regard to Dignity & Respect should be incorporated into Induction and Orientation at School and University level for both employees and students.
  - vii. Data relating to bullying, harassment and sexual misconduct should be reported regularly to UMT, the Governing Authority and the HEA (see also Trust and Transparency recommendations).
  - viii. The dignity and respect documentation applies to all employees and students and others, including those that are hourly paid. This should be taken into a consideration as part of the awareness campaign to ensure that everyone is aware that the policy applies to them.
  - ix. For those incidents that do not fall under the definitions of bullying, harassment or sexual misconduct but the conduct is unacceptable, ensure that there is clarity on the EDI website and cross referencing in relevant documentation as to the relevant policy and procedure.
3. Communication to the reporting person/complainants and person being reported /respondents.
- i. Transparency of disciplinary procedures should be communicated to a complainant and respondent in a way that both reflects personal data obligations of a respondent and the wellbeing of a complainant.

- ii. Ensure communications in relation to D&R policies are clear (including how the complaint process will be handled and accessible (plain English)).
- iii. It is the view of the Review Group that the material produced must strike a balance between supporting a reporting person/complainant while protecting the rights of a person being reported/respondent. The Review Group has followed the University template for the two policies, has set out a separate formal complaints procedure document and has developed a support guide which focuses on the resources in place for a reporting person/complainant whilst explaining the rights and supports available for a person being reported/respondent. The recommendations under the language theme are closely linked to this.

## F. Power and dynamics

The power differentials between individuals who are experiencing issues related to dignity and respect and those causing the alleged offence strongly came through the feedback, particularly where there are reporting relationships or due to the temporary nature of employment for example. Research carried out as part of the review also highlighted the importance of addressing power dynamics.

The Review Group recognises that power relationships and structures are a significant factor in creating opportunity for bullying, harassment and sexual misconduct and a significant inhibiting factor with respect to reporting and acting on reports of breaches of the policies. Key aspects of power imbalance occur with respect to heads of school/unit and employees and students and others holding positional power as supervisors, mentors, managers and leaders with respect to students, postdoctoral researchers and others in early career and where their positions are temporary with dependence on someone exercising power with respect to assessment, appointment, permanence, promotion and/or other aspects of career development and/or more general well-being. Such power dynamics have the dual effect of enabling those holding power to abuse their authority and to inhibit those affected from making informal or formal complaints - sometimes referred to as 'reluctant complainants'.

The following are the recommendations set out under this theme.

1. Reluctant complainant / Environmental Assessment
  - i. The Review Group considered the issue of a reluctant complaint carefully. A reluctant complainant is someone who does not wish to participate in a formal investigation for their own reasons but wants to notify or disclose an issue to the University authorities. In certain cases, the University may wish to take action by carrying out a targeted Dignity and Respect Environmental Assessment of the area where the individual has disclosed issues but does not want to lodge a formal individual complaint.
  - ii. It is also recommended that periodic Dignity and Respect Environmental Assessments be undertaken across the University where a small number of areas will be randomly selected by the D&R Oversight Sub-Group on an annual basis. These assessments will also help measure how well these policies are being embedded across the University and their impact. Investment will be required in order to support this new process. The decision to undertake

periodic or targeted environmental assessments will be taken by a sub-group of the Dignity and Respect Oversight Group and will be made independently of any School/Unit/College/Vice-President area. An area will not be permitted to refuse the undertaking of an environmental assessment.

- iii. In certain exceptional situations, the University may instigate a formal investigation where an individual has disclosed an issue but does not want to bring a formal complaint themselves. This would be limited to circumstances where there is serious concern for the safety and welfare of individuals. The individual involved would be engaged with and afforded all the necessary supports and precautionary measures. The guiding principle is that an individual that reports an issue makes the decision as to how they wish to proceed in relation to resolving the issue and they remain in control of the situation.
- iv. If a Bystander witnesses an incident(s), they should report this to the Dignity and Respect Report and Support Advisory Service who will advise around the different options available in relation to addressing the issues raised.

## 2. Options for Resolution

- i. Support roles will work with individuals in relation to how they would like to see the issue resolved and what option would work for them in their situation. There are a range of options that an individual may wish to consider including the formal complaints process. As highlighted strongly in the external feedback, it is important that the decision rests with the reporting person as to how they wish to proceed, with the support of roles such as the D&R Report and Support Advisor, and that there are options available to them for resolution. This was seen as essential in order for people to come forward and report incidents of bullying, harassment and sexual misconduct. Based on this feedback, the Supporting documentation was separated out, one support document for bullying and harassment and a separate support document for sexual misconduct, as it is recognised that different types of supports and resolution options are required in these situations. Safety of all individuals will be of paramount importance.
- ii. In cases of bullying, the Review Group notes that the new Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work (2021) and the Supreme Court case of Ruffley sets a very high threshold for conduct to be considered bullying. The Code sets out very clearly that a prompt and informal problem-solving approach offers the best potential for addressing allegations of bullying effectively. The Code goes on to state that it is good practice that all informal resolution avenues should be contemplated and where appropriate, exhausted before a formal process is invoked. Proceeding to a formal process should not be viewed as automatic and the Code of Bullying 2021 sets this out. The Review Group recognises the importance of the new Code of Bullying, the value it places on informal interventions and the University's Bullying Policy and Procedure needs to recognise this.
- iii. The Code of Practice as set out above does not apply in cases of sexual misconduct. Informal resolution options where sexual misconduct allegations have been raised are more problematic in the view of the Review Group. The key principle to be maintained is that individuals reporting allegations of sexual misconduct, with the appropriate supports, should be the driver around whatever actions should be taken and the possible routes and actions towards informal resolution should be explored when they are engaging with University and/or external supports. Whether informal interventions are appropriate will

- depend on the nature of the sexual misconduct. Informal resolution options in cases of sexual misconduct and how they could potentially be applied are set out further in the Supports documentation and are defined in the Sexual Misconduct Policy.
- iv. The Review Group is keen to emphasise however, that it has been noted from the feedback, that there are many reasons as to why some or all informal resolution options may not be appropriate for some individuals to engage with in relation to sexual misconduct issues and may wish instead to proceed to the formal investigation stage.
3. Dignity and Respect Report and Support Advisory Service  
The establishment of a proposed Dignity and Respect Report and Support Advisory Service (as set out in the Support and Roles section) will allow individuals to contact this area directly without having to go through line management/hierarchy structures (in the case of employees) or other student services (in the case of students). The intention is that this service will provide support directly and independently to all parties involved in issues of bullying, harassment or sexual misconduct.
  4. Support documentation  
Separate support documentation has been developed outside of the policies and the formal complaints procedure (see Chapter 8).
  5. Precautionary measures  
The University may impose at any stage, precautionary measures on a student or employee who is alleged to have engaged in bullying, harassment or sexual misconduct pending the outcome of a criminal or University investigation process. If a complaint is not upheld due to a technicality but some form of misconduct occurred, then the University has as duty of care and Health and Safety obligations towards all involved. Therefore, some precautionary measures may be kept in place. If the complaint was not upheld as it was found that the incident never happened for example, then precautionary measures would be removed.
  6. Training and awareness raising  
Training and awareness raising is essential for managers to understand the power differentials that may exist and to help create a culture of dignity and respect in their area. It will be important when training materials are being designed and delivered that university specific case-studies and examples highlighting power differentials form an intrinsic part of the programme.
  7. External involvement  
Linked to the Trust and Transparency recommendations, external involvement will be at every stage of the revised dignity and respect policies and procedure.

## G. Language

Much of the language feedback as set out previous chapter related to consultees reviewing the draft dignity and respect policies and procedures that were made available as part of the consultation

process in September-October 2020. On the basis of the feedback received, the Review Group has substantially redrafted the two policies – Bullying and Harassment; Sexual Harassment and Sexual Misconduct, has set out a separate formal complaints procedure and developed supports documentation.

1. Consistent approach

The Review Group has endeavoured to ensure the language and tone is consistent throughout Dignity & Respect documents whilst adhering to the standard University template for University policies.

2. Stand-alone separate procedure for formal complaints.

The Review Group has recommended a stand-alone separate procedure for formal complaints.

3. Separate document outlining the supports available

While policies and procedures are by their nature formal in tone, the Review Group has set out a separate document outlining the supports available to members of the University community. This document is drafted in a less formal way.

4. Suite of flow-charts

The Review Group has also set out a suite of flow-charts as supplementary user-friendly documentation. It is recommended that as part of the implementation plan, further work will need to be done regarding manager, employee and student guides, FAQs, case-studies and short “cheat” sheets.

5. Reporting Person/Complainant led complaint process

The Review Group recognise that there should be no pressure on a reporting person to make a formal complaint and it is important that they will be supported throughout the complaints process.

6. Inclusion of local police authority

The documents have been revised to ensure that reference to an Garda Síochána are followed with “*or other local police authority*” for inclusivity for students or employees from international backgrounds.

7. Expanded terminology for complainants and respondents

Consider using different terms to refer to “complainants” and “respondents” in informal stage. “Reporting Person” and “Person being Reported” will be used throughout the informal stages from now on. This terminology was commended as part of the external consultation.

8. Supportive materials for complainants and respondents

The documents must strike a balance between supporting a reporting person/complainant while protecting the rights of a person being reported/respondent. Arising from this, the Review Group has revised the policies and other documents. The Review Group has set out two separate policies (Bullying and Harassment; Sexual Misconduct). The Review Group has followed the University template with regard to these policies. Separately, the Review Group

has now set out a Supports Document and a further separate formal complaints procedures document. The intention around the Supports document is to allow for more flexibility to focus on the supports in place for a reporting person/complainant and explain the rights and supports available for a person being reported/respondent. Anyone considering a formal complaint can now directly access this as a stand-alone document.

## H. Legal & Technical

It is apparent from the feedback that there were a number of areas in the policies and procedures which were unclear to the reader. The aim of the revised documents is to provide easy to access information.

### 1. Relevant Legislation

The two policies and the procedure have been reviewed by external legal experts to ensure all relevant legislation is referenced.

### 2. Standard of Proof used in a formal investigation

The standard of proof in employment legislation is based on the balance of probabilities. This is in accordance with sectoral norms and best practice. Therefore, it is recommended that internal investigations continue to be based on the balance of probabilities and that the principles of natural justice apply.

### 3. University instigating an investigation without a formal complaint/bystander raising an issue/anonymous complaints

- i. The Review Group considered the issue of a reluctant complaint carefully. A reluctant complainant is someone who does not wish to participate in a formal investigation for their own reasons but wants to notify or disclose an issue to the University authorities. In certain targeted cases, the University may wish to take action by carrying out a Dignity and Respect Environmental Assessment of the area where the individual is experiencing issues. It is the intention that periodic and random Dignity and Respect Environmental Assessments will be undertaken as well as more targeted environmental assessments arising from available data. A Dignity and Respect Environmental Assessment will entail considering the broader cultural issues/prevaling conditions within the area rather than a specific individual complaint. It will consider all relevant data available such as data via the Report and Support Tool highlighting particular statistical trends in an area, anonymous complaints, report made by individuals who have experienced issues or where witnesses have come forward to the University authorities. An environmental assessment will not result in any sanctions being issued, however it gives the University the authority to implement action plans aimed at changing culture or behaviours.
- ii. As set out elsewhere in this report, in certain exceptional situations, the University may instigate a formal investigation where an individual has disclosed an issue but does not want to bring a formal complaint themselves. This would be limited to circumstances where there is serious concern for the safety and welfare of individuals. The individual involved would be engaged with and afforded all the necessary supports and precautionary measures. The guiding principle is that an individual that reports an issue

- makes the decision as to how they wish to proceed in relation to resolving the issue and they remain in control of the situation.
- iii. If a Bystander witnesses an incident(s), they should report this to a Dignity and Respect Report and Support Advisor who will advise around the different options available in relation to addressing the issues raised
  - iv. It should always be the preference that complaints not be anonymous as it may be impossible to carry out a formal complaints investigation without a complainant. This is due to the fact that the principles of natural justice need to be fulfilled whilst conducting a formal investigation – a respondent is entitled to know what they are being accused of and who the accuser is.
4. Precautionary measures
- i. It is recommended that a precautionary measures panel be formed so that panel members can be called upon to make decisions at short notice, in relation to any necessary precautionary measures that may need to be implemented. It is recommended that the panel include six UMT members representing gender balance and one will be selected by the Director of HR or the Registrar on a rotational basis, based on a recommendation from the screening panel that a particular complaint should be considered for some form of precautionary measure or for neutral suspension. If the proposed precautionary measure will include neutral suspension, then a suspension hearing will take place prior to any decision being made. It is recommended that the complainant and respondent are also informed of any decision in relation precautionary measure that are put in place and how this will impact them. If a complaint is not upheld due to a technicality but some form of misconduct occurred, then the University has as duty of care and Health and Safety obligations towards all involved. Therefore, some precautionary measures may be kept in place. If the complaint was not upheld as it was found that the incident never happened for example, then precautionary measures would be removed.
  - ii. It is recommended that the members of the precautionary measures panel be put in place for a period of at least 3 years and that they all attend training on the principles of natural justice and fair procedure. There should be a fair representation of experience with student and employee study or working arrangements.
  - iii. Members of the precautionary measure panel should receive appropriate training in bullying, harassment and sexual misconduct, to include trauma informed and sexual violence.
  - iv. Section 25 of the Universities Act 1997 provides at subsection (6) as follows: *“A university may suspend or dismiss any employee but only in accordance with procedures, a subject to any conditions, specified in a **statute** made following consultation from normal industrial relations structures operating in the University with recognised staff associations or trade unions, which procedures or conditions may provide for the delegation of powers relating to suspension or dismissal to the Chief Officer and shall provide for the tenure of officers.”*

It should be noted that there is no equivalent requirement that the circumstances in which a student might be suspended should be set out in a statute.

Statute 28 (The Disciplinary Statute) provides for suspension, under the heading Suspension of Employee at paragraph 8. The relevant text is as follows: *“In certain cases the University may have to consider suspending an employee with pay pending the conclusion of an investigation and/or a disciplinary process. Any suspension should be neutral in nature and not infer any wrong doing on the part of the suspended employee nor shall it influence or infer any finding of the investigation....”* It goes on to provide for the suspension being kept under review, the concerns which the University may consider in deciding whether to suspend or not, the requirement to afford natural justice to an employee whose suspension is contemplated and so on.

The Review Group recommend that it is appropriate to amend paragraph 8 of the Disciplinary Statute to make it clear that the investigation contemplated could be an investigation under the UCD Formal Complaints Procedure set out in the Dignity and Respect, Bulling and Harassment Policy and Sexual Misconduct Policy. That could be achieved by inserting in brackets in the first sentence of paragraph 8, after the word “investigation”, the words “(including an investigation under the Formal Complaints Procedure provided for in the University’s Dignity and Respect, Bulling and Harassment Policy and Sexual Misconduct Policy)”.... Any amendment to the Statute however requires the Trade Union/Staff Association consultation as per section 25(6).

5. Findings of an investigation

Findings of a formal investigation should not make any reference to sanctions or make a finding which could jeopardise the integrity of a disciplinary process. Investigations should be based on findings of fact. The terms of reference of a formal investigation would be a suitable place to provide more detail in relation to this point.

6. Withdrawal of a complaint

If a complainant withdraws their complaint and the formal investigation process has commenced i.e. preliminary screening panel has deemed the complaint to fall within the definitions and within scope of the policy, the University should reserve the right to investigate this and/or the reason for which it has been withdrawn.

7. Appeal of the findings of a formal investigation

- i. The Review Group recommend that an appeal should be carried out by an appropriately qualified external individual.
- ii. Legal advice received explained that there is no necessity to expand on the grounds of appeal.

8. Work experience

Individuals on work experience are already included within the scope of the revised policies.

## 9. Disciplinary Action

- i. While a formal dignity and respect investigation and disciplinary process are separate to each other, the documentation has been revised highlighting the potential consequences of breaching the dignity and respect policies.
- ii. The Disciplinary Statute (for employees) already allows for demotion as part of the range of penalties. It does not however allow for precluding someone from applying for a promotion based on their disciplinary record. The Statute would need to be revised in order for this option to be considered.
- iii. The development of a code of conduct for employee behaviours as a separate process to the dignity and respect review is recommended as a separate policy outside of this review process.
- iv. There is a separate policy and process for addressing student fitness to practice. If a matter is referred to the Student Disciplinary Procedure that also gives rise to fitness to practice concerns, a decision is taken by the Registrar, or their nominee about which process should take priority. Student Disciplinary Committees can recommend a referral to the student fitness to practise process as part of their decision in adjudicating on breach of the Student Code of Conduct. A Student who is deemed not fit for their profession may be discontinued from the programme and therefore would not graduate with a qualification that provided a licence to practice.

## 10. Witness/Whistle-blower Policy

- i. The Protected Disclosures Act (PDA), 2014 aims to protect workers who raise concerns about possible wrongdoing in the workplace defined as “relevant wrongdoings”. In addition to the PDA, 2014 there are protections in place such as anti-victimisation and anti-penalisation legislation within the Employment Equality Act 2012 and the Health, Safety and Welfare Act 2005. This has been emphasised in a new section in the policy and procedures documents. All members of UCD’s community have a responsibility to act as a bystander and report incidents to university authorities, and similarly individuals should participate in an investigation if called as a witness. It is prohibited within the University to victimise or penalise any individual for bringing a complaint forward or participating in an investigation. Where a person makes a complaint about the treatment of themselves, it is appropriate that that be dealt with, otherwise, by reference to the protected disclosure policy. Different considerations may well apply in circumstances where a person makes a complaint by reference to the treatment of someone else because in those circumstances the matter complained of may be a “relevant wrongdoing” for the purposes of the Protected Disclosures Act 2014. The Act, however, applies only to disclosures made by workers and accordingly, as the law stands at present, has no application whatever to a disclosure made by a student who is not otherwise a worker. Therefore, it is recommended that the PDA, 2014 will be referenced within the relevant legislation section.
- ii. Bystanders will be able to make a report to personnel in the University other than their manager. The relevant section has been amended to ensure another suitable reporting pathway is available if the Head of School is not deemed as appropriate to report the incident to by the witness (refer to the Dignity & Respect Report and Support Advisory Service). Ideally, witnesses or bystanders should come forward because they feel

supported in doing so. Without creating this culture, witnesses will be afraid to come forward for fear of reprisal. Including a disciplinary sanction for witnesses will add to this fear and the Review Group recommends that disciplinary sanctions for witnesses are not included within documentation.

- iii. Due process requires that the complainant and respondent be provided with a copy of any witness statement. It would be a breach of the principles of natural justice to anonymise this information.

## 11. Time Limits

- i. It is recommended that there will be no time limit regarding receipt of complaints by the University. The focus will not be on the length of time to bring the complaint forward but rather the impact of the delay 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.

If the Screening Panel confirm, based on the information they have received as part of the formal complaint, that impact of the delay will not impinge on the likelihood of a fair investigation, an external investigator may be appointed. The external investigator, based on the information received as part of the investigation, can recommend that by reason of the passage of time and taking into account the considerations referred to above, a fair investigation will not be possible.

In the event of the death of a respondent, an investigation will not proceed.

- ii. Indicative timelines have been included in the formal complaints procedure where possible.
- iii. Complainants that come forward in relation to incidents that would have happened prior to the revised policy and procedure being published, will have their complaint investigated through the most current procedure.

## 12. Court order

If the University is put on notice of an order, it should take reasonable steps to facilitate compliance with the order where possible. Enforcement of the order is however a matter for the applicant/court. If a person requires the assistance of the University with reference to the terms of the order, it is reasonable for the University to request a copy it.

### 13. Garda Síochána (Police) Investigation

The fact that a Garda investigation has been initiated does not of itself, obviate or postpone any obligation on the part of the University to conduct an investigation. Much depends on the precise circumstances including and in particular the nature of the connection, if any, between the matter complained of and the University. For example, if the matter complained of happened in the University, on campus or at a university event it may well be that the University would have access to evidence and would be in a position to conduct an investigation. Even in those circumstances, much will depend on the approach taken by the complainant and the respondent. Universities should only in the most exceptional circumstances and with the benefit of specific legal advice report a complaint or a disclosure of sexual misconduct to the Gardaí contrary to the wishes of the reporting person/complainant. The circumstance in which a report by a University may be justified is if the reporting person/ complainant is a minor.

### 14. Malicious complaints

The wording in relation to malicious complaints has been reviewed and updated in the policies.

### 15. Disclosures

- i. The data protection privacy statement will provide more clarity on what happens when a disclosure is made and where that information is stored.
- ii. When an individual makes a disclosure, they are advised how to make a formal complaint, this has been clarified in the documents. This is linked with the training and supports themes. Anyone in receipt of a disclosure should be adequately trained to be able to provide the correct information to the person making the disclosure.

### 16. Preliminary Screening Panel (also see Roles and Support section)

- i. The role of the preliminary screening panel has been revised and is set out in the revised policies, explaining their role, details of the panel members and how decisions are made using set criteria. Information on who the panel comprises of should be included on a webpage, so that it can be updated when required and further details such as how decisions are made. It is recommended that, in line with the new Code on Bullying 2021, that the screening panel advise all complainants where they feel informal options for resolution could be considered in line with the stepped process referred to in the 2021 Code (only for bullying). The panel can also ask a complainant for additional information in relation to their complaint. It is also recommended that representatives from the screening panel be available to meet with complainants where a complaint is not deemed to fall under the definitions and/or scope of the policies so that they can advise as to the reasons for this and also highlight other options available to them for resolution.
- ii. See subsection 11 above regarding time limits and the role of the Screening Panel.
- iii. It is recommended that an external person should be co-opted to sit on the preliminary screening panel. Moreover, in order to ensure that there are no delays in the preliminary screening process, a broader panel of appropriately trained individuals should be

considered. It is recommended that 6 internal people and 3 externals should be trained in the area of bullying, harassment, sexual misconduct, including trauma informed and sexual violence and available to sit on the preliminary screening panel of 3 internal and 1 external members.

#### 17. Formal Complaints

- i. The formal complaints procedure is now a stand-alone document. Process maps for each stage will be created for ease of reference for a complainant and respondent.
- ii. The single formal complaint procedure allows for multiple types of complaints to be submitted against the same person. This has been clarified in the revised documentation.
- iii. An on-line formal complaints form should be developed as soon as possible. The Review Group has not developed it for this report at this point.

#### 18. External investigator

- i. An independent external investigator must be appointed to fully investigate a formal complaint. Their role is to establish the facts of the case only. Investigators need to have authority to access all relevant documents/ records.
- ii. It is recommended that in cases of sexual misconduct, the formal investigation should comprise of two investigators with gender balance.
- iii. More clarity is required to show transparency on how external investigators are appointed. As it stands, the University uses the Office of Government Procurement framework agreement for the provision of external workplace investigation services for employee related investigations. Rather than outlining details of the selection process within the procedure, it is recommended that detailed information on the selection process of investigators for employee and student complaints be placed on a suitable webpage.
- iv. The University should consider engaging with the Irish Universities Association and THEA to ascertain if they would be interested in establishing a panel of external investigators specifically for the Higher Education Sector for employees and students. The need for this specialist panel specifically for this sector is further emphasised by the feedback from the National Women's Council where they advised that investigators of sexual misconduct claims should have trauma-informed training and have experience of sexual misconduct investigations.

#### 19. Potential outcomes of an investigation

- i. The procedures have been updated to place more emphasis on the supports that will be put in place following the conclusion of an investigation. The Review Group recognises that the investigation is only one aspect and appropriate measures will have to be considered on a case by case basis following the outcome, such as possible changes made to academic, living and pastoral arrangements, ensuring that the parties do not come into contact with each other and access to relevant support services.
- ii. The investigation process and disciplinary process are separate and are required to be so to ensure fair procedure.

## 20. Disciplinary Action

The Review Group acknowledges that it is important for the complainant and respondent to be kept up to date during and following an investigation process. The procedures have been updated to commit to providing a complainant 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 should be in accordance the principles of natural justice and fairness for the complainant and respondent.

## 21. Data Protection/GDPR / Privacy Notice

It is recommended that a data privacy statement be developed to show transparency on how information related to complaints, both informal and formal, are retained by the University.

## 22. Scope

- i. The scope section of the policies have been revised to include incidents that happen off campus and on unofficial university business. There may be instances where members of the University community (be they students or employees) experience an incident(s) in situations unconnected to the University. The scope of this policy may well apply in these instances where the alleged incident(s) has a direct impact on the individuals when there is ongoing interaction between the individuals in a working or studying environment. Inappropriate behaviour that takes place online should be included within the scope of the policy.
- ii. Members of UCD clubs and societies are included within the scope of the polices, supports documentation and procedures. It is a recommendation of the Review Group that clubs and societies are included within the implementation plan to ensure focus on appropriate training and awareness campaigns.

## 23. Social Media

Given the potential risk of breaches of the dignity and respect policies via social media, it is recommended that the group responsible for reviewing the University's position on social media usage takes account of issues relating to dignity and respect. It would be important that relevant parties with detailed knowledge of dignity and respect policies and practices in UCD be members of this social media review group.

## 24. Restorative Practice

Restorative Practice in the context of this report refers to the potential opportunity, following a formal investigation or informal intervention, for a person who has been impacted by another individual's actions or behaviour to discuss this impact with that individual and then collectively to work to identify ways to repair the working relationship or relationship between

students. This is a voluntary process. The focus is not on punishment or on the bullying, harassment or sexual harassment issues but providing an opportunity for individuals to discuss the impact of the behaviour and ultimately help to restore the professional relationship. In summary, it covers aspects such as the issues that occurred, how these have impacted and how things can be made better. Further work will be required around this as part of the implementation plan and engagement with experts in this area will be necessary.

## 25. SFI Grant Funding

It is a recommendation of the Review Group that the data privacy statement reflect the particulars of how data relating the circumstances in which allegations of breaches of the policies can be shared with a third party, such as a funding body. The data privacy statement will be guided by the Data Protection Office.

## I. Definitions

Definitions, where possible have been taken from relevant codes of practice, legislation or sectoral frameworks. The feedback has shown dissatisfaction with certain elements of the definitions, particularly in relation to sexual misconduct and consent. The definitions sections have been reviewed by external legal advisors and others, with a view to ensuring clarity, compliance with legislation and due sensitivities given the nature of the subject.

### 1. Precautionary measures

The precautionary measures section has been revised and “appropriate senior person” has been removed. Detail in relation to the precautionary measures panel has been included, in accordance with the recommendation in the legal and technical section of this report.

### 2. Sexual Harassment

The definition of sexual harassment has been taken from the Employment Equality Act and should not be amended, unless set out in legislation.

### 3. Sexual Misconduct

There is no legal definition of sexual misconduct within Irish law. The proposed definition as set out in the policies has been reviewed by external experts. To provide clarity on the definition on sexual misconduct, the policy has been redrafted with the terms sexual misconduct being the overarching term to be used and will encompass the definition of sexual harassment and sexual violence.

### 4. Consent

The proposed definition as set out in the policies has been reviewed by external experts. This reflects the definition used under the Sexual Offences Act.

## 5. Gender

The examples of types of discrimination relating to gender have been reviewed to ensure they are inclusive for all. External feedback detailed that the revised policies are very detailed, well written and gender neutral.

## 6. Bullying / Harassment

- i. The definition of bullying has been taken from the code of practice to address bullying in the workplace/during course of study; it is explicit in the behaviour related to bullying is repeated and must be more than one incident to fit the definition of bullying. Further clarification has been provided in the Code of Bullying 2021, it includes some important qualifications on the generally accepted definition and does so by reference to the decision of the Supreme Court in *Ruffley* as follows:

*“In line with the above operational definition, workplace bullying [or during a course of study] should meet the criteria of an on-going series of accumulation of seriously negative targeted behaviours against a person or persons to undermine their esteem and standing in a harmful, sustained way. Bullying behaviour is offensive, on-going, targeted and outside any reasonable “norm”. A pattern and trend are involved so that a reasonable person would regard such behaviour as clearly wrong, undermining and humiliating. It involves repeated incidents or a pattern of behaviour that is usually intended to intimidate, offend, degrade or humiliate a particular person or group of people – but the intention is not important in the identification process.”*

- ii. A once off isolated incident is an affront to an individual’s dignity and respect in the workplace and they are entitled to raise a grievance in the case of an employee and a student complaint in the case of a student.
- iii. The example behaviours associated with bullying and harassment have been reviewed in the revised drafts in accordance with feedback received.
- iv. In accordance with the Employment Equality Act, harassment is linked to one or more of the nine grounds of discrimination. This has been clarified within the policy.

## 7. Constructive Criticism

A concern was raised during the consultation phase in relation to constructive criticism being too vague as an example of what bullying is not. This example of behaviour has been adapted from the code of practice on addressing bullying in the workplace. More detail has now been set out clarifying that constructive criticism is evidence based on performance indicators/pre agreed goals/initiatives.

## 8. Appeals recommendation

The appeals process section has been revised. It is recommended that appeals are heard by an appropriately qualified external person.

## 9. Victimisation

It is recommended that no employee or student will be victimised or subject to disciplinary action for raising bullying and/or harassment/sexual misconduct issues, making a formal complaint in good faith, for giving evidence in an investigation or by giving notice of intention to do so. Any individual that experiences victimisation should be strongly encouraged to seek support and report this behaviour to the Dignity and Respect Report and Support Advisor. The policy has been updated to highlight this.

**Discrimination.** It is important to clarify that discrimination is not the same as Bullying/Harassment/Sexual Misconduct. Claims of discrimination (outside of the grounds outlined under Harassment) are dealt with under the Grievance Procedure for employees and student code of conduct for students.

## Conclusion

It is clear from the Review Group that revising the policies and procedures in themselves will not achieve the changes required. Many of the recommendations outlined in this report are interlinked and a detailed implementation plan will be required in order to ensure that the recommendations (once approved) are progressed appropriately. As set out elsewhere in this report, in order to support implementation and ensure that the policies and supporting framework are implemented in a timely manner following approval, it is recommended that a temporary project manager is appointed to co-ordinate implementation.

The following chapters outline the revised draft policies, procedures and supports.

# Chapter 5: Revised DRAFT Dignity and Respect Bullying and Harassment Policy

**This policy document has been developed following desk-based research into best practice nationally and internationally, extensive internal consultation through externally facilitated focus groups, written submissions and individual meetings and external consultation with experts in the area of dignity and respect. This policy is one element of a broad framework to work towards a culture of dignity and respect at UCD to include but not limited to: targeted training for key roles, an ongoing University-wide awareness raising campaign and training, dedicated full-time and voluntary support roles and a range of supporting documentation such as visual aids.**

## **1. Purpose**

The purpose of this policy and supplementary materials, including the Support and Guidance document and the Formal Investigation Procedures document, is to support the development of a working and learning environment in which bullying and harassment are unacceptable and where individuals have the confidence and trust in the process to come forward, in the knowledge that their concerns will be dealt with appropriately and fairly.

University College Dublin has six core values driving our culture: Excellence; Integrity; Collegiality; Engagement; Diversity and Creativity. In line with these values, the University is committed to the provision of an environment of respect for diversity and equality of opportunity where:

- you have the right to be treated with dignity and respect and can work and study in a rewarding, safe and stress free environment;
- bullying and harassment will not be tolerated and can lead to disciplinary action;
- it is more likely to enhance performance and achievement which will allow all members of our University community to fully utilise their skills and talents and achieve their full potential.

In addition, the University wants to create a climate of trust through the provision of a transparent oversight process, to include external membership, and to take a proactive approach to monitoring and publication of statistics and identification of actions to address any patterns of inappropriate behaviour that is arising.

This policy sets out how the University defines bullying and harassment, what it expects of members of the UCD student and employee community, the responsibilities of key roles in the University and how you will be supported when issues of this nature occur.

We [University College Dublin] recognise that bullying and harassment – in either a learning or work environment – can cause not only personal distress, but also a loss of confidence, low morale and illness. It can also lead to absenteeism from course work or the workplace and interfere with your academic performance and work. You have the right to disclose experiences of unacceptable behaviour while studying or working, to be listened to, to seek support and to have the issue resolved.

**We encourage you to come forward to seek support and assistance in resolving any issues of bullying or harassment, and to explore informal and formal options available for resolution. You can be assured that we will act sensitively to all cases of bullying and harassment. All individuals involved in a bullying and harassment situation will be supported. We will ensure that, in all cases, reports are carefully and thoughtfully addressed through a process that is**

**transparent and clearly communicated to all individuals involved in line with personal data requirements.**

## **2. Definitions**

It is important that you make yourself aware of the definitions below as it will help determine whether the policy applies to your own situation. It will also make you aware of the type of behaviour that is not acceptable and which you should not engage in. These definitions have been developed based on a review of best practice, Codes of Practice, extensive consultation and relevant legislation. The fact that the person who caused the offence may not have intended to engage in bullying or harassment behaviour is not a defence, it is the impact of the behaviour on you that is considered. It is important to note that whilst some behaviours may not fall under the definitions as outlined below, the University does not tolerate unacceptable behaviour of any type. Please refer to further information located here [insert link] on other processes that may be relevant to resolving the issues you are experiencing.

### **UCD Community**

- All UCD employees, whether part time or full time, permanent or temporary;
- All employees of UCD's wholly owned subsidiary companies or overseas campus/offices;
- All students of UCD;
- Those engaged in Club activity such as graduates (player, committee member, coach/manager), those volunteering to coach/lead/manage, those being employed by the club to coach/ lead/ manage;
- Non-University employees who use University funds, facilities or other resources, including the University's name and reputation, to carry out teaching and/or research, and/or participate in UCD-administered research, including retired employees, visiting faculty and researchers; consultants, contractors, affiliated hospital staff, industrial personnel and research fellows, regardless of obligations to other companies or institutions; and
- All persons conducting teaching and/or research at or under the auspices of UCD including at any of UCD's overseas campus, including visiting faculty and researchers; consultants; contractors, Emeritus or adjunct appointments; and research fellows.

### **Bullying**

Bullying is defined as repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work/study and/or in the course of employment/study which could reasonably be regarded as undermining the individual's right to dignity at the place of work/study. An isolated incident of the behaviour described in this definition may be an affront to dignity at work but, as a once off incident, is not considered to be bullying.

The University will apply the following criteria set out by the Code of Practice on Bullying 2021:

- an on-going series of accumulation of seriously negative targeted behaviours against a person or persons to undermine their esteem and standing in a harmful, sustained way
- behaviour is offensive, on-going, targeted and outside any reasonable "norm"
- a pattern and trend are involved so that a reasonable person would regard such behaviour as clearly wrong, undermining and humiliating.
- involves repeated incidents or a pattern of behaviour that is usually intended to intimidate, offend, degrade or humiliate a particular person or group of people – but the intention is not important in the identification process.

However, unacceptable behaviour is not tolerated and you should refer to the Grievance Procedure or the Student Code of Conduct to resolve an isolated incident.

The following are common, but not exclusive examples of bullying behaviour:

- Verbal abuse/insults
- Physical abuse
- Being treated less favourably than colleagues
- Intrusion – pestering, spying or stalking
- Unjustifiable exclusion e.g. withholding information, isolation or non-co-operation, non-response or repeated unavailability, exclusion from classroom and social activities.
- Menacing behaviour
- Offensive, intimidating, malicious or insulting behaviour, open aggression, threats, shouting.
- Undermining behaviour
- Controlling, coercive and threatening behaviour
- Excessive monitoring of work
- Humiliation
- Gossip
- Withholding work-related information
- Blame for things beyond the person's control
- Misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient.
- Bullying and Harassment on Social Media whether conducted on a personal device or University equipment.

Bullying at work does not include reasonable and essential feedback or constructive criticism or discipline arising from the management of the conduct or performance of an employee at work or actions taken which can be justified on grounds such as safety, health and welfare at work. For example, an employee whose performance is justifiably signalled in a proper and reasonable manner as being below required standards may feel threatened and insecure in their work but this in itself does not indicate bullying. In addition, differences of opinion, arguments or other interpersonal conflict can occur in the workplace, classroom, in student clubs, teams and in student societies. Bullying or harassment should not be confused with these situations.

## Harassment

Harassment is defined as any form of unwanted conduct related to any of the discriminatory grounds under the Employment Equality Acts which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment. Harassment can be a one-off incident. The Formal Investigation Procedures outline a range of informal options and the formal process for resolving issues of a harassment nature. The discriminatory grounds in UCD include:

- **Age:** a person's age, this does not apply to a person aged under 16. Children are covered by Child Protection legislation and the University's Child Protection Policy.
- **Civil status:** a person's civil status be it single, married, separated, divorced, widowed, civil partnered and formerly civil partnered
- **Disability:** includes people with physical, intellectual, learning, cognitive or emotional disabilities and a range of medical conditions
- **Family status:** being a parent of a person under 18 years or the resident primary carer or parent of a person with a disability
- **Gender (including gender identity):** a person's gender identity including male, female, other
- **Membership of the Traveller community:** now recognised as an ethnic group
- **Race:** includes race, skin colour, nationality or ethnic origin

- **Religion:** a person's religious belief, background, outlook or none
- **Sexual orientation:** a person's sexual orientation including gay, lesbian, bisexual and heterosexual
- **Socio-economic status:** a combined economic and sociological measure of a person's work experience and of an individual's economic and social position in relation to others, based on income, education, and occupation.

The following are examples of harassment:

- Verbal harassment – jokes, comments, ridicule or songs
- Written harassment – including text messages, emails or notices
- Physical harassment – jostling, shoving or any form of assault
- Intimidatory harassment – gestures, posturing or threatening poses
- Visual displays such as posters, emblems or badges which may be deemed as harassment
- Inappropriate scrutiny of the activities of others
- Isolation or exclusion from social activities
- Unreasonably changing a person's job content or targets
- Pressure to behave in a manner that the person thinks is inappropriate
- Cyber-harassment whether conducted on a personal device or company equipment.

### **Informal Resolution**

Informal resolution refers to the options available to resolve an issue without instigating the formal investigation procedure. These options are outlined in the Dignity and Respect – Bullying and Harassment Supports and Guidance document. These options include contacting the person being reported if you feel comfortable doing so or asking the Dignity and Respect Report and Support Advisor to meet with the individual on your behalf, engaging in facilitation or mediation. You are advised to discuss options for resolution with the Dignity and Respect Report and Support Advisor. As a person reported, you are also advised to seek advice from a member of the Dignity and Respect Report and Support Advisory Service around informal interventions to be aware as to what is entailed.

As set out in the WRC/HAS Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying (2021) (hereafter called the Code of Practice on Bullying 2021), a prompt and informal problem-solving approach offers the best potential for addressing allegations of bullying effectively. It is good practice that all informal resolution avenues should be considered and where appropriate, exhausted before a formal process is instigated. Proceeding to a formal process should not be viewed as automatic as set out in the Code of Practice on Bullying 2021 and it is important that parties are aware of the emphasis placed on informal options as a means of resolution. An important reason for this is to support the professional relationship going forward. Further advice can be provided by the Report and Support Advisory Service. It is recognised that there may be instances where informal options may not be appropriate.

The support and guidance documentation outlines further informal approaches and processes that should be considered in addressing and resolving allegations of bullying effectively.

### **Reporting Person**

A reporting person is defined as an individual that has come forward to report an incident(s) that they consider to be bullying and/or harassment type behaviour, however they have not submitted a formal complaint form.

## **Person being Reported**

A person being reported is defined as the individual that the reporting person considers to be carrying out the bullying and/or harassment type behaviour, however no formal complaint form has been submitted.

## **Formal Complaint**

A complaint is deemed to be formal once the Dignity and Respect complaint form (INSERT LINK) has been completed and submitted to the Equality, Diversity and Inclusion Unit. Following receipt of a formal complaint, a preliminary screening will be undertaken by a screening panel to decide on a prima facie basis whether the alleged behaviour falls within the definition of bullying and/or harassment and scope as defined in this policy. The screening panel can also recommend if informal interventions should be considered. If deemed to fall within the definitions and scope and informal interventions are deemed inappropriate by the screening panel, the complaint will proceed to a formal investigation which will be supported by either UCD HR or the Students Engagement, Conduct, Complaints and Appeals office, as appropriate. If informal interventions are deemed appropriate by the screening panel and considered the most effective means of resolving the issues as per the WRC/HAS Code of Practice on Bullying 2021, a member of the Screening Panel will meet with both the complainant and respondent separately to discuss these options further and the reasons for recommending informal options in this instance. Further details in relation to formal complaints and the role of the Screening Panel are located in the Formal Complaints Procedure document.

## **Complainant**

The complainant is a person who makes a formal complaint, using the Dignity and Respect complaint form, that they have been subject to bullying and/or harassment.

## **Respondent**

The respondent is a person who is named in a formal complaint as having allegedly carried out the bullying and/or harassment behaviour.

## **Precautionary Measures**

If a person makes a formal complaint of bullying and/or harassment, reasonable precautionary measures may be put in place pending the outcome of a University or criminal 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.

There are two instances where precautionary measures may be put in place in relation to informal resolution. If an individual reports an issue that has not progressed to a formal complaint and is exploring informal resolution options, precautionary measures may be considered (excluding neutral suspension). An appropriate person in the local structures independent of the situation will determine if precautionary measures are required. Further information on precautionary measures can be obtained from the Report and Support Advisory Service. If a formal complaint has been made and the Screening Panel recommends informal options, precautionary measures may also be considered. (Further information on the range of measures in this instance are outlined in the formal Complaints Procedures document). As per the Code, enough time needs to be allowed for the informal option process to be successful and behaviour change to be realistically achieved over the longer term.

Precautionary measures may potentially be kept in place following an intervention depending on the circumstances.

## **Discrimination**

The Employment Equality Acts 1998 – 2015 defines discrimination as treating one person in a less favourable way than another person based on any of the equality grounds (see grounds listed under harassment). These include recruitment and promotion; equal pay; working conditions; training or experience; dismissal and harassment including sexual harassment. Claims of discrimination (other than harassment and sexual harassment) are managed under the Grievance Procedure for employees or Student Complaints (or other) for students.

## **Victimisation**

No person should be the subject of any act or omission that affects them to their detriment for having raised bullying and/or harassment issues, making a formal complaint in good faith, for giving evidence in an investigation (as a witness/bystander for example) or by giving notice of intention to do so. The University takes victimisation very seriously and action will be taken in instances where this occurs. Any individual that experiences victimisation is strongly encouraged to seek support and report this behaviour to the Dignity and Respect Report and Support Advisor or EDI Unit.

## **Penalisation**

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. It could also include coercion or intimidation.

## **Restorative Practice**

Restorative Practice in the context of this policy refers to the potential opportunity, following a formal investigation or informal intervention, for you as a person who has been impacted by another individual's actions or behaviour to discuss this impact with that individual and then collectively to work to identify ways to repair the working relationship or relationship between students. The focus is not on punishment or on the bullying and harassment issues but providing an opportunity for you and the other individual to discuss the impact of the behaviour and ultimately help to restore the professional relationship. In summary it covers aspects such as the issues that occurred, how these have impacted and how things can be made better.

## **Dignity and Respect Environmental Assessment**

A Dignity and Respect Environmental Assessment is an assessment of the broader cultural issues/prevaling conditions within an area. A periodic environmental assessment may be undertaken at intervals as directed by a sub-group of the Dignity and Respect Oversight group where a small number of areas (Colleges/VP areas) will be randomly selected by the sub-group.

A targeted Dignity and Respect Environmental Assessment may also occur where particular statistical trends have been highlighted. These trends may be identified through anonymous reports made by individuals (reporting person) in the <sup>1</sup>[Report and Support Tool](#) for example or where an individual(s) have come forward informally to report an incident but do(es) not wish to make a formal complaint at that point in time. Trends may also be identified where bystanders/witnesses have reported incidents. These assessments will help measure how well this policy is being embedded across the University and its impact.

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<sup>1</sup> Report and Support provides the opportunity for you to make the University aware of incidents that you have either experienced or witnessed by reporting them anonymously. More information can be found at [reportandsupport.ucd.ie](http://reportandsupport.ucd.ie)

The Dignity and Respect Oversight Sub-Group will monitor this data on a quarterly basis. If an environmental assessment of an area is identified, either on a periodic review basis or arising from a targeted review of data available, the area must co-operate with the assessment. All environmental assessments will be conducted by an independent third party. A Dignity and Respect Environmental Assessment will not result in any sanctions being issued, however it gives the University the authority to implement action plans aimed at changing culture or behaviours.

### **Malicious Complaint**

Under the Code of Practice on Bullying 2021, a malicious complaint can be described as an allegation being made without foundation, and with malicious intent, where a person knowingly or without regard to whether it is true or not, accuses another person of allegedly bullying them. This could also apply to where one person maliciously complains of someone allegedly bullying a third party, without fully exploring the veracity of the claim. A malicious complaint has the power to disrupt another person's life to a significant extent and the potential damage should not be underestimated. Being accused of bullying can have a serious impact on any person and reduce their reputation in the eyes of others, even if later shown to not have been proven. Those making complaints - and those involved in early assessment of the circumstances of a complaint - should always be mindful of the context and situational aspects of the event and accept the different perspectives and points of view different people bring to the same event. Making a malicious complaint, if proven, can have serious implications for the employment / studies of the person making such a complaint and this includes disciplinary action, where established

### **3. Scope**

This Policy applies to all members of our community as defined above and others. In this Policy, "others" shall be taken to include, but is not limited to the conduct of contractors, subcontractors, alumni, vendors and those engaged in activities relating to University societies/clubs including their members. It also includes those who engage and/or who interact with the University and/or its associated bodies, those who provide services to the University, those who avail of services and/or are visitors of and to the University or any of its associated bodies.

This Policy applies to all areas of University operations and programmes. It includes conduct which takes place:

- On our campus
- Other place where our employees or students or others are representing the University or are engaged in a University connected activity.
- At events such as social functions, conferences, sporting events, field trips or work assignments which are related to the University or are a University connected activity.
- In relation to clubs/societies
- At non-UCD connected activities, on or off campus, including social gatherings involving UCD students and employees, or other members of the UCD community as defined above, where the alleged incident(s) has a direct impact on the individuals where there is ongoing interaction between the individuals in a University related environment.
- This conduct can be in person, in writing, on the telephone, by e-mail or on the internet and social media.

Where UCD students or employees are on placement, internship or secondment in other organisations, they need to be aware of the dignity and respect policies of these organisations. Where a complaint is made whilst they are on placement or secondment, our students or employees may be subject to the policies of these organisations as well as under this Policy. Based on the circumstances of a case, UCD and the host organisation would need to agree on who should lead the investigation process.

There will be no time limit regarding receipt of complaints by the University. The focus will not be on the length of time to bring the complaint forward but rather the impact of the delay 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.

If the Screening Panel confirm, based on the information they have received as part of the formal complaint, that impact of the delay will not impinge on the likelihood of a fair investigation, an external investigator may be appointed. The external investigator, based on the information received as part of the investigation, can recommend that by reason of the passage of time and taking into account the considerations referred to above, a fair investigation will not be possible.

In the event of the death of a respondent, an investigation will not proceed.

It is possible for an individual to feel they have also been subjected to sexual misconduct. If this is the case, please refer also to the policy on Sexual Misconduct.

#### **4. Principles**

The key principles of the policy are to:

- Ensure that the University has proactive measures in place to promote a positive culture of dignity and respect and to create a working and learning environment which makes clear the expectations of members of our community with regard to respecting each other and that unacceptable behaviour will not be tolerated.
- Create a safe and respectful environment where people feel encouraged to come forward with the issues they are experiencing and have trust and confidence in the process that the issues will be dealt with appropriately and fairly.
- Ensure that there is a range of trained supports available, both voluntary and full-time dedicated roles, whom you can approach and seek support and guidance from and that these are widely communicated.
- Ensure that there are a range of informal and formal options for resolution available for those experiencing issues of a bullying and harassment nature and to promote informal options as the most effective means of dispute resolution as per the Code of Practice on Bullying 2021 where appropriate.
- Promote understanding of our definitions of bullying and harassment.
- Expectation that you will co-operate with all efforts in order to resolve complaints under the policy and without undue delay as appropriate.
- Expectation that you will respect the confidentiality of the process. However, you are strongly encouraged to seek support from the support services available and your family which will involve you sharing information confidentially with them.
- Enhance transparency by having external expert involvement at key stages of the dignity and respect process including external membership on the screening panel, the appointment of external investigators, the use of external mediators and external membership on the EDI Dignity and Respect Oversight Sub-Group.
- Have an effective and transparent monitoring and analysis process of dignity and respect related data, and the reporting of this data to relevant internal and external bodies on a defined periodic basis in order to demonstrate accountability.
- Review this Policy on a regular basis in line with changes in the law, relevant case-law, feedback from people's experience of the policy or other developments.

## **5. Roles and Responsibilities**

As members of our community, we are all expected to work to develop and maintain a high degree of respect in our diverse community and to participate in creating a positive and safe environment. As with all policies and procedures, this document assigns responsibilities to a range of roles within the University, including senior management of the University. Failure to uphold the responsibilities assigned is taken very seriously and may lead to informal or formal action, including, in the case of students, under the Student Code and Student Discipline Procedure, and in the case of employees under the Disciplinary Statute (Statute 28). Formal sanctions available for breach of university policies and procedures are graduated by reference to the seriousness of the breach, for students ranging between a written reprimand to permanent expulsion from the University, and for employees at all levels ranging between a verbal warning to dismissal.

The responsibilities of these roles are described in detail below.

### **Governing Authority**

- Support the pursuit of the development and implementation of leading policies/procedures that clearly represent the values of UCD.
- Amplify the value and importance of dignity and respect in the University and supporting strategy of the Governing Authority.
- Oversee the work of the Dignity and Respect Oversight Group and receive an annual report from this group on the implementation of the policy and supporting framework and monitor emerging trends.
- Engage in relevant training in relation to dignity and respect and broader equality, diversity and inclusion.

### **University Management Team (UMT)**

The University Management Team are the senior leadership team of the University led by the President. They have overall formal responsibility for the operation of this policy. They have the responsibility to:

- Visibly lead and champion a positive culture of dignity and respect free from bullying and harassment and where trust and transparency around dignity and respect is paramount. This will include ensuring that all senior leaders are appropriately trained.
- Ensure that adequate resources are allocated to support a positive culture of dignity and respect including training and awareness raising campaigns.
- Proactively encourage individuals to seek support and guidance if experiencing issues of a bullying and harassment nature.
- Review dignity and respect reports and recommendations submitted on a quarterly basis from the Dignity and Respect Oversight Group and EDI group and take the necessary action.
- Ensure that data is publicly available to enhance transparency around the process.
- Engage with the Governing Authority and external bodies such as the HEA in relation to progress on the implementation of the dignity and respect framework as appropriate.

### **Dignity and Respect Oversight Committee**

The Dignity and Respect Oversight Committee, reporting to the EDI Group and UMT on a quarterly basis and annually to the Governing Authority, will consist of key stakeholders from across the University and external members who are expert in the area of dignity and respect. It will have responsibility to provide oversight and guidance and enhance transparency around dignity and respect as follows:

- Provide guidance and direction in relation to the implementation of the Dignity and Respect policies and supporting framework to support a culture of dignity and respect.

- Monitor progress in relation to the implementation of the broader Dignity and Respect Framework and Consent Framework under <sup>2</sup>ESHTE and measure against established KPIs.
- Monitor statistical data relating to reports made under the Report and Support tool, formal dignity and respect complaints and contacts with designated support roles such as the Dignity and Respect Contact Persons and the Dignity and Respect Report and Support Advisor.
- Direct both periodic and targeted environmental assessments based on available data to be undertaken to assess the culture in an area in relation to Dignity and Respect and measure the impact of the policy.
- Ensure there is transparency in relation to Dignity and Respect in UCD through the publication of statistics and actions to address themes arising.
- Advise on best practice nationally and internationally.
- Act as Champions for a positive culture of dignity and respect and trust in the process.
- Report into and make recommendations to the EDI Group and UMT on a quarterly basis and report annually to the Governing Authority.

### **Dignity and Respect Report and Support Advisors**

Reporting to Equality Diversity and Inclusion, the full-time roles of Dignity and Respect Report and Support Advisors will work proactively with employees and students who disclose issues of a bullying and harassment nature and those who are reported. These roles, who are experienced and trained to support, respond and advise on all reports of a dignity and respect nature, will provide you with a supportive, confidential environment in which to discuss the issues and support you to make a decision that is right for you and your situation.

As a reporting person, these roles will provide support and work with you in relation to the steps to seeking a solution to the issues you are experiencing. This includes supporting you through any informal interventions you wish to use, including accompanying you to meetings with the individual if you wish to approach them or potentially engaging with the other individual depending on the circumstances. They can also assist you in making a formal complaint if you wish to do so and continue providing that support throughout the formal complaints process which may include accompanying you to investigation meetings and the provision of aftercare support following any informal or formal interventions.

As a person being reported, the Dignity and Respect Report and Support Advisors are also available to support you if you have been accused of carrying out such behaviour however different advisors will support the various people involved to avoid a conflict of interest. They will provide details to you on the informal options available or if a formal complaint has been made, they will provide information as to what this will normally entail. They may accompany you to investigations and also provide aftercare support.

The Dignity and Respect Report and Support Advisors will also support, and work closely with, the panel of Dignity and Respect Contact Persons, who are trained voluntary support roles available to those experiencing issues of a dignity and respect nature. Further information on these roles are available in the Support and Guidance document.

The Dignity and Respect Report and Support Advisor roles are available during normal working hours, however in the case of emergency the Duty Manager in Estate Services is available at any time day or night on 716 7999 and has a direct contact the Gardaí (Police) if required.

The key responsibilities of the roles include:

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<sup>2</sup> Ending Sexual Violence in Third Level Education Project

- Providing impartial information and support around options in relation to resolving issues of a bullying and harassment nature.
- Supporting engagement in informal interventions if there is a desire to do so including the provision of information on mediation and liaising with the external mediation provider in the event that mediation is proceeding.
- Accompanying a reporting person to approach the person carrying out the alleged bullying and harassment behaviour and potentially engaging with them if requested.
- Supporting and guiding the reporting person in making a formal complaint if they wish to do so.
- Accompanying complainants or respondents to investigation meetings (if requested to by the complainant or respondent) and providing after care support following a formal investigation process regardless of the outcome.
- Signposting and referring individuals to other appropriate support services both within the University and externally.
- Keeping accurate records to a safe, professional and ethical standard and monitor and report statistical data.
- Providing specialist advice to University and College employees on individual cases of dignity and respect, including possible actions to ensure that employees and students feel safe and protected.
- Providing key support for the panel of Dignity and Respect Contact Persons and guide and advise as appropriate ensuring a high standard and consistency in delivery of support as well as championing of the panel.
- Liaising closely with other key Dignity and Respect supports such as Student Advisers, EDI, HR and the Dignity and Respect Oversight Committee.
- Supporting the delivery of dignity and respect training to employees and students.
- Monitoring contacts and disclosures which will feed into the overall data reporting system that will support the Dignity and Respect Oversight Sub-Group make decisions around instigating targeted environmental assessments.
- Keeping abreast of best practice developments in this area nationally and internationally.

### **Individuals**

As individual members of the University Community, we all have a responsibility to:

- At all times, treat all members of the University community with whom you interact with dignity and respect and be aware of the impact of your actions.
- Be familiar with the principles of this policy and positively contribute to a culture of dignity and respect by engaging with any training and/or awareness raising and initiatives.
- If you witness behaviour that you consider to be bullying and/or harassment, you should report it to a Head of School/Line Manager or the Dignity and Respect Report and Support Advisor.
- Encourage any individual that confides in you that they have experienced bullying and/or harassment, to seek support and guidance from the sources available.
- Engage in respectful conduct or behaviour that will not endanger your own safety, health and welfare or work or that of any other person including obligations under the Safety, Health and Welfare at Work Act, 2005.

### **Human Resources/Office of the Registrar as appropriate**

- Provide advice to Heads of School/Unit and line managers on addressing dignity and respect related matters including how they can best support those experiencing issues of a dignity and respect nature.
- Signpost employees and students to specialist supports and advisors such as the Dignity and Respect Report and Support Advisors, Dignity and Respect Contact Persons, Employee Assistance Service, Student Counselling Service etc.

- Provide management support to external investigators in the formal Dignity and Respect Complaints process.
- Maintain communications with the reporting person/complainant and person being reported /respondent and keep them informed of the progress of the formal investigation.

### **Equality, Diversity & Inclusion (EDI)**

- Support the roles of the Dignity and Respect Report and Support Advisors.
- Champion and promote a culture of dignity and respect throughout the University Community where bullying and harassment is not tolerated.
- Lead out on periodic reviews of the Dignity and Respect - Bullying and Harassment policy.
- Support the work of the Dignity and Respect Oversight Group.
- Monitor the data in relation to bullying and harassment from the various sources and compile statistical reports and make recommendations to the Dignity and Respect Oversight Group, UMT and the Governing Authority.

### **People Managers (Heads of School/Unit and those with line management responsibilities) (for employees)**

**People managers have important roles to play in creating a culture of dignity and respect in their School/Unit and supporting employees who are experiencing issues of dignity and respect, with support from HR. There may be instances where an individual may feel that there is a conflict of interest in approaching their line managers where the issue is with the line manager or if both individuals involved report to the same manager. In this instance, individuals can approach the next management level up or contact the Dignity and Respect Report and Support Advisor as well as seek support from the other sources of support available. The role of the People Manager is to:**

- At all times, treat all members of the University community with dignity and respect.
- Proactively promote ongoing awareness in relation to dignity and respect in their area including keeping dignity and respect as a regular agenda item at School/Unit meetings.
- Work with those involved in a bullying and harassment issue in a proactive manner to provide options and potential pathways for resolution of issues in a positive, solution focused manner. Seek advice from HR and the Dignity and Respect Report and Support Advisors as well as engaging with other people managers to seek support and advice (anonymously) in relation to addressing issues of dignity and respect in their areas.
- Undertake appropriate training and be able to explain the policy and the supports to employees in their area.
- Encourage employees to come forward to report issues and to encourage them to seek support and guidance from the Dignity and Respect Report and Support Advisors and other supports that can assist in the resolution of issues.
- Monitor and follow up on the situation to ensure that unwelcome behaviour does not occur or recur.
- Be vigilant for signs of bullying and harassment through observation and by getting feedback and to take appropriate action before a matter escalates.
- Where unwelcome behaviour has occurred, and is admitted, be clear that it is not acceptable and to take disciplinary action if appropriate.
- Work with HR to take precautionary measures as deemed reasonable by the University.
- Facilitate and/or pro-actively request environmental assessments in their area and encourage participation by students and employees, ensuring that they are supported throughout the process.

### **Heads of School, Associate Deans and Programme Co-ordinators (in the case of students)**

- At all times, treat all members of the University community with dignity and respect.
- Proactively promote ongoing awareness in relation to dignity and respect amongst students.
- Respond sensitively and promptly to students who are raising dignity and respect issues and signpost them to the various supports such as the Student Advisers and Dignity and Respect Report and Support Advisor.
- Seek advice from the Dignity and Respect Report and Support Advisor if required in relation to issues raised by students.
- Undertake appropriate training and be familiar with the Dignity and Respect Policies and Supports.
- Be vigilant for signs of bullying and harassment through observation and by getting feedback and to take appropriate action before a matter escalates.
- Facilitate and/or pro-actively request environmental assessments in their area and encourage participation by students and employees, ensuring that they are supported throughout the process.
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**There are a number of support roles in the University that provide support and information to students and employees such as the Dignity and Respect Contact Persons, Student Advisers, Chaplains, Students Union, Trade Unions. Further information in relation to these roles can be found in the Dignity and Respect Supports and Guidance document [Insert Link].**

### **Trade Unions (for employees)**

Trade Unions can play an important role in providing information, advice and support to employees who feel that they are being bullied or harassed or against whom a complaint has been made. The trade unions with the right to represent grades of employees in UCD are: IFUT, SIPTU and UNITE.

### **Students' Union**

The Student's Union have a number of full-time sabbatical officers who are elected each year by students. They are a further point of contact for students who may be experiencing issues relating to dignity and respect. They assist students by providing a listening ear and signposting to Student Advisers and Dignity and Respect Report and Support Advisor for specialist support and guidance.

### **Role of Bystanders**

A bystander in the context of this policy is an individual that witnesses an incident(s) of bullying or harassment. As a bystander, you are encouraged to report any incidents witnessed to your Head of School/Module Co-ordinator or Dignity and Respect Report and Support Advisor in the case of students and in the case of employees, your manager or Dignity and Respect Report and Support Advisor who will advise as to the various options available to address the issues.. A Dignity and Respect Environmental Assessment may also potentially occur on foot of a Bystander report.

## **6. Related documents/information**

### **(a) Related Documents**

- Dignity and Respect - Supports and Guidance Document
- Dignity and Respect - Formal Investigation Procedure
- Dignity and Respect –Sexual Misconduct Policy
- [Equality, Diversity and Inclusion Policy](#)
- [Employee-Student Relationship Policy](#)
- [Student Code of Conduct](#)

- [Disciplinary Statute](#)
- [Dignity and Respect Data Privacy Statement](#)
- [Supporting Materials \(flow charts etc when developed\)](#)
- [Industrial Relations Act 1990 \(Code of Practice for employers and employees on the prevention and resolution of bullying at work\)](#)

### **(b) Legislation**

This Policy is designed to ensure compliance with the Codes of Practice issued under the Safety, Health and Welfare at Work Act 2005, the Industrial Relations Act 1990 (as amended) and the Employment Equality Act (as amended) and the provisions of the Work Relations Commission (WRC) S.I. 208/2012 for addressing harassment/sexual harassment.

The following legislation is relevant to bullying and harassment:

- Safety, Health and Welfare at Work Act 2005
- Non-Fatal Offences Against the Person Act 1997
- Equal Status Acts, 2000 - 2018
- Prohibition to Incitement of Hatred Act 1989
- Employment Equality Acts, 1998 – 2015
- Data Protection Act 1988 – 2018
- Protected Disclosures Act 2014
- Irish Human Rights and Equality Commission Act 2014
- Industrial Relations Act 1990 (Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work Order 2020) (SI no 674 of 2020)

This Policy has also been developed to ensure compliance with the Student Code and the IUA Guidelines 2020.

### **(c) Confidentiality (see Data Privacy statement)**

Confidentiality will be observed as far as practicable and in accordance with the provisions of the Data Protection Act 2003 - 2018 and the Children First Act, 2015 which governs child protection. Confidentiality is a key principle of the Dignity and Respect – Bullying and Harassment policy and is essential to the integrity of a formal complaints process. It is important that any party to a complaint, which most commonly includes reporting person/complainant, person being reported/respondent or witness, does not breach confidentiality. This does not preclude parties to the complaint from accessing confidential support services such as Employee Assistance Service, speaking to a designated contact person or a student advisor, trade union representative, accompanying person or human resources. Respect for an individual's request for confidentiality will be maintained (as far as practicable) except in any or all of the following situations:

- In situations where there is a risk that a Respondent may repeat their actions and pose a real physical/mental threat to the well-being of others. If this situation arises, the HR Director or the Registrar, as appropriate, must be contacted and there will be full disclosure to them
- Where failure to disclose information may be a breach of statute
- Where an individual is a minor
- Where there is a potential risk to the University
- Where failure to disclose information may be a breach of Funding Agency Terms & Conditions.

The University will take action that is necessary and proportionate in order to protect the right of the reporting person/ complainant, person being reported/ respondent or witness involved in an investigation.

#### **d) Investigations by An Garda Síochána (Police)/ Court orders**

- I. Where an employee/student identifies a breach of this policy which constitutes a criminal offence or an immediate threat to safety, they should report the matter to the Gardaí. Individuals should also inform the University through their line manager or the Dignity and Respect Report and Support Advisor, so that appropriate steps can be taken and support provided. Employees or students can contact the Gardaí directly or through the Duty Manager in Estate Services who has access to a contact point in Donnybrook Garda Station at any time, day or night. The Duty manager can be contacted on 716 7999.

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 reporting person/complainant. The circumstance in which a report by a University may be justified is if there is considered to be a clear and imminent risk to the safety of the reporting person/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 reporting person/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 Formal Investigation Procedures.

- II. If any individual has a court order against a UCD community member, they should provide a copy of this to the Dignity and Respect Support and Report Advisor. When the University is put on notice of a court order it will take all reasonable steps to facilitate compliance with the order where possible. Enforcement of the order is however a matter for the applicant/court.

#### **e) The Children's First Act 2015 and Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012**

The University is obliged to report any disclosures of child sexual abuse, assault, ill-treatment, or neglect of children to Tusla under the reporting responsibilities of the Children First Act 2015, the 2017 Guidance, the University's Child Safeguarding Statement and the principles of natural justice. Any person to whom such a report is made should contact the UCD Child Protection Officer. The University also has a reporting obligation under the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012. The Act creates a criminal offence of withholding information relating to the commission of a serious offence, including a sexual offence, against a person under 18 years or a vulnerable person.

#### **f) Transparency through Monitoring and Reporting**

We are committed to being transparent in relation to issues of bullying and harassment in the University whilst still protecting anonymity. Data relating to complaints and reports of bullying and harassment will be used to inform the development of initiatives and activities designed to prevent such behaviour, enhance supports for those experiencing bullying and harassment and promote a safe and respectful environment for all.

A report including an analysis of data collated in relation to contacts, reports, formal complaints and anonymous reports via the University's anonymous Report and Support system and, where appropriate, relevant recommendations will be submitted to the University Management Team and EDI Group on a quarterly basis and annually to the Governing Authority. Data will also be made available to the Dignity and Respect Oversight sub-group through a data collection system that will be established to enable the group to identify areas for targeted environmental assessments.

Specifically, the report will include:

- Statistical data relating to contact, reports, anonymous reports and formal complaints made under the Dignity and Respect - Bullying and Harassment Policy received each year.
- The number of formal complaints investigations and the number of formal complaints that led to disciplinary action.
- Contacts made with the Dignity and Respect Report and Support Advisors.
- An analysis of the data collated and any relevant recommendations.
- Summary of progress against the Framework for Consent in HEIs action plans
- Summary of progress against the overall Dignity and Respect Implementation Plan
- Outline of planned actions and initiatives.

For the purpose of continuous monitoring and to enable local review, quarterly reports will be produced and disseminated to senior university leaders. Data will also be made available to relevant University stakeholder groups.

The University will also report dignity and respect statistical data to the HEA as appropriate.

### **g) Data Protection**

The University has published data privacy statements for employees and students which explain how personal data is used. A specific Data Privacy statement has been developed for this policy which explains how the University will use personal data if one is a reporting person/complainant, person being reported/respondent or a witness in a case considered under the policy and procedure for handling cases of bullying and harassment. The Data privacy statement is located here [insert link].

## **7. Version history**

<b>Version</b>	<b>Date</b>	<b>Description</b>	<b>Author</b>
1.0	October 2016		Project team
1.1	December 2016	Redraft	Plenary Group
1.2	January 2017	Redraft	Plenary Group
1.3	February 2017	Redraft	Plenary Group
1.4	21 February 2017	Redraft	Plenary Group
1.5	9 March 2017	Edits	Plenary Group
1.6	6 April 2017	EIA Edits	Project team
1.7	May 2017	Redraft post consultation pre-Plenary Group	Project team

1.8	7 June 2017	Final Draft	Plenary Group
1.9	August 2020	Periodic Review as advised under the University Policy Management Framework and developments at national level	Review Group
1.10	December 2020	Periodic Review as advised under the University Policy Management Framework and developments at national level	Review Group
1.11	February 2021	External input and revised draft	Project team
1.12	April 2021	Final feedback from Uni community	Project team/Review Group

# Chapter 6: Revised DRAFT Dignity and Respect Sexual Misconduct Policy

This policy document has been developed following desk-based research into best practice nationally and internationally, extensive internal consultation through externally facilitated focus groups, written submissions and individual meetings and external consultation with experts in the area of dignity and respect. The national framework, “Safe, Respectful, Supportive and Positive: Ending Sexual Violence and Harassment in Irish Higher Education Institutions, 2019”, which outlines a framework that promotes a healthy and informed understanding of consent and relationship in higher education systems, has been closely followed in support of this policy. The Irish Universities Association, How to Respond to Alleged Staff or Student or University Related Sexual Misconduct 2020 has also informed the development of this policy.

This policy is one element of a broad framework to work towards a culture of dignity and respect at UCD to include but not limited to: targeted training for key roles, an ongoing University-wide awareness raising campaign and training, dedicated full-time and voluntary support roles and a range of supporting documentation such as visual aids.

*We encourage you to come forward to seek support and assistance in relation to issues of sexual misconduct, so that we can work with you to resolving these issues. You can be assured that we will act sensitively and disclosures will be carefully and thoughtfully addressed through a process that is transparent and clearly communicated to all individuals involved. Issues of a sexual misconduct nature may potentially constitute a criminal offence. Employees or students can contact the Gardaí directly or through the Duty Manager in Estate Services who has access to a contact point in Donnybrook Garda Station at any time, day or night. The Duty manager can be contacted on Extension 716 7999.*

***All individuals involved in a sexual misconduct issue will be supported.***

## 1. Purpose

The purpose of this policy and supplementary materials, including the Dignity and Respect Support and Guidance document and the Formal Investigation Procedures document, is to support the development of a working and learning environment in which sexual misconduct is unacceptable and where individuals have the confidence and trust in the process to disclose, in the knowledge that their concerns will be dealt with appropriately and fairly.

University College Dublin has six core values driving our culture: Excellence; Integrity; Collegiality; Engagement; Diversity and Creativity. In line with these values, the University is committed to the provision of an environment of respect for diversity and equality of opportunity where:

- you have the right to be treated with dignity and respect and can work and study in a rewarding, safe and stress free environment;
- sexual misconduct will not be tolerated and can lead to disciplinary action;
- the environment is more likely to enhance performance and achievement which will allow all members of our University community to fully utilise their skills and talents and achieve their full potential.

In addition, the University wants to create a climate of trust through the provision of a transparent oversight process, to include external membership, and to take a proactive approach to monitoring and

publication of statistics and identification of actions to address any patterns of inappropriate behaviour that is arising.

This policy sets out how the University defines sexual misconduct, what it expects of members of the UCD student and employee community, the responsibilities of key roles in the University and how you will be supported when issues of this nature occur.

We [University College Dublin] recognise that sexual misconduct – in either a learning or work environment – can cause not only personal distress and anxiety, but also a loss of confidence, low morale and illness. It can also lead to absenteeism from course work or the workplace and interfere with your academic performance and work. You have the right to disclose experiences of unacceptable behaviour while studying or working, to be listened to, to seek support and to have the issue resolved. We also understand that anyone involved in a situation involving sexual misconduct has the right to support and information.

This policy should be read in conjunction with the Dignity and Respect Supports and Guidance Document and Dignity and Respect Procedure (The Procedure).

## 2. Definitions

It is important that you make yourself aware of the definitions below as it will help determine whether the policy applies to your own situation. It will also make you aware of the type of behaviour that is not acceptable and which you should not engage in. These definitions have been developed based on a review of best practice, Codes of Practice, extensive consultation, the National Framework, Safe, Respectful, Supportive and Positive: Ending Sexual Violence and Harassment in Irish Higher Education Institutions, 2019. The fact that the person who caused the offence may not have intended to engage in sexual misconduct is not a defence, it is the impact of the behaviour that is considered. It is important to note that whilst some behaviours may not fall under the definitions as outlined below, the University does not tolerate unacceptable behaviour of any type. Please refer to further information located here [insert link] on other processes that may be relevant to resolving the issues you are experiencing.

### UCD Community

- All UCD employees, whether part time or full time, permanent or temporary;
- All employees of UCD's wholly owned subsidiary companies or overseas campus/offices;
- All students of UCD;
- Those engaged in Club activity such as graduates (player, committee member, coach/manager), those volunteering to coach/lead/manage, those being employed by the club to coach/ lead/ manage;
- Non-University employees who use University funds, facilities or other resources, including the University's name and reputation, to carry out teaching and/or research, and/or participate in UCD-administered research, including retired employees, visiting faculty and researchers; consultants, contractors, affiliated hospital staff, industrial personnel and research fellows, regardless of obligations to other companies or institutions; and
- All persons conducting teaching and/or research at or under the auspices of UCD including at any of UCD's overseas campus, including visiting faculty and researchers; consultants; contractors, Emeritus or adjunct appointments; and research fellows.

### **<sup>3</sup>Sexual Misconduct:**

Sexual Misconduct covers a broad range of inappropriate and unwanted behaviours of a sexual nature including sexual harassment and sexual violence. Sexual misconduct can be committed by a person of any gender and it can occur between people of the same or different genders. It is often gender targeted and perpetrated to demean, diminish and intimidate. Sexual misconduct may occur between strangers or acquaintances, including people involved, or formerly involved, in an intimate or sexual relationship.

The following are examples of behaviours associated with sexual misconduct (non-exhaustive list)

- Predicating inclusion or access to work or study opportunities or other advantages on participation in interactions of a sexual nature
- Grooming, psychological abuse and coercive contact
- Controlling, coercive and threatening behaviour including all or some forms of domestic abuse (emotional, physical, financial, sexual including threats) by a partner or ex-partner.
- Making unwanted remarks of a sexual nature, either directly, or via text or social media apps.
- Sharing private sexual materials of another person without consent;
- Any behaviour of a sexual nature that is committed without consent
- Kissing without consent.
- Touching inappropriately through clothes without consent.
- Non-consensual taking or sharing of intimate images.
- Sexual harassment/sexual misconduct on social media.
- Verbal or physical harassment in a sexual context.
- Inappropriately showing sexual organs to another person
- Creating, accessing, viewing or distributing child pornography material online or offline.
- Stalking behaviours whether online or offline.
- A promise of resources, access to education, opportunities and career progression in exchange for sexual access
- All forms of sexual violence including attempting to engage in sexual intercourse or engaging in a sexual act without consent.
- Misuse of power, by academic or professional staff towards students or more junior levels of employee or misuse of power in a relationship between students or employees who have unequal institutional power.

This definition of Sexual Misconduct also embraces Sexual Harassment (as defined below).

### **Sexual Harassment**

Sexual Harassment is defined under the Employment Equality Acts 1998 – 2015. It includes any act of physical intimacy, request for sexual favours, other act or conduct including spoken words, gestures or the production, display or circulation of written words, picture or other material that is **unwelcome** and could **reasonably be regarded** as sexually offensive, humiliating or intimidating.

The following are examples of behaviours associated with sexual harassment: (non-exhaustive list)

Physical contact such as unnecessary touching, patting or pinching or brushing against another body, assault, coercive sexual intercourse or rape.

- Sexual advances, propositions or pressure for sexual activity, continued suggestions for social activity after it has been made clear that such suggestions are unwelcome, unwanted or offensive flirtations, suggestive remarks, innuendos or lewd comments

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<sup>3</sup> Safe, Respectful, Supportive and Positive: Ending Sexual Violence and Harassment in Irish Higher Education Institutions, 2019. Definition of Sexual Misconduct

- The display of pornographic or sexually suggestive pictures, objects, written materials including posters, emails, text-messages, social media messaging or faxes
- Leering, whistling or making sexually suggestive gestures
- Conduct that denigrates or ridicules or is intimidatory or physically abusive of a person because of their sex

The Employment Equality Acts 1998 - 2015 do not prohibit all relations of a sexual or social nature at work. To constitute harassment/sexual harassment the behaviour complained of must firstly be unwelcome. It is up to each employee/student/other (e.g. visitor or sub-contractor) to decide

- (a) what behaviour is unwelcome, irrespective of the attitude of others to the matter and
- (b) from whom such behaviour is welcome or unwelcome, irrespective of the attitudes of others to the matter

The fact that an individual has previously agreed to the behaviour does not stop them from deciding that it has become unwelcome. It is the unwanted nature of the conduct which distinguishes harassment/sexual harassment from behaviour which is welcome and mutual.

In addition, to constitute harassment/sexual harassment under the Employment Equality Acts 1998 - 2015, the behaviour must have the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

### **Consent**

Consent in the context of sexual misconduct is defined as the freely given verbal or non-verbal communication of a feeling of willingness to engage in sexual activity. A person consents to a sexual act if they freely and voluntarily agree to engage in that act. There is no consent if the victim is asleep or unconscious; force or the threat of force is used; they cannot consent because of the effect of alcohol/other drug; they cannot communicate consent because of a physical and mental disability; they are mistaken about the act or about the identity of the other person; the only indication of consent came from a third person, or if they are being unlawfully detained at the time of the act. This is not an exhaustive list and are illustrative only.

Consent can be withdrawn at any time, and just because someone has previously given consent, does not preclude that person from withdrawing consent.

Non-consensual sexual activity may amount to a prosecutable criminal offence.

This definition is consistent with the definition of consent in the Criminal Law (Sexual Offences) Act 2017. The full definition is included under Section 6 below.

### **Disclosure**

In the context of this policy, disclosure refers to the case where an individual discloses that they feel they have been subjected to sexual misconduct, which includes sexual harassment and sexual violence. Making a disclosure does not constitute a formal complaint, however after speaking with someone, you may decide to then submit a formal complaint. When making a disclosure, you will be supported to work through the issue by a trained support person, such as the Dignity and Respect Report and Support Advisor, and discuss what a resolution would look like for you, with safety for everyone being of paramount importance. You will also be signposted towards other internal and external supports. You will be made aware of your right to make a formal complaint and/or contact the Gardaí (Police) in the case of an alleged criminal offence.

## **Reporting Person**

A reporting person is defined as an individual that has come forward to report an incident(s) that they consider to be sexual misconduct type behaviour, however they have not submitted a formal complaint form.

## **Person being Reported**

A person being reported is defined as the individual that the reporting person considers to be carrying out the sexual misconduct type behaviour, however no formal complaint form has been submitted.

## **Informal Resolution**

Informal resolution refers to the options available to resolve an issue without instigating the formal investigation procedure. The appropriateness of informal interventions in instances of sexual misconduct will depend on the nature of the conduct.

The key principle to be maintained is that individuals reporting allegations of sexual misconduct, with the appropriate supports, should be the decision maker around whatever actions should be taken and the possible routes and actions towards informal resolution should be explored when they are engaging with University and/or external supports.

Informal resolution options include the reported person being contacted to let the person being reported know that the alleged behaviour described is not acceptable and is in contravention of the Sexual Misconduct policy and should stop. The reporting person may also wish to consider other options that they feel will assist them in resolving the issue informally. In helping determine if this option may be appropriate, the health and safety of all parties would be of paramount importance.

Reporting persons are advised to discuss options for resolution with the Dignity and Respect Report and Support Advisor.

## **Formal Complaint**

A complaint is deemed to be formal once the Dignity and Respect complaint form has been completed and submitted to the Equality, Diversity and Inclusion (EDI) unit. Following receipt of a formal complaint, a preliminary screening carried out by a screening panel will decide on a prima facie basis whether the alleged behaviour falls within the definition of sexual misconduct and scope as defined in this policy. The screening panel can also recommend if informal interventions should be considered. If deemed to fall within the definitions and scope and informal interventions are deemed inappropriate by the screening panel, or the complainant does not wish to engage in informal interventions, the complaint will proceed to a formal investigation which will be supported by either UCD HR or the Students Engagement, Conduct, Complaints and Appeals office, as appropriate. Further information in relation to the screening panel and formal investigation process is located in the Formal Complaints Procedure.

## **Complainant**

The complainant is a person who makes a formal complaint, using the Dignity and Respect complaint form, that they have been subject to sexual misconduct.

## **Respondent**

The respondent is a person who is named in a formal complaint as having allegedly carried out the sexual misconduct.

## **Precautionary Measures**

If a person makes a formal complaint of sexual misconduct, reasonable precautionary measures may be put in place pending the outcome of a University or criminal 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. Precautionary measures may potentially be kept in place following an intervention depending on the circumstances. (Further information on the range of measures are outlined in the formal Investigation Procedures document).

### **Discrimination**

The Employment Equality Acts 1998 – 2015 defines discrimination as treating one person in a less favourable way than another person based on any of the equality grounds (see grounds listed under harassment). These include recruitment and promotion; equal pay; working conditions; training or experience; dismissal and harassment including sexual harassment. Claims of discrimination (other than harassment and sexual harassment) are managed under the Grievance Procedure for employees or Student Complaints (or other) for students.

### **Victimisation**

No person should be the subject of any act or omission that affects them to their detriment for having raised bullying and/or harassment issues, making a formal complaint in good faith, for giving evidence in an investigation (as a witness/bystander for example) or by giving notice of intention to do so. The University takes victimisation very seriously and action will be taken in instances where this occurs. Any individual that experiences victimisation is strongly encouraged to seek support and report this behaviour to the Dignity and Respect Report and Support Advisor or EDI Unit.

### **Penalisation**

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. It could also include coercion or intimidation.

### **Dignity and Respect Environmental Assessment**

A Dignity and Respect Environmental Assessment is an assessment of the broader cultural issues/prevaling conditions within an area. A periodic environmental assessment may be undertaken at intervals as directed by a sub-group of the Dignity and Respect Oversight group where a small number of areas will be randomly selected by the sub-group.

A targeted Dignity and Respect Environmental Assessment may also occur where particular statistical trends have been highlighted. These trends may be identified through anonymous reports made by individuals (reporting person) in the [4Report and Support Tool](#) for example or where an individual(s) have come forward informally to report an incident but do(es) not wish to make a formal complaint at that point in time. Trends may also be identified where bystanders/witnesses have reported incidents. These assessments will help measure how well this policy is being embedded across the University and its impact.

The Dignity and Respect Oversight Sub-Group will monitor this data on a quarterly basis. If an environmental assessment of an area is identified, either on a periodic review basis or arising from a

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<sup>4</sup> Report and Support provides the opportunity for you to make the University aware of incidents that you have either experienced or witnessed by reporting them anonymously. More information can be found at [reportandsupport.ucd.ie](http://reportandsupport.ucd.ie)

review of data available, the area must co-operate with the assessment. All environmental assessments will be conducted by an independent third party. A Dignity and Respect Environmental Assessment will not result in any sanctions being issued, however it gives the University the authority to implement action plans aimed at changing culture or behaviours.

### **Malicious Complaint**

Adopting the definition under the Code of Practice on Bullying 2021, a malicious complaint can be described as an allegation being made without foundation, and with malicious intent, where a person knowingly or without regard to whether it is true or not, accuses another person of alleged sexual misconduct against them. This could also apply to where one person maliciously complains of someone allegedly engaged in sexual misconduct with a third party, without fully exploring the veracity of the claim. A malicious complaint has the power to disrupt another person's life to a significant extent and the potential damage should not be underestimated. Being accused of sexual misconduct can have a serious impact on any person and reduce their reputation in the eyes of others, even if later shown to not have been proven. Those making complaints - and those involved in early assessment of the circumstances of a complaint - should always be mindful of the context and situational aspects of the event and accept the different perspectives and points of view different people bring to the same event. Making a malicious complaint, if proven, can have serious implications for the employment / studies of the person making such a complaint and this includes disciplinary action, where established.

## **3. Scope**

This Policy applies to all members of our community as defined above and others. In this Policy, "others" shall be taken to include, but is not limited to the conduct of contractors, subcontractors, alumni, vendors and those engaged in activities relating to University societies/clubs including their members. It also includes those who engage and/or who interact with the University and/or its associated bodies, those who provide services to the University, those who avail of services and/or are visitors of and to the University or any of its associated bodies.

This Policy applies to all areas of University operations and programmes. It includes conduct which takes place:

- On our campus
- Other place where our employees or students or others are representing the University or are engaged in a University connected activity.
- At events such as social functions, conferences, sporting events, field trips or work assignments which are related to the University or are a University connected activity.
- In relation to clubs/societies
- At non-UCD connected activities on or off campus including social gatherings involving UCD students and employees, or other members of the UCD community as defined above, where the alleged incident(s) has a direct impact on the individuals when there is ongoing interaction between the individuals in a University related environment.
- This conduct can be in person, in writing, on the telephone, by e-mail or on the internet and social media.

Where UCD students or employees are on placement, internship or secondment in other organisations, they need to be aware of the dignity and respect policies of these organisations. Where a complaint is made whilst they are on placement or secondment, our students or employees may be subject to the policies of these organisations as well as under this Policy.

There will be no time limit regarding receipt of complaints by the University. The focus will not be on the length of time to bring the complaint forward but rather the impact of the delay 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.

If the Screening Panel confirm, based on the information they have received as part of the formal complaint, that impact of the delay will not impinge on the likelihood of a fair investigation, an external investigator may be appointed. The external investigator, based on the information received as part of the investigation, can recommend that by reason of the passage of time and taking into account the considerations referred to above, a fair investigation will not be possible.

In the event of the death of a respondent, an investigation will not proceed.

It is possible for an individual to feel they have also been subjected to bullying and/or harassment. If this is the case, please refer also to the policy on Bullying and Harassment.

## **4. Principles**

### **Key principles**

The key principles of the policy are to:

- Ensure that the University has proactive measures in place to promote a positive culture of dignity and respect and to create a working and learning environment which makes clear the expectations of members of our community with regard to respecting each other and that unacceptable behaviour will not be tolerated.
- Create a safe and respectful environment where people feel encouraged to disclose the issues they are experiencing and have trust and confidence in the process that the issues will be dealt with appropriately and fairly.
- Ensure that there is a range of trained supports available, both voluntary and full-time dedicated roles, whom you can approach and seek support and guidance from and that these are widely communicated.
- Promote understanding of our definitions of sexual misconduct and consent.
- Ensure that there are both informal and formal options available for resolution acknowledging that informal options need to be considered carefully.
- Enhance transparency by having external expert involvement at key stages of the dignity and respect process including external membership on the screening panel, the appointment of external investigators and external membership on the EDI Dignity and Respect Oversight Sub-Group.
- Expectation that you will co-operate with all efforts in order to resolve complaints under the policy and without undue delay as appropriate.
- Expectation that you will respect the confidentiality of the process. However, you are strongly encouraged to seek support from the support services available, your family and other personal supports which will involve you sharing information confidentially with them.
- Have an effective and transparent monitoring and analysis process of dignity and respect related data, and the reporting of this data to relevant internal and external bodies on a defined periodic basis in order to demonstrate accountability.

- Review this Policy on a regular basis in line with changes in the law, relevant case-law, feedback from people's experience of the policy or other developments.

## **5. Roles and responsibilities**

As members of our community, we are all expected to work to develop and maintain a high degree of respect in our diverse community and to participate in creating a positive and safe environment.

As with all policies and procedures, this document assigns responsibilities to a range of roles within the University, including senior management of the University. Failure to uphold the responsibilities assigned is taken very seriously and may lead to informal or formal action, including, in the case of students, under the Student Code and Student Discipline Procedure, and in the case of employees under the Disciplinary Statute (Statute 28). Formal sanctions available for breach of university policies and procedures are graduated by reference to the seriousness of the breach, for students ranging between a written reprimand to permanent expulsion from the University, and for employees at all levels ranging between a verbal warning to dismissal.

### **Governing Authority**

- Support the pursuit of the development and implementation of leading policies/procedures that clearly represent the values of UCD.
- Amplify the value and importance of dignity and respect in the University and supporting strategy of the Governing Authority.
- Oversee the work of the Dignity and Respect Oversight Group and receive an annual report from this group on the implementation of the policy and supporting framework and monitor emerging trends.
- Engage in relevant training in relation to dignity and respect and broader equality, diversity and inclusion.

### **University Management Team (UMT)**

The University Management Team are the senior leadership team of the University led by the President. They have overall formal responsibility for the operation of this policy. They have the responsibility to:

- Visibly lead and champion a positive culture of dignity and respect free from sexual misconduct where trust and transparency around dignity and respect is paramount. This will include ensuring that all senior leaders are appropriately trained.
- Ensure that adequate resources are allocated to support a positive culture of dignity and respect including training and awareness raising campaigns and supports for employees and students.
- Proactively encourage individuals to seek support and guidance if experiencing issues of a sexual misconduct nature.
- Review dignity and respect reports and recommendations submitted on a quarterly basis from the Dignity and Respect Oversight Group and EDI group and take the necessary action.
- Ensure that data is publicly available to enhance transparency around the process.
- Engage in relevant training in relation to dignity and respect and broader equality, diversity and inclusion.
- Engage with the Governing Authority and external bodies such as the HEA in relation to progress on the implementation of the dignity and respect framework as appropriate.

### **Dignity and Respect Oversight Committee**

The Dignity and Respect Oversight Committee, reporting to the EDI Group and UMT on a quarterly basis and annually to the Governing Authority, will consist of key stakeholders from across the University and external members who are expert in the area of dignity and respect. It will have responsibility to provide oversight and guidance and enhance transparency around dignity and respect as follows:

- Provide guidance and direction in relation to the implementation of the Dignity and Respect policies and supporting framework to support a culture of dignity and respect.
- Monitor progress in relation to the implementation of the broader Dignity and Respect Framework and Consent Framework under <sup>5</sup>ESHTE and measure against established KPIs.
- Monitor statistical data relating to reports made under the Report and Support tool, formal dignity and respect complaints and contacts with designated supports roles such as the Dignity and Respect Contact Persons and the Dignity and Respect Report and Support Advisor.
- Direct both periodic and targeted environmental assessments based on available data to be undertaken to assess the culture in an area in relation to Dignity and Respect and measure the impact of the policy.
- Ensure there is transparency in relation to Dignity and Respect in UCD through the publication of statistics and actions to address themes arising.
- Advise on best practice nationally and internationally.
- Act as Champions for a positive culture of dignity and respect and trust in the process.
- Report into and make recommendations to the EDI Group and UMT on a quarterly basis and report annually to the Governing Authority.

### **Dignity and Respect Report and Support Advisors**

Reporting to Equality Diversity and Inclusion, the full-time roles of Dignity and Respect Report and Support Advisors will work proactively with employees and students who disclose issues of sexual misconduct and those who are reported. These roles, who are experienced and trained to support, respond and advise on all reports of a dignity and respect nature, will provide you with a supportive, confidential environment in which to discuss the issues and support you to make a decision that is right for you and your situation.

As a reporting person, these roles will provide support and work with you in relation to the steps to seeking a solution to the issues you are experiencing but the decision will rest with you as to how you would like the issue to be resolved. They can also assist you in making a formal complaint if you wish to do so and continue providing that support throughout the formal complaints process which may include accompanying you to investigation meetings and the provision of aftercare support following any informal or formal interventions.

As a person being reported, the Dignity and Respect Report and Support Advisors are also available to support you if you have been accused of carrying out such behaviour however different advisors will support the various people involved to avoid a conflict of interest. If a formal complaint has been made, they will provide information as to what this will normally entail. They may accompany you to investigations if you wish and also provide aftercare support.

The Dignity and Respect Report and Support Advisors will also support, and work closely with the panel of Dignity and Respect Contact Persons, who are trained voluntary support roles available to those experiencing issues of a dignity and respect nature. Further information on these roles is available in the Support and Guidance document.

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<sup>5</sup> Ending Sexual Violence in Third Level Education Project

The Dignity and Respect Report and Support Advisor roles are available during normal working hours, however in the case of emergency the Duty Manager in Estate Services is available at any time day or night on 716 7999 and has a direct contact to the Gardaí (Police) if required.

The key responsibilities of the roles include:

- Providing impartial information and support around options in relation to resolving issues of a sexual misconduct nature.
- Supporting and guiding the reporting person in making a formal complaint if they wish to do so.
- Accompanying complainants and respondents to investigation meetings if they wish and providing after care support following a formal investigation process regardless of the outcome.
- Signposting and referring individuals to other appropriate support services both within the University and externally.
- Keeping accurate records to a safe, professional and ethical standard and monitor and report statistical data.
- Providing specialist advice to University and College employees on individual cases of dignity and respect, including possible actions to ensure that employees and students feel safe and protected.
- Providing key support for the panel of Dignity and Respect Contact Persons and guide and advise as appropriate ensuring a high standard and consistency in delivery of support as well as championing of the panel.
- Liaising closely with other key Dignity and Respect supports such as Student Advisers, EDI, HR and the Dignity and Respect Oversight Committee.
- Supporting the delivery of dignity and respect training to employees and students.
- Monitoring contacts and disclosures which will feed into the overall data reporting system that will support the Dignity and Respect Oversight Sub-Group make decisions around instigating targeted environmental assessments.
- Keeping abreast of best practice developments in this area nationally and internationally.

### **Individuals**

As individual members of the University Community, we all have a responsibility to:

- At all times, treat all members of the University community with whom you interact with dignity and respect and be aware of the impact of your actions.
- Be familiar with the principles of this policy and positively contribute to a culture of dignity and respect by engaging with any training and/or awareness raising and initiatives.
- If you witness behaviour that you consider to be sexual misconduct, you should report it to a Head of School/Line Manager or the Dignity and Respect Report and Support Advisor.
- Encourage any individual that confides in you that they have experienced sexual misconduct, to seek support and guidance from the sources available.
- Engage in training and awareness raising on the matters that are the subject of this policy.
- Engage in respectful conduct or behaviour that will not endanger your own safety, health and welfare or work or that of any other person including obligations under the Safety, Health and Welfare at Work Act, 2005.

**Human Resources/Office of the Registrar as appropriate**

- Provide advice to Heads of School/Unit and line managers on addressing dignity and respect related matters including how they can best support those experiencing issues of a dignity and respect nature.
- Signpost employees and students to specialist supports and advisors such as the Dignity and Respect Report and Support Advisors, Dignity and Respect Contact Persons, Employee Assistance Service, Student Counselling Service etc.
- Provide management support to external investigators in the formal Dignity and Respect Complaints process.
- Maintain communications with the reporting person/complainant and person being reported/respondent and keep them informed of the progress of the formal investigation.

### **Equality, Diversity & Inclusion (EDI) Unit**

- Support the roles of the Dignity and Respect Report and Support Advisors.
- Receive formal dignity and respect complaints through the completion of the Dignity and Respect Complaints form and managing the formal complaints process up to and including the screening panel stage.
- Champion and promote a culture of dignity and respect throughout the University Community where sexual misconduct is not tolerated.
- Lead out on periodic reviews of the Dignity and Respect –Sexual Misconduct policy.
- Support the work of the Dignity and Respect Oversight Group.
- Engage in relevant and appropriate training.
- Monitor, report on and publish the data in relation to sexual misconduct from the various sources and compile statistical reports and make recommendations to the Dignity and Respect Oversight Group, UMT and the Governing Authority.

### **People Managers (Heads of School/Unit and those with line management responsibilities) (for employees)**

**People managers have important roles to play in creating a culture of dignity and respect in their School/Unit and supporting employees who are experiencing issues of dignity and respect, with support from HR. There may be instances where an individual may feel that there is a conflict of interest in approaching their line managers where the issue is with the line manager or if both individuals involved report to the same manager. In this instance, individuals can approach the next management level up or contact the Dignity and Respect Report and Support Advisor as well as seek support from the other sources of support available.**

The role of the People Manager is to:

- At all times, treat all members of the University community with dignity and respect.
- Proactively promote ongoing awareness in relation to dignity and respect in their area including keeping dignity and respect as a regular agenda item at School/Unit meetings.
- Work with those involved in a sexual misconduct issue in a proactive manner to support the resolution of issues and stop the unacceptable behaviour. Seek advice from HR and the Dignity and Respect Report and Support Advisors as well as engaging with other people managers to seek support and advice (anonymously) in relation to addressing issues of dignity and respect in their areas.
- Undertake appropriate training and be able to explain the policy and the supports to employees in their area.
- Encourage employees to come forward to report issues and to encourage them to seek support and guidance from the Dignity and Respect Report and Support Advisors and other supports that can assist in the resolution of issues.
- Monitor and follow up on the situation to ensure that unwelcome and non-consensual behaviour does not occur or recur.

- Be vigilant for signs of sexual misconduct through observation and by getting feedback and to take appropriate action before a matter escalates.
- Where unwelcome behaviour has occurred, and is admitted, be clear that it is not acceptable and to take disciplinary action if appropriate.
- Work with HR to take precautionary measures as deemed reasonable by the University.
- Facilitate and/or pro-actively request environmental assessments in their area and encourage participation by students and employees, ensuring that they are supported throughout the process.

### **Heads of School, Associate Deans and Programme Co-ordinators (in the case of students)**

- At all times, treat all members of the University community with dignity and respect.
- Proactively promote ongoing awareness in relation to dignity and respect amongst students.
- Respond sensitively and promptly to students who are raising sexual misconduct issues and signpost them to the various supports such as the Student Advisers and Dignity and Respect Report and Support Advisor.
- Seek advice from the Dignity and Respect Report and Support Advisor if required in relation to issues raised by students.
- Be vigilant for signs of sexual misconduct through observation and by getting feedback and to take appropriate action before a matter escalates.
- Undertake appropriate training and be familiar with the Dignity and Respect Policies and Supports.
- Facilitate and/or pro-actively request environmental assessments in their area and encourage participation by students and employees, ensuring that they are supported throughout the process.

**There are a number of support roles in the University that provide support and information to students and employees such as the Dignity and Respect Contact Persons, Student Advisers, Chaplains, Students Union and Trade Unions. Further information in relation to these roles can be found in the Dignity and Respect Supports and Guidance document [Insert Link].**

### **Trade Unions (for employees)**

Trade Unions can play an important role in providing information, advice and support to employees who feel that they are being subject to sexual misconduct or against whom a complaint has been made. The trade unions with the right to represent grades of employees in UCD are: IFUT, SIPTU and UNITE.

### **Student's Union (Students)**

The Student's Union have a number of full-time sabbatical officers who are elected each year by students. They are a further point of contact for students who may be experiencing issues relating to dignity and respect. They can play an important role in providing information, advice and support to students who feel that they are being subject to sexual misconduct or against whom a complaint has been made. They assist students by providing a listening ear and signposting to Student Advisers and Dignity and Respect Report and Support Advisor for specialist support and guidance.

### **Role of Bystanders**

A bystander in the context of this policy is an individual that witnesses an incident(s) of sexual misconduct. As a bystander, you are encouraged to report any incidents witnessed to your Head of School/Module Co-ordinator or Dignity and Respect Report and Support Advisor in the case of students and in the case of employees, your manager or Dignity and Respect Report and Support Advisor who will advise as to the various options available to address the issues. A Dignity and Respect Environmental Assessment may also potentially occur on foot of a Bystander report.

## 6. Related documents

### a) Related Documents (*hyperlink these*)

- Dignity and Respect: Support and Guidance Document
- Dignity and Respect Formal Investigation Procedure
- Dignity and Respect, Bullying and Harassment Policy
- The Irish Universities Association, How to Respond to Alleged Staff or Student or University Related Sexual Misconduct. 2020
- Equality, Diversity and Inclusion Policy
- Employee-Student Relationship Policy
- Student Code of Conduct
- Disciplinary Statute
- <<note to include link to consent framework webpage>>
- Dignity and Respect Data Privacy Statement
- Supporting Materials (flow charts etc when developed)

### b) Legislation

This Policy is designed to ensure compliance with the Codes of Practice issued under the Safety, Health and Welfare at Work Act 2005, the Industrial Relations Act 1990 (as amended) and the Employment Equality Act (as amended) and the provisions of the Work Relations Commission (WRC) S.I. 208/2012 for addressing harassment/sexual harassment.

The following legislation is relevant to sexual misconduct:

- Safety, Health and Welfare at Work Act 2005
- Non-Fatal Offences Against the Person Act 1997
- Equal Status Acts 2000 - 2018
- Prohibition to Incitement of Hatred Act 1989
- Employment Equality Acts, 1998 – 2015
- Data Protection Act 1988 – 2018
- Irish Human Rights and Equality Commission Act 2014
- Criminal Law (Sexual Offences) Act 2017
- Protected Disclosures Act 2014
- Industrial Relations Act 1990 (Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work Order 2020) (SI no 674 of 2020)

The national framework, “Safe, Respectful, Supportive and Positive: Ending Sexual Violence and Harassment in Irish Higher Education Institutions, 2019”, which outlines a framework that promotes a healthy and informed understanding of consent and relationship in higher education systems, has been closely followed in support of this policy. The Irish Universities Association, How to Respond to Alleged Staff or Student or University Related Sexual Misconduct 2020 has also informed the development of this policy.

### c) Consent

The following is the excerpt from the Criminal Law (Sexual Offences) Act 2017 which defines Consent.

#### **Amendment of Act of 1990**

**48.** The Act of 1990 is amended by the substitution of the following section for section 9:

**“9.** (1) A person consents to a sexual act if he or she freely and voluntarily agrees to engage in that act.

(2) A person does not consent to a sexual act if—

(a) he or she permits the act to take place or submits to it because of the application of force to him or her or to some other person, or because of the threat of the application of force to him or her or to some other person, or because of a well-founded fear that force may be applied to him or her or to some other person,

(b) he or she is asleep or unconscious,

(c) he or she is incapable of consenting because of the effect of alcohol or some other drug,

(d) he or she is suffering from a physical disability which prevents him or her from communicating whether he or she agrees to the act,

(e) he or she is mistaken as to the nature and purpose of the act,

(f) he or she is mistaken as to the identity of any other person involved in the act,

(g) he or she is being unlawfully detained at the time at which the act takes place,

(h) the only expression or indication of consent or agreement to the act comes from somebody other than the person himself or herself.

(3) This section does not limit the circumstances in which it may be established that a person did not consent to a sexual act.

(4) Consent to a sexual act may be withdrawn at any time before the act begins, or in the case of a continuing act, while the act is taking place.

(5) Any failure or omission on the part of a person to offer resistance to an act does not of itself constitute consent to that act.

(6) In this section—

‘sexual act’ means—

(a) an act consisting of—

(i) sexual intercourse, or

(ii) buggery,

(b) an act described in section 3(1) or 4(1) of this Act, or

(c) an act which if done without consent would constitute a sexual assault;

‘sexual intercourse’ shall be construed in accordance with section 1(2) of the Principal Act.”.

#### **d) Confidentiality (see Data Privacy statement)**

Confidentiality will be observed as far as practicable and in accordance with the provisions of the Data Protection Act 2003 - 2018 and the Children First Act, 2015 which governs child protection. Confidentiality is a key principle of the Dignity and Respect policy and is essential to the integrity of a formal complaints process. It is important that any party to a complaint, which most commonly includes reporting person/complainant, person being reported/respondent or witness, does not breach confidentiality. This does not preclude parties to the complaint from accessing confidential support services and confiding in them such as the Employee Assistance Service or Student Counselling, speaking to a designated dignity and respect contact person or a student advisor, trade union representative, accompanying person or human resources or other support. Respect for an individual’s request for confidentiality will be maintained (as far as practicable) except in any or all of the following situations:

- In situations where there is a risk that a Respondent may repeat their actions and pose a real physical/mental threat to the well-being of others. If this situation arises, the HR Director or the Registrar, as appropriate, must be contacted and there will be full disclosure to them.
- Where failure to disclose information may be a breach of statute
- Where an individual is a minor
- Where there is a potential risk to the University.

The University will take action that is necessary and proportionate in order to protect the rights of the reporting person/complainant, person being reported/respondent or witness involved in an investigation.

#### **e) Investigations by An Garda Síochána (Police)/ Court orders**

- i. Where an employee/student identifies a breach of this policy which constitutes a criminal offence or an immediate threat to safety, they should report the matter to the Gardaí. Individuals should also inform the University through their line manager or the Dignity and

Respect Report and Support Adviser, so that appropriate steps can be taken and support provided. Employees or students can contact the Gardaí directly or through the Duty Manager in Estate Services who has access to a contact point in Donnybrook Garda Station at any time, day or night. The Duty manager can be contacted on Extension 716 7999.

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 reporting person/complainant. The circumstance in which a report by a University may be justified is if there is considered to be a clear and imminent risk to the safety of the reporting person/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 Formal Investigation Procedures.

- ii. If any individual has a court order against a UCD community member, they should provide a copy of this to the Dignity and Respect Support and Report Advisor. When the university is put on notice of a court order it will take all reasonable steps to facilitate compliance with the order where possible. Enforcement of the order is however a matter for the applicant/court.

**f) The Children’s First Act 2015 and Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012**

The University is obliged to report any disclosures of child sexual abuse, assault, ill-treatment, or neglect of children to Tusla under the reporting responsibilities of the Children First Act 2015, the 2017 Guidance, the University’s Child Safeguarding Statement and the principles of natural justice. Any person to whom such a report is made should contact the UCD Child Protection Officer. The University also has a reporting obligation under the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012. The Act creates a criminal offence of withholding information relating to the commission of a serious offence, including a sexual offence, against a person under 18 years or a vulnerable person.

**g) Transparency through Monitoring and Reporting**

We are committed to being transparent in relation to issues of sexual misconduct in the University whilst still protecting anonymity. Data relating to complaints and reports of sexual misconduct will be used to inform the development of initiatives and activities designed to prevent such behaviour, enhance supports for those experiencing sexual misconduct and promote a safe and respectful environment for all.

A report including an analysis of data collated in relation to contacts, reports, formal complaints and anonymous reports via the University’s anonymous Report and Support system and, where appropriate, relevant recommendations will be submitted to the University Management Team and EDI Group on a quarterly basis and annually to the Governing Authority. Data will also be made available to the Dignity and Respect Oversight sub-group through a data collection system that will be established to enable the group to identify areas for targeted environmental assessments.

Specifically, the report will include:

- Statistical data relating to contact, reports, anonymous reports and formal complaints made under the Dignity and Respect - Sexual Misconduct Policy received each year.

- The number of formal complaints investigations and the number of formal complaints that led to disciplinary action.
- An analysis of the data collated and any relevant recommendations.
- Summary of progress against the Framework for Consent in HEIs action plans
- Summary of progress against the overall Dignity and Respect Implementation Plan
- Outline of planned actions and initiatives.

For the purpose of continuous monitoring and to enable local review, quarterly reports will be produced and disseminated to senior university leaders. Data will also be made available to relevant University stakeholder groups.

The University will also report dignity and respect statistical data to the HEA as appropriate.

The University will also report dignity and respect data to the HEA as appropriate.

#### **h) Data Protection**

The University has published data privacy statements for employees and students which explain how personal data is used. A specific Data Privacy statement has been developed for this policy which explains how the University will use personal data if one is a reporting person/complainant, person being reported/respondent or a witness in a case considered under the policy and procedure for handling cases of bullying and harassment. The Data privacy statement is located here [insert link].

## **7. Version history**

<b>Version</b>	<b>Date</b>	<b>Description</b>	<b>Author</b>
1.0	August 2020	New policy on and Sexual Misconduct	D&R Project Review Group 2019 / 2020
2.0	December 2020	New policy on and Sexual Misconduct	D&R Project Review Group 2019 / 2020
3.0	February 2021	External input and revised draft	Project team
4.0	April 2021	Final feedback from University community considered	Project team/Review Group

# Chapter 7:

## A. Bullying and Harassment - Supports

### 1. Introduction

As set out in the Dignity and Respect - Bullying and Harassment policy, the University is committed to supporting the development of a working and learning environment in which bullying and harassment are unacceptable and where individuals have the confidence and trust in the process to come forward, in the knowledge that their concerns will be dealt with appropriately and fairly. University College Dublin has six core values driving our culture: Excellence; Integrity; Collegiality; Engagement; Diversity and Creativity.

In line with these values, the University is committed to the provision of an environment of respect for diversity and equality of opportunity where:

- everyone has the right to be treated with dignity and respect and can work and study in a rewarding, safe and stress free environment;
- bullying and harassment will not be tolerated and can lead to disciplinary action;
- it is more likely to enhance performance and achievement which will allow all members of our University community to fully utilise their skills and talents and achieve their full potential.

In addition, the University wants to create a climate of trust through the provision of a transparent oversight process, to include external membership, and to take a proactive approach to monitoring and publication of statistics and identification of actions to address any patterns of inappropriate behaviour that is arising and to monitor the impact of the Dignity and Respect - Bullying and Harassment policy.

The University recognises that coming forward with an issue is difficult for an individual. Any issues raised will be treated seriously and objectively and sensitively, where the rights of the person raising the issue and the person against whom the issue is being raised are respected. As an individual coming forward with an issue (person reporting), you will be provided with a range of supports, options and reassurances in order to help the issue to be resolved and for you to feel safe. The aim of this document is to provide information to you on supports that are available during this process, the details of appropriate options available and the steps the University can take to support you. Depending on the situation, bullying and harassment issues can potentially be resolved effectively through the informal channels and you are encouraged to consider these options to ascertain if any of these would help to resolve the situation. There may be some instances where informal options are not deemed appropriate, however as set out in the WRC/HSA Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying (2021) (hereafter called the Code of Practice on Bullying 2021), a prompt and informal problem-solving approach offers the best potential for addressing allegations of bullying effectively. This documentation outlines further informal approaches and processes that can be considered in addressing and resolving allegations of bullying effectively. The intention is that the principles set out in the Code of Practice on Bullying 2021 apply to all members of the University community including students.

As a person reported, it is important that you are aware that the options outlined in this document and the supports are also available to you and you are encouraged to seek support and information.

### 2. Supports

If you are experiencing issues of bullying and/or harassment, it is very important that you talk to someone and avail of the supports that are available in the first instance. These supports will also

provide information to you as to your options or will signpost you to where you can obtain more detailed and specific information and guidance in relation to resolving the issues. This is advised before deciding what course of action is appropriate.

There are a number of roles in the University that have a responsibility in relation to promoting a culture of dignity and respect. These roles are described in detail the Bullying and Harassment policy.

The University has invested in the provision of a range of full-time and voluntary support roles which all receive specific training to provide support and information in relation to bullying and harassment. These roles are outlined below and are available to a person reporting or being reported.

	<b>Employees</b>	<b>Students</b>
<b>Support Roles</b>	<ul style="list-style-type: none"> <li>• Dignity and Respect Report and Support Advisors</li> <li>• Dignity and Respect Contact Persons</li> <li>• UCD Employee Networks</li> <li>• Employee Assistance Service</li> <li>• Trade Unions</li> <li>• Pavee Point</li> <li>• TENI</li> <li>• Akidwa</li> </ul>	<ul style="list-style-type: none"> <li>• Dignity and Respect Report and Support Advisors</li> <li>• Student Advisers</li> <li>• Dignity and Respect Contact Persons</li> <li>• Chaplains</li> <li>• Students' Union</li> <li>• Student Counselling Service</li> <li>• Pavee Point</li> <li>• TENI</li> <li>• Akidwa</li> </ul>

**Table 1: Summary of Dignity and Respect Support Roles**

### **Dignity and Respect Report and Support Advisors**

Reporting to Equality Diversity and Inclusion, the full-time roles of Dignity and Respect Report and Support Advisors will work proactively with employees and students who disclose issues of bullying and harassment and those who are reported. These Advisors, who are experienced and trained to support, respond and advise on all reports of a dignity and respect nature, will provide you with a supportive, confidential environment in which to discuss the issues and support you to make a decision that is right for you and your situation.

As a reporting person, these roles will provide support and work with you in relation to the steps to seeking a solution to the issues you are experiencing but the decision will rest with you as to how you would like the issue to be resolved. They can also assist you in making a formal complaint if you wish to do so and continue providing that support throughout the formal complaints process which may include accompanying you to investigation meetings and the provision of aftercare support following any informal or formal interventions.

As a person being reported, the Dignity and Respect Report and Support Advisors are also available to support you if you have been accused of carrying out such behaviour however different advisors will support the various people involved to avoid a conflict of interest. If a formal complaint has been made, they will provide information as to what this will normally entail. They may accompany you to investigations and also provide aftercare support.

The Dignity and Respect Report and Support Advisors will also support, and work closely with, the panel of Dignity and Respect Contact Persons, who are trained voluntary support roles available to those experiencing issues of a dignity and respect nature. Further information on these roles are available in the Support and Guidance document.

The Dignity and Respect Report and Support Adviser roles are available during normal working hours, however in the case of emergency the Duty Manager in Estate Services is available at any time day or night on 716 7999 and has a direct contact the Gardaí (Police) if required.

The key responsibilities of the roles include:

- Providing impartial information and support around options in relation to resolving issues of a bullying and harassment nature.
- Supporting and guiding the reporting person in making a formal complaint if they wish to do so.
- Accompanying complainants and respondents to investigation meetings and providing after care support following a formal investigation process regardless of the outcome.
- Signposting and referring individuals to other appropriate support services both within the University and externally.
- Keeping accurate records to a safe, professional and ethical standard and monitor and report statistical data.
- Providing specialist advice to University and College employees on individual cases of dignity and respect, including possible actions to ensure that employees and students feel safe and protected.
- Providing key support for the panel of Dignity and Respect Contact Persons and guide and advise as appropriate ensuring a high standard and consistency in delivery of support as well as championing of the panel.
- Liaising closely with other key Dignity and Respect supports such as Student Advisers, EDI, HR and the Dignity and Respect Oversight Committee.
- Supporting the delivery of dignity and respect training to employees and students.
- Monitoring contacts and disclosures which will feed into the overall data reporting system that will support the Dignity and Respect Oversight Sub-Group make decisions around instigating targeted environmental assessments.
- Keeping abreast of best practice developments in this area nationally and internationally.

### **Dignity and Respect Contact Person (for employees or students)**

The University has established a panel of Dignity and Respect Contact Persons who have been trained to provide support and information to you in relation to the resolution of dignity and respect matters. This panel is available to both students and employees and you may approach any member of the Dignity and Respect panel that you wish. As a student, following initial contact with a Head of School, Associate Dean, Programme Co-ordinator or the Student Adviser, you may also wish to make contact with a Dignity and Respect Contact person for further information and support or you can approach a member of the panel in the first instance if you wish. Any meeting that is arranged with a Dignity and Respect Contact Person remains strictly private and confidential. The Dignity and Respect Contact Persons are:

- Specially trained to advise on the options available for resolution under the Bullying and Harassment policy and procedure and Sexual Misconduct policy and procedure, including the formal investigation process.
- Available to support those reporting issues of bullying and/or harassment or sexual misconduct, and those who are reported, by listening in an independent and non-judgemental manner on a confidential basis.
- Signpost and provide advice on other services (e.g. Employee Assistance Service, Student Counselling Services and Rape Crisis Centres)
- Provide objective advice on the options available in accordance with the policy and procedure with the aim of the individual making an informed choice as to how they wish to proceed.

A Dignity & Respect Contact Person will not be interviewed or be involved in a formal investigation of a complaint (i.e. they will not be interviewed as a witness and should not accompany a complainant or respondent).

The membership of the Dignity and Respect Contact Persons panel is a diverse group of employees representing different areas of the University who were appointed following an expression of interest process and are voluntary roles. To ensure impartiality, those getting in touch with a Contact Person from the panel should choose someone not known to them. Further information on the Dignity and Respect Contact Persons panel and their details can be accessed here (INSERT LINK).

### **Student Adviser (for students)**

The UCD Student Advisory Service is a point of contact, support and referral for all UCD students throughout their studies. Every academic programme in UCD has a dedicated Student Adviser who offers students time and space to explore issues of concern to them. The Student Advisers can assist students in finding pathways to deal with personal, social and emotional issues and can advise of and support students through the appropriate UCD policies, procedures and services for their circumstances.

### **Chaplain**

UCD Chaplains offer a listening ear, someone who will not sit in judgment, but just be there to offer support and care or practical help, in complete confidence.

### **Students' Union (for students)**

The Student's Union have a number of full-time sabbatical officers who are elected each year by students. They are a further point of contact for students who may be experiencing issues relating to dignity and respect. They assist students by providing a listening ear and signposting to student advisers and Dignity and Respect Report and Support Advisor for specialist support and guidance.

### **Student Counselling (for students)**

Professional counselling is available for our students. Counselling gives some time and space in a confidential setting to explore any issues that are a concern. Talking to people who are trained to listen to problems can deepen a person's understanding of what is happening and can help develop alternative ways of dealing with the situation.

The UCD Student Counselling Service web page includes full details of how an appointment can be made with a counsellor.

### **Trade Unions (employees)**

The trade unions are a partner in supporting a positive dignity and respect culture in the University. Trade union representatives can be contacted to support employees experiencing issues relating to dignity and respect. The three recognised trade unions in UCD are IFUT, SIPTU & UNITE.

### **UCD Employee Networks**

UCD EDI supports a number of employee networks, which provide opportunities for colleagues to get together and make connections and to provide peer support. See [here](#) for the list of Networks available.

## **External Supports**

At times, individuals may feel more comfortable contacting external supports outside of UCD where people are not known to them. The following are some external supports you may wish to avail of.

### **Employee Assistance Service (for employees)**

The UCD Employee Assistance Service (EAS) is a 24/7 free and confidential support service designed to assist employees in dealing more effectively with any personal or work-related problems they might be facing including issues of a dignity and respect nature. The service is operated confidentially by Spectrum.Life, the largest provider of employee health and wellness services in Ireland. The service can be used by a UCD employee, their spouse, civil partner and dependents where the family member can be described as over the age of 18 and residing in the family home. All services provided through the Spectrum.Life EAS are done so in total confidence. The identity of individuals and personal details will always be protected and information will never be shared with or reported to UCD or management team or anyone else, without the employee's clear consent. Further information on the EAS can be obtained [here](#).

### **Pavee Point**

Pavee Point Traveller & Roma Centre is a national non-governmental organisation comprised of Travellers, Roma and members of the majority population working in partnership at national, regional, local and international levels. Over the past thirty years Pavee Point has an established track record in innovative and ground-breaking work using a collective community development approach to addressing Traveller issues and promoting Traveller rights.

Phone: **+353 (01) 8780255**  
Email: [info@pavee.ie](mailto:info@pavee.ie)

### **Transgender Equality Network Ireland**

TENI is a non-profit member-driven organisation, founded in 2006 and registered as a company limited by guarantee in February 2010. The governance is provided by a volunteer Board and operations are led by the Chief Executive and staff. Community engagement is an essential part of TENI's identity and their mandate is based on a substantial membership, which elects the Board and is involved in long-term strategic planning.

Gender Identity Family Support Line: **01 907 3707**

### **Akidwa**

Akina Dada wa Africa-AkiDwa (Swahili for sisterhood) is a national network of migrant women living in Ireland. AkiDwa's vision is a just society where there is equal opportunity and equal access to resources in all aspects of society – social, cultural, economic, civic and political. Their mission is to promote equality and justice for all migrant women living in Ireland. Over two decades, AkiDwa has gained recognition as a leading NGO for highlighting the issues faced by migrant women in Ireland. AkiDwa consults with migrant women and other key stakeholders, identifies discriminatory practices and develops evidence-based and representative solutions that address key issues like health, sexual and gender-based violence, and discrimination.

Phone: **01 8349851**

### 3. Informal Options

There are several ways where bullying and harassment issues can be dealt with informally. As set out in the Code of Practice on Bullying 2021, a prompt and informal problem-solving approach offers the best potential for addressing allegations of bullying effectively.

The objective of dealing with issues informally is to try and resolve them swiftly and effectively with the minimum amount of distress to all parties.

It is good practice that all informal resolution avenues - as set out below - should be considered and where appropriate, exhausted before a formal process is instigated. Proceeding to a formal process should not be viewed as automatic as set out in the Code of Practice on Bullying 2021, it is important that parties are aware of the emphasis placed on informal options as a means of resolution. An important reason for this is to support the professional relationship going forward. Further advice can be provided by the Report and Support Advisory Service. It is recognised that there may be instances where informal options may not be appropriate.

The Screening Panel may also recommend, on receipt of a formal complaint, that informal options may be the most appropriate means of resolving the issue(s). If this arises, a member of the Screening Panel will meet with the parties involved separately to discuss this further. (Further information on the Screening Panel and Formal Complaints is available in the Formal Complaints document).

If an individual reports an issue that has not progressed to a formal complaint and is exploring informal resolution options, precautionary measures may be considered (excluding neutral suspension). An appropriate person in the local structures independent of the situation will determine if precautionary measures are required. Further information on precautionary measures can be obtained from the Report and Support Advisory Service. If a formal complaint has been made and the Screening Panel recommends informal options, precautionary measures may also be considered in these instances (see Formal Complaints Procedure). As per the Code, enough time needs to be allowed for the informal option process to be successful and behaviour change to be realistically achieved over the longer term.

#### **Make the Person Causing the Alleged Offence Aware**

If you feel that you have been subjected to bullying or harassment, one option is to make the person causing the alleged offence aware that their behaviour is unwelcome and request that it stops or changes. If you think you are unable to contact or approach the person by yourself, you may have someone accompany you as a source of support, such as a colleague/trade union representative or a student or member of the Students Union or a Dignity and Respect Report and Support Advisor. Alternatively, a Dignity and Respect Report and Support Advisor may approach the person on your behalf. It may be the case that the person causing the alleged offence does not realise that they are perceived to be behaving in a manner which is negatively affecting someone else and this approach can often resolve the situation. Whilst this is not a defence, the unwelcome behaviour may cease if they are made aware of it.

The following can be used as a guide to try and resolve the matter informally using this approach and you can seek further guidance from the supports that are available to you as outlined above.

- Ask to meet with the person causing the alleged offence in a location where you can speak confidentially. You may want to bring a support person/friend with you.
- Resolving matters informally can be more successful when having a face-to-face conversation with someone rather than sending an email or text message as sometimes the tone can get lost in the message, however it may be the case that making contact in writing is the best approach for you.
- Writing down the behaviours/incidents, dates they occurred and the impact they had on you can help to prepare for the meeting with the person

- Start by giving examples of the type of behaviour that you feel is unwelcome and how it makes you feel i.e. “when you addressed me in that manner in front of other people, I felt embarrassed”
- Try to avoid labelling the behaviour as “bullying or harassment and instead focus on how that behaviour made you feel. i.e. embarrassed, uncomfortable, undermined.
- Ask for the behaviour to change or to stop.
- Allow appropriate opportunities to respond.
- If you feel comfortable, you can explain that this type of behaviour is contrary to the Policy.
- Each person should keep a written record of their interpretation of the meeting.

**Discuss with Manager (for employees) / Discuss with Head of School, Associate Dean, Programme Co-ordinator (for students)**

You can seek support from your Manager (for employees)/or Head of School, Associate Dean, Programme Co-ordinator (for students). The role of the Manager, Head of School, Associate Dean or Programme Coordinator can be very important in working with those involved in an issue in a proactive manner to provide options and potential pathways for resolution of issues in a positive, solution focussed manner.

If the person causing the alleged offence is the Manager / Head of School, Associate Dean or Programme Co-ordinator, then you are advised to contact the manager/person at the next level. If you are unable to raise the issue within the line management levels, you can contact any of the other supports outlined above.

**Discuss with a Dignity and Respect Report and Support Advisor**

You can also approach a Dignity and Respect Report and Support Advisor to support you in taking steps to resolve the issue. This role is described above. This role provides ongoing support and information but can also work with you proactively to help resolve the issues. This may include accompanying you to approach the person causing the alleged behaviour or potentially engaging with the individual on your behalf. If you decide to make a formal complaint, the role will support you throughout the formal investigation process as well as aftercare support. This role is also available to provide support the person reported.

**Mediation**

Mediation is a voluntary, confidential process that allows you to resolve an issue with another individual, including bullying and harassment, in a mutually agreeable way with the help of a neutral external third party, a mediator. The aim of the mediation service is to resolve disputes at the earliest possible opportunity and to encourage all involved to resolve their differences without having to go through a formal complaints process. Mediation can also be used following an informal or formal intervention to help restore the working relationship. The mediation option is available to both employees and students.

It is important to note that attending mediation does not preclude any other form of dispute resolution, such as a formal investigation. As an employee, you should discuss the option of mediation with your immediate manager in the first instance. If there is a conflict of interest in discussing the issue with the immediate manager, the employee raising the issue should discuss the option of mediation with that person’s line manager or contact the Dignity and Respect Report and Support Advisor for further advice. For students, the person raising the issue should discuss the option of mediation with their Student Adviser in the first instance. Mediation is a service where the costs are covered by the University and therefore removes any financial burden on a local School/Unit.

Further information on mediation can be obtained from the Equality Diversity and Inclusion website (<http://www.ucd.ie/equality/mediationservice/>).

#### 4. Cultural Interventions

##### Dignity and Respect Environmental Assessment

A Dignity and Respect Environmental Assessment is an assessment of the broader cultural issues/prevaling conditions within an area. A periodic environmental assessment may be undertaken at intervals as directed by a sub-group of the Dignity and Respect Oversight group where a small number of areas will be randomly selected by the sub-group.

A targeted Dignity and Respect Environmental Assessment may also occur where particular statistical trends have been highlighted. These trends may be identified through anonymous reports made by individuals (reporting person) in the <sup>6</sup>[Report and Support Tool](#) for example or where an individual(s) have come forward informally to report an incident but do(es) not wish to make a formal complaint at that point in time. Trends may also be identified where bystanders/witnesses have reported incidents. These assessments will help measure how well this policy is being embedded across the University and its impact.

The Dignity and Respect Oversight Sub-Group will monitor this data on a quarterly basis. If an environmental assessment of an area is identified, either on a periodic review basis or arising from a review of data available, the area must co-operate with the assessment. All environmental assessments will be conducted by an independent third party. A Dignity and Respect Environmental Assessment will not result in any sanctions being issued, however it gives the University the authority to implement action plans aimed at changing culture or behaviours.

##### Report and Support Tool

Students, employees and visitors to UCD can now report issues of a Dignity & Respect nature anonymously through the **UCD Report and Support** tool. This is an important new initiative which provides the opportunity for members of the University community and others to make the University aware of incidents of bullying, harassment, sexual harassment and sexual misconduct that have been experienced or witnessed, without the need to identify oneself or disclose sensitive and personal details.

This tool has been developed in recognition that not all those experiencing bullying, harassment or sexual harassment feel able to come forward to make a formal complaint or engage in an informal means of resolving an issue of this nature.

The information provided through the Report and Support tool will be valuable for the University as it strives to create a culture where everyone is treated with dignity and respect and is free from discrimination. The information will be collated and analysed to enable UCD to take steps to support the elimination of bullying, harassment and sexual harassment and sexual misconduct.

##### Restorative Practice

Restorative Practice in the context of Dignity and Respect refers to the potential opportunity, following a formal investigation or informal intervention, for you as a person who has been impacted by another individual's actions or behaviour to discuss this impact with that individual and then collectively to work to identify ways to repair the working relationship or relationship between students. The focus is not on punishment or on the bullying and harassment issues but provides an opportunity for you and the other individual to discuss the impact of the behaviour and ultimately help to restore the professional

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<sup>6</sup> Report and Support provides the opportunity for you to make the University aware of incidents that you have either experienced or witnessed by reporting them anonymously. More information can be found at [reportandsupport.ucd.ie](http://reportandsupport.ucd.ie)

relationship. It is a voluntary process. In summary it covers aspects such as the issues that occurred, how these have impacted and how things can be made better.

## B. SEXUAL MISCONDUCT - SUPPORTS

### 1. Introduction

***We encourage you to come forward to seek support and assistance in relation to issues of sexual misconduct, so that we can work with you to resolving these issues. You can be assured that we will act sensitively and disclosures will be carefully and thoughtfully addressed through a process that is transparent and clearly communicated to all individuals involved. Issues of a sexual misconduct nature may potentially constitute a criminal offence. Employees or students can contact the Gardaí directly or through the Duty Manager in Estate Services who has access to a contact point in Donnybrook Garda Station at any time, day or night. The Duty manager can be contacted on Extension 716 7999.***

***All individuals involved in a sexual misconduct issue will be supported.***

As set out in the Dignity and Respect – Sexual Misconduct policy, [insert link] the University is committed to supporting the development of a working and learning environment in which sexual misconduct, including sexual harassment and sexual violence, is unacceptable and where individuals have the confidence and trust in the process to come forward, in the knowledge that their concerns will be dealt with appropriately, sensitively and fairly. University College Dublin has six core values driving our culture: Excellence; Integrity; Collegiality; Engagement; Diversity and Creativity.

In line with these values, the University is committed to the provision of an environment of respect for diversity and equality of opportunity where:

- everyone has the right to be treated with dignity and respect and can work and study in a rewarding and stress free environment;
- sexual misconduct will not be tolerated and can lead to disciplinary action;
- it is more likely to enhance performance and achievement which will allow all members of our University community to fully utilise their skills and talents and achieve their full potential.

In addition, the University wants to create a climate of trust through the provision of a transparent oversight process, to include external involvement, and to take a proactive approach to monitoring and publication of statistics and identification of actions to address any patterns of inappropriate behaviour that is arising and to monitor the impact of the policy.

The University recognises that coming forward with an issue of sexual misconduct is difficult for an individual. Any issues raised will be treated seriously and objectively and sensitively, where the rights of the person raising the issue and the person against whom the issue is being raised are respected. As an individual coming forward with an issue, you will be provided with a range of supports, options and re-assurances in order to help the issue to be resolved and for you to feel safe. The aim of this document is to provide information to you on supports that are available during this process, the details of appropriate options available and the steps the University can take to support you to resolve the issues. It is important that there are options open to you should you wish to resolve the issue informally but any option chosen must be undertaken in a manner that you feel comfortable with and is right for you. In relation to the option of making a formal complaint, further information on the formal complaints process is available here [Insert link].

As a person reported, it is important that you are aware that the options outlined in this document and the supports are also available to you and you are encouraged to seek support and information.

## 2. Supports for Employees and Students

If you are experiencing issues of sexual misconduct, it is very important that you talk to someone and avail of the supports that are available in the first instance. These supports will also provide information to you as to your options or will signpost you to where you can obtain more detailed and specific information and guidance in relation to resolving the issues. This is advised before deciding what course of action is appropriate.

There are a number of roles in the University that have a responsibility in relation to promoting a culture of dignity and respect. These roles are described in detail the Sexual Misconduct policy.

The University has invested in the provision of a range of full-time and voluntary support roles which all receive specific training to provide support and information in relation to sexual misconduct. These roles are available to provide support to a person reporting and a person being reported and are outlined below.

	Employees	Students
<b>Support Roles</b>	<ul style="list-style-type: none"> <li>• Dignity and Respect Report and Support Advisors</li> <li>• Dignity and Respect Contact Persons</li> <li>• Employee Assistance Service</li> <li>• Trade Unions</li> <li>• Dublin Rape Crisis Centre</li> <li>• Men's Aid</li> <li>• Women's Aid</li> <li>• Akidwa</li> </ul>	<ul style="list-style-type: none"> <li>• Dignity and Respect Report and Support Advisors</li> <li>• Student Advisers</li> <li>• Dignity and Respect Contact Persons</li> <li>• Chaplains</li> <li>• Students' Union</li> <li>• Student Counselling Service</li> <li>• Dublin Rape Crisis Centre</li> <li>• Men's Aid</li> <li>• Women's Aid</li> <li>• Akidwa</li> </ul>

**Table 1: Summary of Dignity and Respect Support Roles**

### Dignity and Respect Report and Support Advisors

Reporting to Equality Diversity and Inclusion, the full-time roles of Dignity and Respect Report and Support Advisors will work proactively with employees and students who disclose issues of sexual misconduct and those who are reported. These advisors, who are experienced and trained to support, respond and advise on all reports of a dignity and respect nature, will provide you with a supportive, confidential environment in which to discuss the issues and support you to make a decision that is right for you and your situation.

As a reporting person, these roles will provide support and work with you in relation to the steps to seeking a solution to the issues you are experiencing but the decision will rest with you as to how you would like the issue to be resolved. They can also assist you in making a formal complaint if you wish to do so and continue providing that support throughout the formal complaints process which may include accompanying you to investigation meetings and the provision of aftercare support following any informal or formal interventions.

As a person being reported, the Dignity and Respect Report and Support Advisors are also available to support you if you have been accused of carrying out such behaviour however different advisors will support the various people involved to avoid a conflict of interest. If a formal complaint has been made, they will provide information as to what this will normally entail. They may accompany you to investigations and also provide aftercare support.

The Dignity and Respect Report and Support Advisors will also support, and work closely with, the panel of Dignity and Respect Contact Persons, who are trained voluntary support roles available to those experiencing issues of a dignity and respect nature. Further information on these roles are available in the Support and Guidance document.

The Dignity and Respect Report and Support Adviser roles are available during normal working hours, however in the case of emergency the Duty Manager in Estate Services is available at any time day or night on 716 7999 and has a direct contact the Gardaí (Police) if required.

The key responsibilities of the roles include:

- Providing impartial information and support around options in relation to resolving issues of a sexual misconduct and/or bullying and harassment nature.
- Supporting and guiding the reporting person in making a formal complaint if they wish to do so.
- Accompanying complainants and respondents to investigation meetings and providing after care support following a formal investigation process regardless of the outcome.
- Signposting and referring individuals to other appropriate support services both within the University and externally.
- Keeping accurate records to a safe, professional and ethical standard and monitor and report statistical data.
- Providing specialist advice to University and College employees on individual cases of dignity and respect, including possible actions to ensure that employees and students feel safe and protected.
- Providing key support for the panel of Dignity and Respect Contact Persons and guide and advise as appropriate ensuring a high standard and consistency in delivery of support as well championing of the panel.
- Liaising closely with other key Dignity and Respect supports such as Student Advisers, EDI, HR and the Dignity and Respect Oversight Committee.
- Supporting the delivery of dignity and respect training to employees and students.
- Monitoring contacts and disclosures which will feed into the overall data reporting system that will support the Dignity and Respect Oversight Sub-Group make decisions around instigating targeted environmental assessments.
- Keeping abreast of best practice developments in this area nationally and internationally.

### **Dignity and Respect Contact Person (for employees or students)**

The University has established a panel of Dignity and Respect Contact Persons who have been trained to provide support and information to you in relation to the resolution of dignity and respect matters. This panel is available to both students and employees and you may approach any member of the Dignity and Respect panel that you wish. As a student, following initial contact with a Head of School, Associate Dean, Programme Co-ordinator or the Student Adviser, you may also wish to make contact with a Dignity and Respect Contact person for further information and support or you can approach a member of the panel in the first instance if you wish. Any meeting that is arranged with a Dignity and Respect Contact Person remains strictly private and confidential. The Dignity and Respect Contact Persons are:

- Specially trained to advise on the options available for resolution under the Bullying and Harassment policy and procedure and Sexual Misconduct policy and procedure, including the formal investigation process.

- Available to support those reporting issues of bullying and/or harassment, sexual harassment or sexual misconduct, and those who are reported, by listening in an independent and non-judgemental manner on a confidential basis.
- Signpost and provide advice on other services (e.g. Employee Assistance Service, Student Counselling Services and Rape Crisis Centres)
- Provide objective advice on the options available in accordance with the policy and procedure with the aim of the individual making an informed choice as to how they wish to proceed.

A Dignity & Respect Contact Person will not be interviewed or be involved in a formal investigation of a complaint (i.e. they will not be interviewed as a witness and should not accompany a complainant or respondent).

The membership of the Dignity and Respect Contact Persons panel is a diverse group of employees representing different areas of the University who were appointed following an expression of interest process and are voluntary roles. To ensure impartiality, those getting in touch with a Contact Person from the panel should choose someone not known to them. Further information on the Dignity and Respect Contact Persons panel and their details can be accessed here [INSERT LINK].

### **Student Adviser (for students)**

The UCD Student Advisory Service is a point of contact, support and referral for all UCD students throughout their studies. Every academic programme in UCD has a dedicated Student Adviser who offers students time and space to explore issues of concern to them. The Student Advisers can assist students in finding pathways to deal with personal, social and emotional issues and can advise of and support students through the appropriate UCD policies, procedures and services for their circumstances.

### **Chaplain**

UCD Chaplains offer a listening ear, someone who will not sit in judgment, but just be there to offer support and care or practical help, in complete confidence.

### **Students' Union (for students)**

The Student's Union have a number of full-time sabbatical officers who are elected each year by students. They are a further point of contact for students who may be experiencing issues relating to dignity and respect. They assist students by providing a listening ear and signposting to student advisers and Dignity and Respect Report and Support Advisor for specialist support and guidance.

### **Student Counselling (for students)**

Professional counselling is available for our students. Counselling gives some time and space in a confidential setting to explore any issues that are a concern. Talking to people who are trained to listen to problems can deepen a person's understanding of what is happening and can help develop alternative ways of dealing with the situation.

The UCD Student Counselling Service web page includes full details of how an appointment can be made with a counsellor.

## **Trade Unions (employees)**

The trade unions are a partner in supporting a positive dignity and respect culture in the University. Trade union representatives can be contacted to support employees experiencing issues relating to dignity and respect. The three recognised trade unions in UCD are IFUT, SIPTU & UNITE.

## **External Supports to UCD**

At times, individuals may feel more comfortable contacting external supports outside of UCD where people are not known to them. The following are some of the external supports available.

## **Employee Assistance Service (for employees)**

The UCD Employee Assistance Service (EAS) is a 24/7 free and confidential support service designed to assist employees in dealing more effectively with any personal or work-related problems they might be facing including issues of a dignity and respect nature. The service is operated confidentially by Spectrum.Life, the largest provider of employee health and wellness services in Ireland. The service can be used by a UCD employee, their spouse, civil partner and dependents where the family member can be described as over the age of 18 and residing in the family home. All services provided through the Spectrum.Life EAS are done so in total confidence. The identity of individuals and personal details will always be protected and information will never be shared with or reported to UCD or management team or anyone else, without the employee's clear consent. Further information on the EAS can be obtained [here](#).

## **Dublin Rape Crisis Centre (DRCC) – Phone 1800 77 88 88**

The Dublin Rape Crisis Centre is an external source of support that offers counselling services to help people recover from the trauma of sexual violence.

Their telephone counsellors are available 24 hours a day, 365 days of the year, to listen, provide information and organise counselling if desired. The Helpline is available to people who have experienced rape, sexual assault, sexual harassment or childhood sexual abuse. It is also available to those supporting victims -family, friends and professionals.

They have a dedicated group of trained volunteers who are available to offer support and information to anyone who is attending the Sexual Assault Treatment Unit in the Rotunda Hospital. This support service is also offered to families and friends accompanying those attending the unit.

They also have trained volunteers available to accompany anyone wishing to make a statement to the Gardai. They will also accompany those who are attending court or similar proceedings.

TO BE CONSIDERED FURTHER AS PART OF IMPLEMENTATION AND TO BE DISCUSSED WITH THE DRCC.

## **Men's Aid**

Men's Aid Ireland is the only dedicated national service supporting men and their families experiencing Domestic Violence including coercive control in Ireland. Their professional and qualified support team have years of experience in supporting men and families experiencing domestic abuse.

National Confidential Helpline – **01 554 3811**

## **Women's Aid**

Women's Aid is a leading national organisation that has been working in Ireland to stop domestic violence against women and children since 1974. They work to make women and children safe from domestic violence, offer support, provide hope to women affected by abuse and work for justice and social change. Over the course of 40 years the organisation has built up a huge body of experience and expertise on the issue, enabling them to best support women and children and share this knowledge with other agencies responding to women experiencing domestic violence.

Direct Services for women experiencing domestic violence underpin and inform all of their work to end domestic violence.

The **Women's Aid National Freephone Helpline 1800 341 900** operates 24 hours a day, seven days a week, and provides support and information to callers experiencing abuse from intimate partners.

The Women's Aid Helpline is the only free, national, domestic violence helpline with specialised trained staff, fully accredited by The Helplines Association and with a Telephone Interpretation Service facility covering 170 languages for callers needing interpreting services.

### **Akidwa**

Akina Dada wa Africa-AkiDWA (Swahili for sisterhood) is a national network of migrant women living in Ireland. AkiDWA's vision is a just society where there is equal opportunity and equal access to resources in all aspects of society – social, cultural, economic, civic and political. Their mission is to promote equality and justice for all migrant women living in Ireland. Over two decades, AkiDWA has gained recognition as a leading NGO for highlighting the issues faced by migrant women in Ireland. AkiDWA consults with migrant women and other key stakeholders, identifies discriminatory practices and develops evidence-based and representative solutions that address key issues like health, sexual and gender-based violence, and discrimination.

**Phone: 01 8349851**

### **3. Making an Initial Disclosure**

Making an initial disclosure can be the first step for you if you have been subjected to sexual misconduct including sexual harassment and sexual violence. By making the disclosure, you are seeking support and you will get correct and relevant information so that you can make an informed decision on how you wish to proceed. The immediate priority upon your disclosure, whether current or historic, is your safety and welfare.

#### **Options for Resolution**

##### Informal Options

We respect that it is your right to choose how you wish to proceed to resolve the issues experienced and we will provide clear and consistent advice as to supports and options and how the University can help you. It is essential that you have control in making decisions on what to do next. Supports such as the Dignity and Respect Report and Support Advisor can discuss and explore options with you to work through what a solution might look like for you and what you would like to happen. In some instances, you may feel that you wish the issue to be resolved informally.

Informal resolution options include the reporting person contacting the person being reported if they feel comfortable doing so or asking the Dignity and Respect Report and Support Advisor to meet with the person being reported. The purpose of this would be to let the person being reported know that the alleged behaviour described is not acceptable and is in contravention of the Sexual Misconduct policy and it should stop. Other options that the reporting person feels will assist them in resolving the issue informally can also be discussed. It is important that someone who is specifically trained in the area of sexual misconduct, either internally or externally, has this discussion with you as the safety of everyone is paramount and any options for resolution needs to be carefully considered.

### Reporting to Gardaí

If the offending behaviour constitutes a criminal offence, you should consider reporting the incident to the Gardaí (Police). The decision whether to make a report to the Gardaí is a personal choice. If you wish to contact the Gardaí (Police), you can contact them directly or through the Duty Manager in Estate Services who is available at any time day or night on 716 999 and has a direct contact to the Gardaí (Police).

### Formal Complaint

Anyone who has been subjected to sexual misconduct has the right to make a formal complaint in accordance with the Dignity and Respect formal investigation procedure. It is important to understand that making a disclosure is not the same thing as making a formal complaint. A complaint is deemed to be formal once a Dignity and Respect formal complaint form has been completed and submitted to the Equality, Diversity and Inclusion Unit.

If following the disclosure, you do not wish for the University to take any action, including the instigation of the formal investigation procedure, action will not normally be pursued. However, in exceptional circumstances, the University does reserve the right to instigate a formal investigation where a sufficient concern arises for the University, having regard to our broader obligation in relation to the safety and welfare of you and others. This will be taken on a case-by-case basis and discussed with you if such a situation arises. Appropriate internal and external supports will be made available to you and any precautionary measures required will be taken.

In the case of sexual assault, you can also consider attending the nearest sexual assault treatment unit (SATU) which can enable forensic evidence to be collected whilst a decision is being made about whether or not you wish to make a report to An Garda Síochána (Police). Forensic samples should be collected as soon as possible, but can be collected within up to seven days, and can be stored by the SATU for up to one year. You can also contact the National 24/7 Rape Crisis Centre Helpline for free, confidential support on **1800 77 88 88**.

To ensure you get the correct level of support required, an initial disclosure should be made to one or more of the people outlined in the support section above.

### **What to do if you have been victim to sexual assault**

Any student or employee who feels they have been subjected to sexual assault may wish to consider the below supports and options available to them.

- **Tell yourself:** When someone experiences an incident of sexual misconduct, they may be unsure if the incident happened or if it was illegal. It is important to trust your gut instinct and if something felt wrong or uncomfortable then it is likely it was. Remember if you are raped or sexually assaulted it is never your fault. You have done nothing wrong.
- **Talk to someone you trust:** Try and tell someone you trust what has happened, this could be a friend, a family member or your Manager (for employees) / Head of School, Associate Dean, Programme Co-ordinator (for students) or a designated support person.
- **Seek medical care:** Even if there are no obvious injuries or you don't want to report the assault to the Gardaí (Police), it is important to seek medical attention if the assault has recently happened. The University can help you with this process such as getting you to a Sexual Assault Treatment Unit (SATU). You can also attend your own GP or Emergency Dept.
- Avail of internal or external supports as listed below and described in section xxx above:
  - Employee Assistance Service (for employees)
  - Student counselling (for students)

- Student advisors (for students)
- Student counsellors (for students)
- Dignity and Respect Contact Persons (for employees and students)
- Rape Crisis Centres are there to help anyone who has been sexually assaulted, more details can be found [rapecrisishelp.ie](http://rapecrisishelp.ie). They have national 24-hour helpline for immediate help and support on **1800 77 88 88**. A member from the Rape Crisis Centre can accompany you to a SATU.
- **Call for emergency support:** If you feel that you are in danger try to get to a safe place and call a trusted person or Unicare on 01 716 7999 if you are on campus or the Gardaí (Police) 999/112.

### **What to do Immediately after the event:**

If you or someone else may still be at risk or injured call **Estates** on **01 716 7999** or the **Gardaí (Police)** on **999/112**.

If you are not at risk find somewhere safe and warm and call somebody you trust to support you. If you are in Accommodation this could be your Residential Assistant or a member of the Residential Life Team if you do not want to contact friends or family.

Although it may be discomfoting to do so, if you have experienced sexual assault it is really important that you preserve any evidence which may help the Gardaí (Police) with subsequent investigations.

To preserve evidence try not to:

- Use the toilet or discard underwear or sanitary products
- Wash, shower or bath
- Wash your hands
- Remove, wash, discard or destroy clothing worn or bedding and towels used at the time of the incident or subsequent to it
- Drink or eat anything, including non-essential medication
- Clean your teeth
- Smoke
- Delete any communications such as relevant texts, social media messages and/or emails.

## **4. Cultural Interventions**

### **Dignity and Respect Environmental Assessment**

A Dignity and Respect Environmental Assessment is an assessment of the broader cultural issues/prevaling conditions within an area. A periodic environmental assessment may be undertaken at intervals as directed by a sub-group of the Dignity and Respect Oversight group where a small number of areas will be randomly selected by the sub-group.

A targeted Dignity and Respect Environmental Assessment may also occur where particular statistical trends have been highlighted. These trends may be identified through anonymous reports made by individuals (reporting person) in the <sup>7</sup>[Report and Support Tool](#) for example or where an individual(s) have come forward informally to report an incident but do(es) not wish to make a formal complaint at that point in time. Trends may also be identified where bystanders/witnesses have reported incidents.

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<sup>7</sup> Report and Support provides the opportunity for you to make the University aware of incidents that you have either experienced or witnessed by reporting them anonymously. More information can be found at [reportandsupport.ucd.ie](http://reportandsupport.ucd.ie)

These assessments will help measure how well this policy is being embedded across the University and its impact.

The Dignity and Respect Oversight Sub-Group will monitor this data on a quarterly basis. If an environmental assessment of an area is identified, either on a periodic review basis or arising from a review of data available, the area must co-operate with the assessment. All environmental assessments will be conducted by an independent third party. A Dignity and Respect Environmental Assessment will not result in any sanctions being issued, however it gives the University the authority to implement action plans aimed at changing culture or behaviours.

### **Restorative Practice**

Restorative Practice in the context of Dignity and Respect refers to the potential opportunity, following a formal investigation or informal intervention, for you as a person who has been impacted by another individual's actions or behaviour to discuss this impact with that individual and then collectively to work to identify ways to repair the working relationship or relationship between students. The focus is not on punishment or on the issues but providing an opportunity for you and the other individual to discuss the impact of the behaviour and ultimately help to restore the professional relationship. In summary it covers aspects such as the issues that occurred, how these have impacted and how things can be made better. comfortable

### **Report and Support Tool**

Students, employees and visitors to UCD can now report issues of a Dignity & Respect nature anonymously through the **UCD Report and Support** tool. This is an important new initiative which provides the opportunity for members of the University community and others to make the University aware of incidents of bullying, harassment, sexual harassment and sexual misconduct that have been experienced or witnessed, without the need to identify oneself or disclose sensitive and personal details.

This tool has been developed in recognition that not all those experiencing bullying, harassment or sexual harassment feel able to come forward to make a formal complaint or engage in an informal means of resolving an issue of this nature.

The information provided through the Report and Support tool will be valuable for the University as it strives to create a culture where everyone is treated with dignity and respect and is free from discrimination. The information will be collated and analysed to enable UCD to take steps to support the elimination of bullying, harassment and sexual harassment and sexual misconduct.

# Chapter 8: Revised DRAFT 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](mailto: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 4 people in total: 3 primary senior nominees from HR, UCD Legal Office, the Office of the Registrar and an externally appointed independent third party. A sitting panel will be gender balanced.

In reserve, there are 3 other internal nominees and four external members in total. Full details on the panel members can be found at [Insert Link]. 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, UCD Legal Office 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***

<sup>8</sup>Once a formal complaint is received, the preliminary screening panel will convene a meeting within 5 working days 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

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<sup>8</sup> 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. (The criteria that the screening panel will use to make this decision is outlined in appendix 2). In the event that the complaint is not deemed to fall within the remit of the Bullying and Harassment and/or Sexual Misconduct policies, the Screening Panel can meet with the complainant to outline the reasons for their decision and to discuss alternative Procedures available.
- If relevant, the Screening Panel may make a recommendation to the Director of Human Resources 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 pre-determined 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 (Screening Panel Process Map- appendix 3)

## **Next Steps**

- The Screening Panel will outline the reasons in writing for their prima facia decision to the EDI Unit within 2 working days of their meeting. 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 within 7 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 nominated person (member of the Screening Panel) will arrange a meeting 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). A note taker will also attend the meeting. 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 will be provided with a written summary of the actions agreed following the meetings. The complainant and respondent must inform the EDI Unit ([edi@ucd.ie](mailto:edi@ucd.ie)) of their decision in writing in relation to their decision around proceeding with informal options within 3 working days of meeting with the screening panel member.

- 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 5.

The screening panel has the authority to make a recommendation to the Director of Human Resources or the Registrar that precautionary action should be considered, based on the information contained in the complaint form. The Director of Human Resources 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 <sup>9</sup>precautionary 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.

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<sup>9</sup> Details of the members and appointment to the precautionary measures panel can be found at (webpage).

A risk assessment which will be used as a decision-making tool to decide on an appropriate precautionary measure can be found in appendix 6.

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 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 institutions 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 the 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 unreasoned 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 (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 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 HR Director/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.

Investigation process map - appendix 7.

### ***Potential Outcomes***

- The investigation will consider all material and evidence before it and a decision will be made on balance of probability, as to whether the complaint is valid.
- Where the Investigator finds there is no case to answer or finds that the matter complained of is without merit, the Investigator may dismiss the complaint, and will outline the reasons for this in the report. In this case, no action will be made against the complainant or the respondent.
- Where there is a finding of fact that the respondent has behaved in a way which is in breach of the policies, the matter will be dealt with under the appropriate disciplinary procedures, as specified in the University's Statutes or the Student Code.
- In the case of a complaint being upheld against a member of a University Club, the matter may be dealt with under the disciplinary procedures, as specified in the University's Statutes, the Student Code (as applicable) and/or under the AUC Procedures.
- Where the Investigator makes a finding that the complaint is malicious or false, the complainant may be subject to the relevant Disciplinary Procedures, as specified in the University's Statutes or under the Student Code. The University recognises that this is the exception rather than the norm and complainants are supported to come forward with their complaints.

### ***Following an investigation***

- Where an investigator has made a finding that the respondent has a further case to answer, the University will take appropriate 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 HR Director/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](mailto: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 HR Director/Registrar or nominee, within 10 working days of the notification of the outcome of the investigation. The HR Director/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.

Appeals process map - appendix 8.

## **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. Victimisation/ 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 proceeding 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 at: <http://www.ombudsman.gov.ie/en/Make-a-Complaint>. 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 at: <http://www.oco.ie/complaints/>.

## **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

## Appendix to Formal Procedure

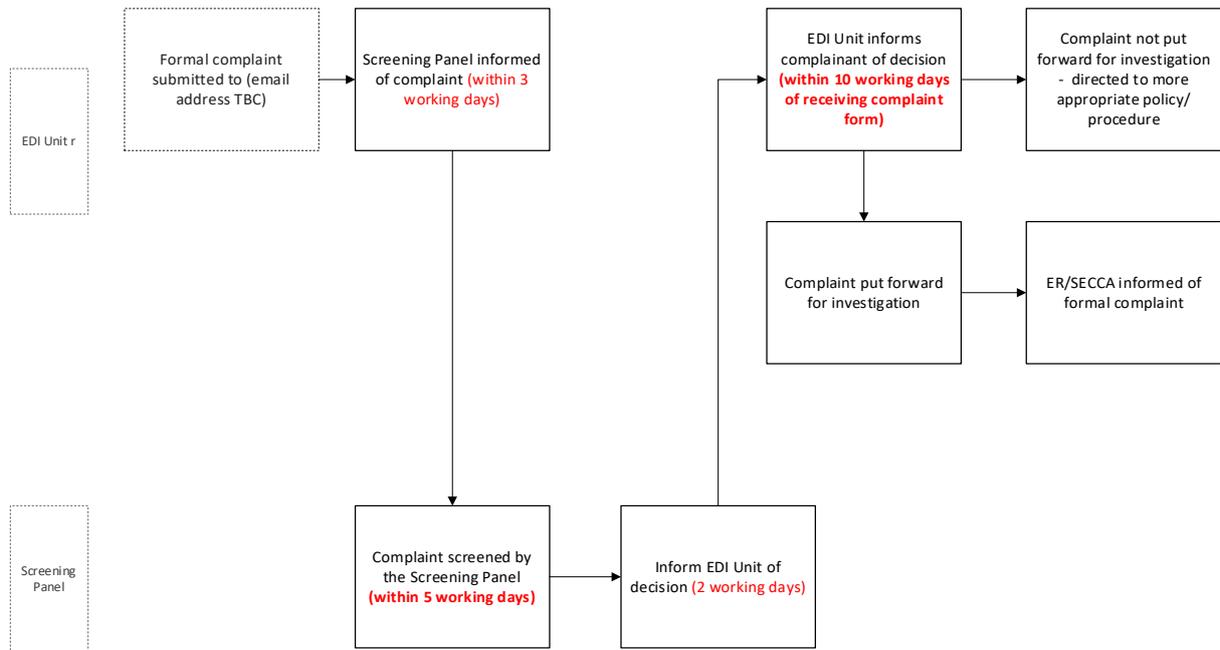
1. APPENDIX 1: Form for making a formal complaint under the dignity and respect policy (to be revised as part of the implementation plan – it will be a single online form for all complaints)

APPENDIX 2. Criteria Assessment for Screening of Complaints

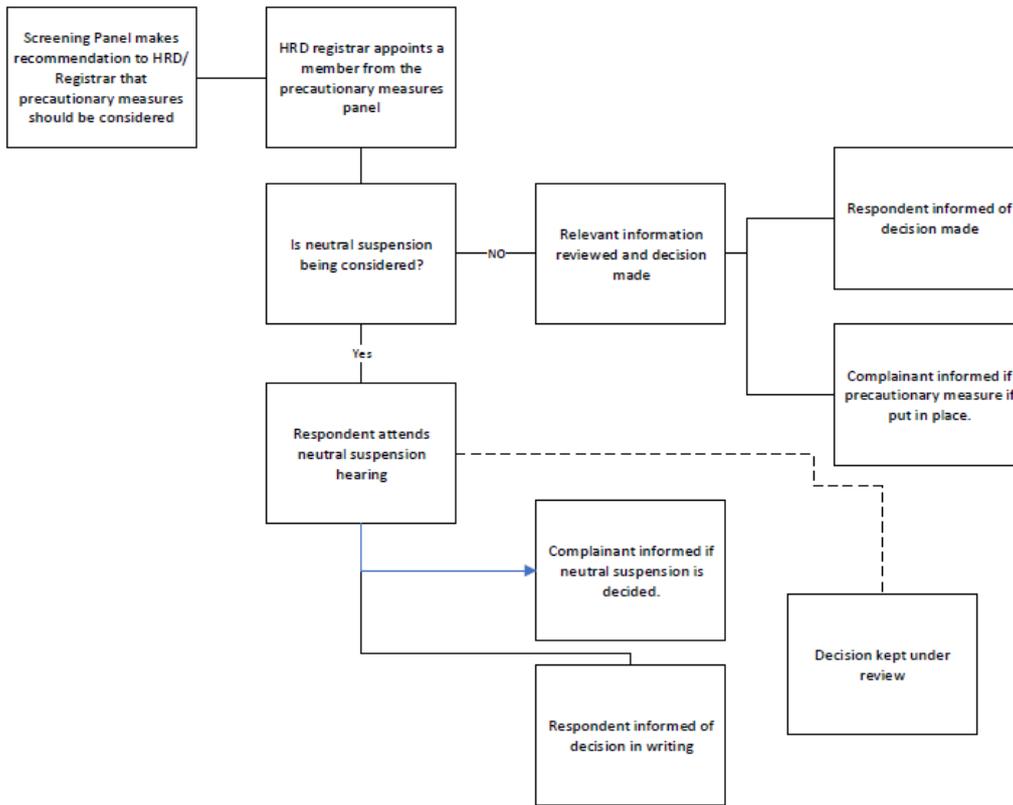
1. Scope	a) Is the alleged behaviour within the parameters of the scope section	Yes/no
2. Bullying (Definition) (must answer yes to b-d to progress to formal investigation)	b) Is the alleged behaviour repeated?	yes/no
	c) Is the behaviour complained of direct or indirect (verbal, physical or otherwise), 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	

Please note the process maps and diagrams in the appendices are for demonstrative purposes – these will be developed fully as part of the implementation plan prior to publication

### APPENDIX 3: Screening Panel Process Map



APPENDIX 4: Precautionary Measures Process Map (for demonstrative purposes – subject to change)



## APPENDIX 5: 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.

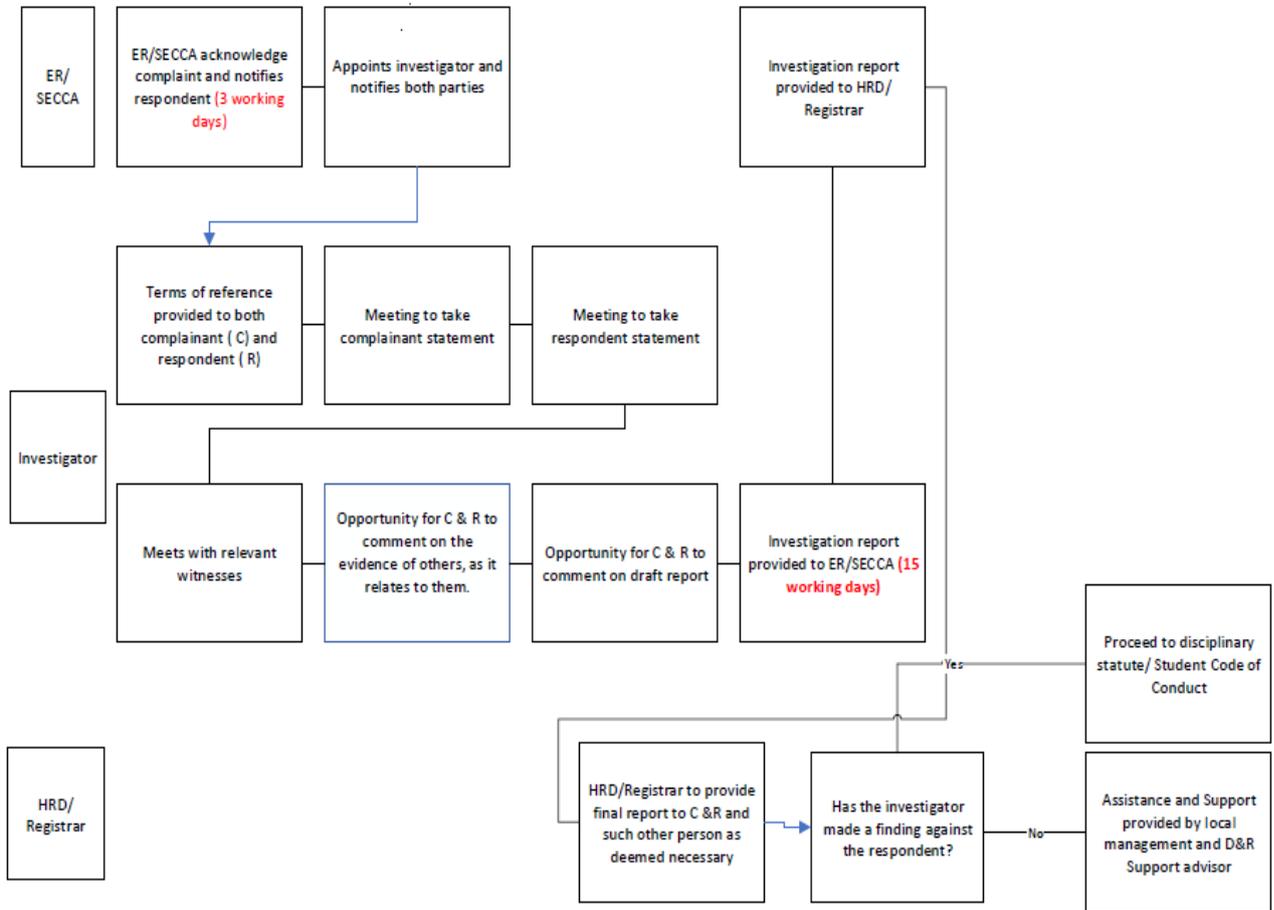
Students	Employees	Non – employees
<ul style="list-style-type: none"> <li>• Voluntary no contact agreement.</li> <li>• Require the respondent not to contact the complainant and/or certain witnesses.</li> <li>• Require that the respondent remains out of certain libraries, restaurants, bars, clubs and societies, social spaces, appropriate accommodation arrangements within the University etc.</li> <li>• Alternative study arrangement, such as remote learning.</li> <li>• 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.</li> <li>• A qualified or partial suspension may be put in place where appropriate.</li> <li>• 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.</li> </ul>	<ul style="list-style-type: none"> <li>• Voluntary no contact agreement</li> <li>• Require the respondent not to contact the complainant and/or certain witnesses.</li> <li>• Require that the respondent remains out of certain common areas at certain times, such as the break room and common areas.</li> <li>• Alternative working arrangement, such a remote working, agreed change in working hours.</li> <li>• Neutral suspension from work.</li> <li>• As an alternative to suspension, an employee may be given the option of taking voluntary leave.</li> </ul>	<ul style="list-style-type: none"> <li>• Access card temporarily revoked</li> <li>• Suspension from attending the premises</li> </ul>

APPENDIX 6: Precautionary measures risk assessment  
 IUA example – needs further consideration

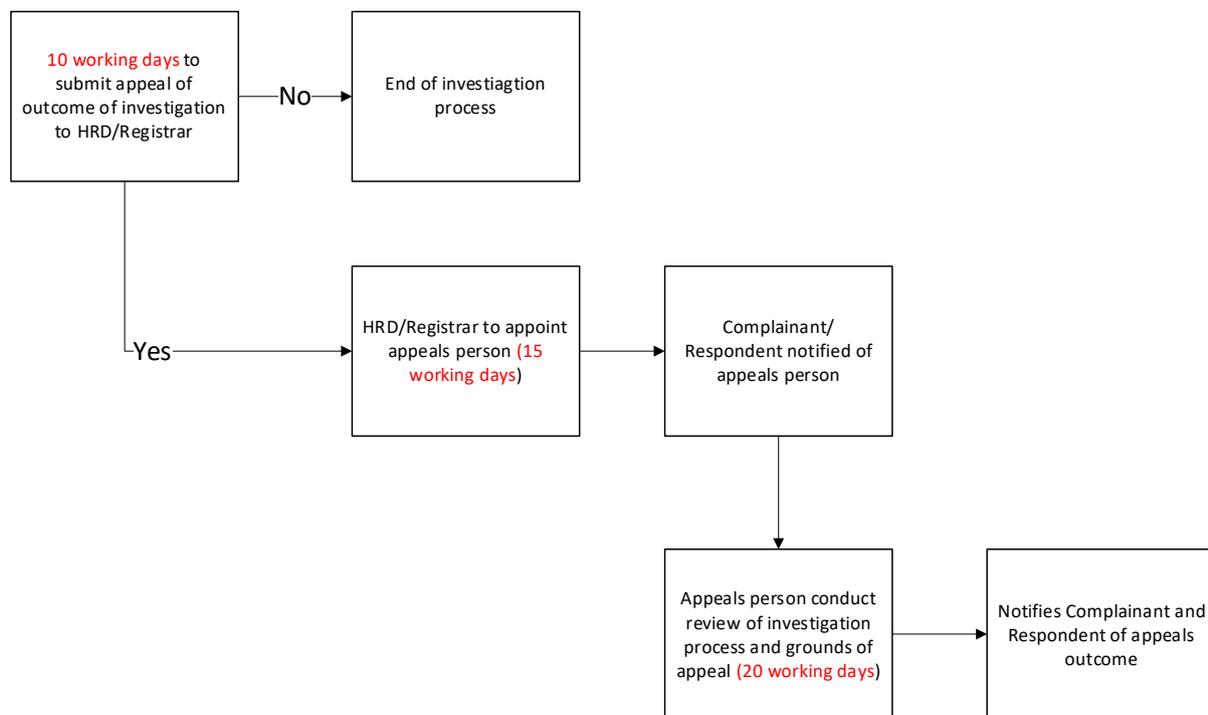
What are the risks to the well-being and safety of Student A /others	What measures are required to manage the risk/concerns?	Action by whom and by when?	Completed
<b>Academic progress:</b> Student A failed to submit two pieces of coursework within the prescribed deadline			
<b>Personal health and well-being:</b> Student A has a history of mental health difficulties or is distressed with having to sit in a class with Student B.			
<b>Safety:</b> Student A is concerned that Student B will approach them in person or via social media/intent messaging and be abusive towards them			
[Others]			

Review date .....

APPENDIX 7: Formal Investigation Process Map (for demonstrative purposes – subject to change)



## APPENDIX 8: Appeal Process Map (for demonstrative purposes – subject to change)



## APPENDIX 9: Data Privacy statement

(Pending completion)

## APPENDIX 10: Related documents/information

- Dignity and Respect - Bullying and Harassment Policy
- Dignity and Respect –Sexual Misconduct Policy
- Equality, Diversity and Inclusion Policy
- Employee-Student Relationship Policy
- Student Code of Conduct
- Disciplinary Statute (employees)
- Dignity and Respect Data Privacy Statement
- Supporting Materials (flow charts etc when developed)
- The following legislation and national frameworks have been referred to when developing the formal procedure;
  - Employment Equality Acts 1998 – 2015,
  - Safety, Health and Welfare at Work Act 2005,
  - Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work—Safety, Health and Welfare at Work Act 2005.
  - Code of Practice detailing Procedures for Addressing Bullying in the Workplace - Industrial Relations Act 1990
  - Code of Practice on Sexual Harassment and Harassment at Work - Employment Equality Acts, 2012
  - The national framework, Safe, Respectful, Supportive and Positive: Ending Sexual Violence and Harassment in Irish Higher Education Institutions, 2019
  - Irish Universities Association, How to Respond to Alleged Staff or Student or University Related Sexual Misconduct.
  - GDPR TBC

# Appendices to Dignity and Respect Review Report

Appendix I – Review Group Feedback to the IUA in relation to the IUA Guidelines document (January 2020)

Appendix II - IUA Guidance for Universities How to Respond to Alleged Staff or Student or University Related Sexual Misconduct

Appendix III – Examples of other Universities Definitions of Sexual Misconduct

Appendix IV – Dignity & Respect Practices Nationally and Internationally

## Appendix I – Review Group feedback to the IUA

The guidelines from the IUA on how universities should respond to allegations of sexual misconduct are welcomed and overall, very well received. The guidelines provide practical guidance which can be incorporated into the University's overall dignity and respect procedures. There are some aspects of the guidelines which, as they stand would need more guidance and clarification on how they work in practice, taking into consideration fair procedure and natural justice.

In summary, it is our view the main areas which need further clarification and consideration are as follows:

- The definition of sexual misconduct - it is unclear whether this definition is to replace the definition of sexual harassment, or if it is in addition. The definition of sexual harassment is prescribed within Equality legislation and clarification is sought in this regard.
- It would be beneficial to extend the scope of the standards and behaviors beyond students and employees to visitors, contractors self, club member etc.
- Further clarification is sought on the expectation to have "a single point of contact for each complainant will assist so that they don't have to repeatedly recount the details of the incident". It is unclear whether this means a different point of contact for each class of complainant (e.g., student, employee etc.).
- Further clarification is sought on the requirement for Universities to instigate formal investigations and disciplinary procedures in circumstances where a complainant does not wish to pursue a formal complaint/ 3<sup>rd</sup> party complaints / anonymous complaint. There are concerns from a legislative / natural justice perspective where instigating an investigation on this basis would amount to a breach in fair procedure for the respondent, which would put the University at risk of litigation.
- Further clarification is sought in relation to what would be classed as *exceptional circumstance* that would give rise to when a University is obligated to make a referral to An Garda Síochána.
- The broad statement of all employees receiving training may not be feasible given the size of the university. Other options would be welcomed such as online awareness.
- The option to appeal the decision to suspend an employee/student to the President will have a detrimental effect on the procedural fairness of a potential disciplinary process due to the most senior person in the organisation making a prima facie decision to suspend. Also, the option to appeal the decision to place someone in suspension could cause unnecessary delays in the process. In the exceptional circumstances that someone needs to be removed from the organisation as a precautionary measure, this should be done as soon as possible for the protection and safety of the complainant and wider community of the university, rather than having a protracted suspension procedure.

# Appendix II – IUA Guidance for Universities How to Respond to Alleged Staff or Student or University Related Sexual Misconduct

[https://www.iaa.ie/wp-content/uploads/2020/09/IUA-Guidance-for-Universities-Consent-Framework%20ADFinal\\_May2020.pdf](https://www.iaa.ie/wp-content/uploads/2020/09/IUA-Guidance-for-Universities-Consent-Framework%20ADFinal_May2020.pdf)

## IUA Guidance for Universities

### How to Respond to Alleged Staff or Student or University Related Sexual Misconduct

#### 1. Introduction

- 1.1 In April 2019 the Minister of State for Higher Education published a Framework policy document for Higher Education Institutions entitled *Safe, Respectful, Supportive and Positive - Ending Sexual Violence and Harassment in Irish Higher Education Institutions*. (“the Framework”)
- 1.2 The focus of this Guidance is on ensuring that appropriate policy and procedural arrangements are in place in each university to ensure effective response to reports/complaints of Sexual Misconduct. Universities are advised that, consistent with the Framework, these arrangements should be situated within a broader institutional context that focuses on prevention, support and an institutional culture that promotes the values of respect, dignity and integrity.
- 1.3 While universities have a strong policy base in relation to Discipline and Dignity and Respect issues, there is a general acceptance that further guidance is required to adequately reflect the various duties and obligations that universities have in relation to their students, and staff and others (including visitors, suppliers, employees of suppliers, club members etc.) and to assist universities in handling the most complex and sensitive incidents, particularly those involving sexual misconduct.
- 1.4 Sexual Misconduct is defined<sup>10</sup> 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 of any kind including non-consensual taking and/or sharing of intimate images, creating, accessing, viewing or distributing child pornography material online or offline, stalking behaviours whether online or offline in a sexual context, and any verbal or physical harassment in a sexual context.”

Sexual misconduct can be committed by a person of any gender and it can occur between people of the same or different genders. It is often gender targeted and perpetrated to demean, diminish and intimidate. Sexual misconduct may occur between

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<sup>10</sup> Source: *Safe, Respectful, Supportive and Positive: Ending Sexual Violence and Harassment in Irish Higher Education Institutions*

strangers or acquaintances, including people involved in an intimate or sexual relationship. This definition embraces Sexual Harassment,<sup>11</sup> which traditionally has been well covered in Dignity and Respect policies, and to which the procedural guidance set out here is also applicable.

As may be noted from the above, some instances of sexual misconduct may also constitute a criminal offence.

- 1.5 Universities have been very active in the provision of Sexual Consent training, as a key initiative in ensuring a safe and respectful institutional environment. In this context, 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”.
- 1.6 Any difficulty in defining what constitutes Sexual Misconduct should not deter students or staff from complaining of behaviour which is unwelcome.
- 1.7 A particularly complex issue for universities is how to handle cases where the alleged sexual misconduct may also constitute a criminal offence. This Guidance provides the basis for universities to amend their existing policies and procedures (including those relating to Sexual Harassment) or to introduce new aspects of policy where none currently exists. It is recommended that each university has clear, dedicated policies and procedures on Sexual Misconduct in line with this Guidance.
- 1.8 This Guidance is addressed to the universities that are members of the Irish Universities Association and it is intended as general guidance on how to respond to alleged staff or student sexual misconduct. The application and impact of the law can vary widely based on the jurisdiction in which the events occur, based on the specific facts involved and by reason of changes in the law and in judicial interpretation of the law. Given those variables there may be omissions or inaccuracies in information contained in the Guidance. Accordingly this Guidance is published on the understanding that the Irish Universities Association are not thereby engaging in the provision of legal or other professional advice or services. As such the Guidance should not be used as a substitute for consultation with professional legal or other advisers.
- 1.9 In any case where a complaint relates to a matter which is also a criminal offence in Ireland or in another jurisdiction, specific legal advice should be sought by the university concerned.
- 1.10 As this Guidance is addressed to member universities only, a person who wishes to make a complaint about sexual misconduct or who is a person against whom such a complaint has been made, should refer to the university’s relevant policies and procedures.
- 1.11 Incidents of sexual misconduct are a societal wide issue. Universities have been very proactive to date in putting positive measures in place to deal with alleged incidents of sexual misconduct and in the provision of appropriate supports from the time any

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<sup>11</sup> Equal Status Act 2000, s11(5)(a): references to sexual harassment are to any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, being conduct which in either case has the purpose or effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

incidents are first reported. Universities will continue to play their role and ensure enhanced systems and supports are in place.

## 2. **Framework for Consent in Higher Education Institutions 2019**

2.1 All universities strive to place the student experience at the heart of the university mission, ensuring that the context exists for every student to thrive, flourish, and develop to their full potential. A safe and respectful academic, extracurricular, and social environment is an essential prerequisite to achieving this objective. In this regard, the universities strongly support the Framework design, which sets out a ‘Whole of System’ approach, ensuring that positive support and prevention are embedded in institutional culture.

Outcomes such as, (a) whether students have good understanding of consent and knowledge of positive actions, etc. and (b) workable knowledge and preparedness to engage with supports / reporting, are key criteria in assessing the effectiveness of universities in achieving these objectives.

This is described in the Framework Vision, which is summarised as:

2.1.1 A campus or institutional culture which is safe, respectful and supportive; clear in its condemnation of unwanted and unacceptable behaviours.

2.1.2 The higher education student experience empowers individuals to foster a culture of respect, dignity and integrity.

2.2 The national Framework is based on the premise that initiatives in relation to sexual harassment and gender-based violence are of limited value, unless systemic and institutional issues are also addressed, through attention to institutional culture, and supporting structures and processes. Within this broader context the Framework sets specific expectations of universities in relation to their policies, as follows:

2.2.1 Dedicated policies are in place consistent with the Framework aims.

2.2.2 Policies are explicitly linked to clear lines of responsibility, active responses, institutional reporting, and regular review.

2.2.3 Policies include guidelines for addressing student complaints, including transparency for all involved.

2.2.4 Policy implementation is supported by institutional leadership, and an annual report to the Governing Authority.

2.2.5 Accessible, trauma-informed services; for supporting student disclosure, reporting and complaints, and for counselling and advocacy.

2.3 The Framework also states that HEIs must aim to (pg. 17):

2.3.1 Provide a transparent and consistent system for addressing student complaints of sexual harassment, sexual assault, and rape.

- 2.3.2 Provide a transparent and accountable protocol for those against whom complaints have been made who are part of the student or staff body of the HEI.

This Guidance has been developed to support universities in achieving that objective, while complementing the cultural change being advanced through initiatives such as universities' Gender Action Plans, as envisaged in Principle 12 of the SAGE Charter – 'Eradicating bullying, sexual and moral harassment from our institutions'.

### **3. Basis for University Intervention**

- 3.1 In the context of the institutional and sectoral objectives set out in section 2 above, it is important that university intervention in the management of complaints/reports<sup>12</sup>, is not confined solely to the matters of procedure and process. While these are undoubtedly important, and are the focus of these guidelines, these must be conjoined with a wider ethos and policy of the institution to promote and support positive sexual, consensual behaviour through education programmes, and a preventative ethos of mutual support and respect. In addition, it will be very important for universities to be able to clarify for those reporting an incident, that there is a difference between disclosing (which is followed by support) and making a complaint, and the subsequent options that are available to them.
- 3.2 The rules and regulations of universities which require staff and students to conduct themselves appropriately and enable universities to respond to reports/complaints of misconduct, are generally covered by a set of policies in relation to standards of behaviour and appropriate disciplinary procedures and codes of practice. Setting out the required standards and the need for individual accountability for one's own behaviour should be a key pillar in ensuring a proactive preventative approach. Universities should ensure that the relevant rules and regulations include behaviour perpetrated by or against non-staff or student members of the university community, e.g. visitors, on site contractors etc.
- 3.3 In order to ensure that any complaints of sexual misconduct are responded to appropriately, universities should:
  - 3.3.1 publish an appropriate policy or code of conduct which
    - 3.3.1.1 states that any form of sexual harassment or sexual violence or sexual misconduct is unacceptable and that the university has responsibility (with staff and students) for ensuring an environment free from any form of sexual misconduct;
    - 3.3.1.2 sets out the types of behaviours that are unacceptable;
    - 3.3.1.3 makes it clear that any such behaviour will amount to a breach of discipline; and

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<sup>12</sup> Universities are also implementing various 'Report and Support' tools. These typically are not formal complaint mechanisms, but their function is for the purposes of monitoring self-reports of harassment and misconduct and to raise awareness of existing university supports and disclosure channels.

- 3.3.1.4 provides a clear indication of the sanctions which may be imposed on staff or students in relation to any such breaches (the sanction imposed must be reasonable and proportionate to the misconduct which is found to have occurred)
- 3.3.2 publish disciplinary procedures/regulation which include a list of the sanctions which could be imposed on students and staff
- 3.3.3 ensure that the Policies are easy to locate on the university's website, and conform to the National Framework principles of:
  - 3.3.3.1 Transparency - Transparent, easily accessible and easily understood policies.
  - 3.3.3.2 Consistency - Consistent and timely application of university policies and procedures.
  - 3.3.3.3 Integrity - strong ethical principles and values at the heart of processes and procedures.
- 3.4 Each university must have a clear process for reporting sexual misconduct with designated channels and clear reporting processes for staff and students. Typically, university policies should specify examples of unacceptable behaviours relating to sexual misconduct and indicate the types of sanctions that may be imposed if such behaviour is found to have occurred. Policies should also set out how reports/complaints will be handled, from initial informal (if applicable) and formal reporting, through investigatory and disciplinary stages.

Examples of sexual misconduct are set out in Appendix I

- 3.5 Policies can never cover all incidents of unacceptable behaviour. Universities may decide to develop detailed supporting policies or guidelines on specific issues that clarify expected behavioural standards, such as personal relationships between staff and students, senior and junior staff etc. However, the scope of the Policies should clearly include examples which happen inside and outside of the university, as well as conduct on social media, and in digital communications. It should also be made clear in the policies that the unacceptable behaviours listed are not exhaustive and that the indication of the sanctions which may be applied if certain behaviour is found to have occurred is illustrative only (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). The policies should also include a description of any terms that may require interpretation 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.
- 3.6 It is essential that universities provide appropriate and relevant information and support to students or staff members who report sexual misconduct from the time when the incident is first reported to the university up until the time when the relevant criminal and/or disciplinary process has been concluded (and often beyond that). This should include facilitating attendance at a Sexual Assault Treatment Unit if that is what the person wishes.

- 3.7 In situations where one student has made an allegation against another student, in order to ensure due process and to avoid re-traumatisation, universities should treat the reporting student and the accused student fairly and not make any presumptions about either of them.
- 3.8 In order to ensure that students are provided with all appropriate information and support, appropriate training and guidance will need to be provided to all relevant staff who may have an involvement in responding to student reports/complaints. Staff coming within the scope of this type of training and guidance will range from those who may only need to be aware of general policies and support options, as well as those relevant members of staff who will be expected to have a deeper level of knowledge and expertise in order to be able to co-ordinate the provision of internal and external support. There should be clear reporting pathways and an understanding that engagement with same will not require the person concerned to make a report to the Gardaí. Universities will work with local Rape Crisis Centres, and other relevant partners in making services available to people who report sexual misconduct.

In accordance with the Framework there should be a clear, simple and accessible method of reporting incidents of sexual misconduct to ensure that complainants are referred to these specially designated /trained members of staff as quickly as possible. Identification of a single point of contact for each class of complainant (e.g. student, staff etc.) will assist so that they do not have to repeatedly recount the details of the incident. All staff should be trained about when and how to refer a student or staff member to these designated contacts. Even with clear reporting processes in place, many students will make disclosures to the academic or professional staff that they come into contact with on a daily basis, so it is important that all staff have a basic understanding of what to do, how to listen actively, and what to say by way of response in these circumstances.

- 3.9 The scope of the policy or code of conduct (including the extent to which staff or students can be disciplined for behaviour which happens outside of and/or is unconnected with the University) should be specified within the policy or code of conduct. The policy or code of conduct should provide that they extend to sexual misconduct by a staff member or student occurring on or off university premises (including via social media) or digital communications where the complainant is a student or employee of the university or others visiting, working or studying at the University and to sexual misconduct occurring during university (or university-related) activities (including on placements and field trips).
- 3.10 There may be cases where reported sexual misconduct by a student or staff member is considered to be insufficiently connected to the university, for the university to be able to investigate it under the university's disciplinary procedures. Similarly, there may also be situations where the university may not be the appropriate agency to investigate a particular complaint, e.g. alleged misconduct by students/student teachers on placements governed by Child Protection legislation and procedures; staff on secondment to other organisations, etc. There should be clear provisions as to how any such cases should be managed.
- 3.11 When dealing with complaints that have been made about the conduct of one of its students or staff members, universities must have regard to the various duties and obligations that they owe to all of their staff and students including 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 Employment Equality Acts and Equal Status Acts duties and upholding human rights. Cases involving allegations made by one student against another student or, indeed, by a student against a staff member or vice versa, require careful and sensitive management because universities owe a duty of care to both parties and are obliged to take steps to protect both parties from unintended harm. This results in universities having to balance the conflicting rights and interests of two parties when considering what action to take.

- 3.12 Universities should also include provisions in their internal procedures for the university to instigate formal investigation and disciplinary procedures in circumstances where a complainant does not wish to pursue a formal complaint, but where a sufficient concern arises for the university, having regard to their broader obligations in relation to the safety and welfare of others. Similarly, the authority for universities to act on third party complaints and anonymous complaints should also be set out clearly in the relevant university procedures. It is recognised that there will be inherent limitations in responding to these types of complaints, particularly with regard to the rights of respondents pursuant to the rules of natural justice and Article 6 of the European Convention on Human Rights. These limitations may be exacerbated, or mitigated, by issues such as the level of detail provided, the number of such complaints etc. The approach to be adopted by a university in such instances will be determined on a case by case basis, however it is important that provision is made for these exceptional cases within university procedures.
- 3.13 Universities should ensure that any investigation is carried out by appropriately trained individuals. For example, the investigator should understand the health and welfare issues involved, the potential inter-action between the disciplinary process and the criminal process and the procedure that should be followed.
- 3.14 Universities should consider whether any adjustments need to be made to the disciplinary procedure to address any actual and/ or perceived imbalances between the complainant and the person against whom the complaint is made, referred to as “the Respondent” hereafter. In considering what adjustments may be required, universities should take into account the trauma that the complainant may suffer when giving evidence and the need to uphold fundamental principles relating to a fair hearing for the respondent such as the right for the accused to hear the evidence against them and the right to “test” that evidence. For example, a university could allow the complainant to provide evidence from a different room through video link and questioning could be through the Chair so that the respondent and the complainant do not have to communicate directly with each other and to ensure that no inappropriate questions can be put.
- 3.15 Where a complaint against a student or a member of staff is not upheld, and no disciplinary action is taken against them, universities should be aware that the respondent and the complainant are likely to continue to require assistance and support. The measures that are necessary will have to be assessed on a case-by-case basis, but should 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, Employee Assistance Programme, etc..

- 3.16 Building on the progress made across the sector in relation to provision of Consent workshops it is recommended that the opportunity to participate in such workshops is made available to all students and staff given that these consent framework guidelines are to be situated within a broader institutional context that focuses on prevention, support and a positive institutional culture.

#### 4. **Precautionary Action**

- 4.1 University procedures should expressly provide for the university to impose at an early stage precautionary measures on a student or staff member who is alleged to have engaged in sexual misconduct pending the outcome of criminal/disciplinary proceedings.
- 4.2 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 that the university has concluded that the person concerned has committed a breach of discipline or a criminal offence.
- 4.3 Precautionary action must be reasonable and proportionate and may include:
- 4.3.1 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.)
  - 4.3.2 suspending a student respondent from their studies or makes alternative tuition arrangements (in the case of alleged sexual misconduct by a student). Suspension means that the student is prohibited from participating in the academic activity of the university and the student's registration on his/her course is put on hold. A qualified or partial suspension may be put in place where appropriate.
  - 4.3.3 making appropriate accommodation arrangements to ensure separation between the respondent and complainant in student residential settings.
  - 4.3.4 making appropriate arrangements to ensure separation of the respondent and complainant in delivery of teaching and supervision (for example, moving the respondent into another tutorial group or laboratory group).
  - 4.3.5 placing a staff member concerned off duty (in the case of alleged sexual misconduct by a staff member).
  - 4.3.6 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). Exclusion means that the student is prohibited from taking part in certain university activities, using certain university facilities and/or entering certain university grounds or premises. A qualified or partial exclusion may be put in place where appropriate.
- 4.4 The grounds for taking any such action should be clearly set out in the university procedures. For example, the university procedures may provide that precautionary measures may be put in place provided they are proportionate and **necessary**:

- 4.4.1 to ensure that a full and proper investigation can be carried out (either by the Garda Síochána or a University investigator); and/or
- 4.4.2 to protect the complainant or others whilst the allegation is being dealt with as part of a criminal process or disciplinary process.
- 4.5 In order to ascertain the type and extent of any precautionary measures, universities should undertake a risk assessment on a case-by-case basis. Importantly, precautionary measures are not contingent on the making of a criminal complaint and can be instituted to facilitate an investigation or pending the outcome of a university's disciplinary process. 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 taken into account 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.
- 4.6 The precautionary measures that are put in place should be those which will best protect the investigation and/or the complainant /others from harm whilst having the minimum possible impact on the respondent. Note that in cases where one party has made an allegation against another(s), universities will have to take into account the interests and welfare of both and endeavour to treat them fairly and equally when undertaking the risk assessment and ascertaining the potential effectiveness and impact of precautionary measures.
- 4.7 The type of misconduct, the circumstances of the incident, the circumstances of the individuals involved, and the views of the Gardaí/prosecutor, if applicable, will all be relevant in assessing risk and in determining if, and what 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 that are put in place should be reviewed at regular intervals and reconsidered as the case develops
- 4.8 Any decision to impose a precautionary suspension on a student or to place a staff member off duty 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. Further, any suspension or off duty decision should be fixed for a specified period of time and subject to review at regular intervals.
- 4.9 The decision to suspend a student or place a staff member off duty as a precautionary measure should be made at a senior level and the respondent should have an opportunity to:
  - 4.9.1 consider the reasons why such a decision might be made
  - 4.9.2 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)
  - 4.9.3 request a review at any stage if there is a material change in the circumstances of the case.

- 4.10 Note that it may be appropriate for the disciplinary procedures to provide that a decision to suspend may be made by a senior member of staff at a level which enables any appeal to be reserved to the President.

## 5. Alleged Sexual Misconduct which may Constitute a Criminal Offence

### General Principles

- 5.1 There are many instances where an alleged act of sexual misconduct may also constitute a criminal offence and this guidance focusses on providing recommendations about how universities should respond to these cases. As set out in section 1.4 earlier, not all sexual misconduct will constitute a criminal offence, and these issues will continue to be dealt with through university disciplinary procedures as appropriate.
- 5.2 The intervention by universities in cases where an alleged act of sexual misconduct may also constitute a criminal offence is a complex exercise. This Guidance makes recommendations about the process that can be followed and the factors that should be taken into account.
- 5.3 Universities receiving complaints of sexual misconduct, must recognise that any allegation of sexual misconduct which may constitute a criminal offence is likely to have an adverse impact on all parties involved (whether the incident is dealt with through a disciplinary process or a criminal process). As a priority, universities should ensure that all parties involved in any such incidents, particularly the reporting person and the accused party, have access to appropriate supports.
- 5.4 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.
- 5.5 The internal disciplinary process is a civil matter, is based upon an allegation that a student or staff member has by engaging in sexual misconduct breached the university's rules and regulations; the allegation has to be proven on the balance of probabilities (the event is more likely to have occurred than not) and the most serious sanction that can be applied is permanent expulsion from the university or termination of employment.
- 5.6 In contrast, the criminal process is an external process, deals with allegations that an accused person 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.
- 5.7 Taking the above differences into account, universities should follow three key principles when dealing with disciplinary matters which may constitute criminal offences.
  - 5.7.1 A person who reports to a university sexual misconduct which also constitutes a criminal offence should be given clear guidance as to the options open to them. This should include internal support and reporting options, as well as attending at the nearest HSE Sexual Assault Treatment Unit (SATU)<sup>13</sup>, and/or referral to the Gardai (noting that these two are both separate and discrete services). See section 6.1 for more details.

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<sup>13</sup> <https://www2.hse.ie/services/sexual-assault-treatment-units/sexual-assault-treatment-units.htm> SATUs provide both healthcare and forensic services to victims of sexual assault.

- 5.7.2 The criminal process must take priority. Consequently, if the matter is being dealt with under the criminal process, then save for taking any necessary precautionary action (see section 4), or unless the circumstances require otherwise (such as cases where the complainant may wish for a university investigation process to proceed and where same is possible) the internal disciplinary process should be postponed until the criminal process is at an end.
- 5.7.3 If the matter is not being dealt with under the criminal process (perhaps because the complainant chooses not to make a criminal complaint) or where the criminal process has concluded, then the university should consider whether a breach of discipline appears to have occurred and, if so, refer the matter for consideration under its internal disciplinary procedures. The Framework notes that “not all of those who experience sexual violence or harassment wish to engage with the criminal justice system”.

5.8 These key principles are expanded upon below.

### **Referral to the Garda Síochána**

- 5.9 Usually the reporting of a crime is made by the complainant and the evidence of the complainant is crucial in securing a conviction.
- 5.10 Where the complainant 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 Gardaí the university should facilitate that. If they do not wish to make a report to the Gardaí then, subject to the points made in the paragraph below, the university should comply with that decision. It is of course open to a complainant to make a report to the university and the Gardaí.
- 5.11 Universities should only in the most exceptional circumstances and with the benefit of specific legal advice report a complaint or a disclosure of sexual misconduct to the Gardaí contrary to the wishes of the complainant. The circumstance in which a report by a university may be justified is if the complainant is a minor<sup>14</sup> or where there is clear evidence of wrongdoing available to the university separate from the complainant itself or where there is considered to be a clear and imminent risk to the safety of the complainant or of third parties.
- 5.12 Under the Data Protection Acts 1988 to 2018 and GDPR, universities will need to be able to justify the disclosure of information about a complainant that is made to the Gardaí without their consent or where there is considered to be a clear and imminent threat to the safety of the complainant or of third parties<sup>15</sup>.
- 5.13 In deciding whether to make such a disclosure, and what information to disclose, universities must take into account any potential harm that the unauthorised disclosure may cause to the complainant. This assessment will have to be undertaken on a case-by-case basis as much will depend on the circumstances of the matter. However, it

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<sup>14</sup> 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

<sup>15</sup> The lawful grounds for processing data include (Article 6(1)(d) GDPR and Part 5 Clause 73(1)(b)(ii) Data Protection Act 2018) where the processing is necessary to protect the vital interests of a data subject or another person.

should be noted that disclosing information to the Gardaí without the complainant's consent could cause significant harm as it is likely to undermine the relationship of trust and confidence between the university and the complainant and potentially result in the complainant declining any further support or assistance from the university or those associated with the university (which could make the complainant more vulnerable). Further, preventing a complainant from controlling the reporting process could cause them further distress. It is particularly important for those who are victims of sexual misconduct to feel that they are in control of the reporting process.

- 5.14 If universities decide that it is necessary for them to report the sexual misconduct to the Gardaí, then the reasons for taking that action should be explained to the complainant so that they understand what is happening and is prepared if/when the Gardaí contact them.
- 5.15 If the complainant decides not to make a report to the Gardaí where the accused is a student or staff member of the university, the complainant should have the option of requesting that the university deal with the matter under its policies and, in such circumstances, the university should follow its policies and procedures when determining what action should be taken. A clear explanation of how these approaches are different must be given to the complainant so that they understand the difference in outcomes. A university's policies should also provide that it has the ability to institute disciplinary proceedings against the accused of its own volition if the complainant does not wish to make a formal complaint (as set out in earlier section 3, pg. 5).

#### **Outcome of a Criminal Process**

- 5.16 If a student or a member of staff 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.
- 5.17 If a student or a member of staff 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 a student or a member of staff 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.
- 5.18 Where a student or a member of staff is acquitted of a criminal offence and no disciplinary action is taken against them, universities should be aware that the respondent and the complainant are likely to continue to require assistance and support. The measures that are necessary will have to be assessed on a case-by-case basis, but should 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, Employee Assistance Programme, etc..

- 5.19 Universities should note that any such action would be taken in order to protect the welfare and well-being of both parties and not as part of a disciplinary process. The rights and interests of both (and of other students and staff members where necessary) would therefore have to be balanced fairly and equally.

### **Record Keeping**

- 5.20 Universities must ensure that clear processes are in place for recording and documenting all actions and decision-making that are taken by the university from the day when the report of the incident is received up until any criminal and/or disciplinary proceedings have been concluded. This will mean that there will be a record about which process is underway, what issues/matters have arisen and been considered and the basis for the decisions that have been made. Such records are an essential element of best practice, and will enable decisions to be made effectively and allow for previous decisions to be reconsidered and reviewed when appropriate. All data must be retained in accordance with GDPR.
- 5.21 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 the Gardaí 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. Consequently, every effort should be made to ensure that written records are clear, accurate and appropriate.

## 6. Provision of Information and Support to complainants in relation to procedural options

6.1 No pressure should be put on the complainant to take any particular course of action. The support required by those who have experienced any form of Sexual Misconduct should be trauma-informed, and may range from counselling, educational supports, and information and help with accessing available services, either internal or external, such as Rape Crisis Centres or SATUs, in addition to any internal or external investigative process. Relevant policies should also stipulate clearly that no penalisation of a complainant will be tolerated.

6.2 In providing information and support in response to complaints, universities should assist complainants to understand the various options available to them and provide them with support in making a decision about the way forward.

The key decisions for the complainant will usually be as follows:

6.2.1 make a report to the Garda Síochána

6.2.2 take some time to consider the options (in this situation, where appropriate, universities should provide advice about attendance at the nearest sexual assault treatment unit (SATU) which can enable forensic evidence to be collected whilst a decision is being made about whether or not to make a report to the Garda Síochána. Forensic samples should be collected as soon as possible, but can be collected within up to seven days, and can be stored by the SATU for up to one year)

6.2.3 not report the matter to the Garda Síochána but request that the university consider the case under its disciplinary procedures (or other internal process)

6.2.4 report the matter to the university and the Gardaí such that a criminal investigation/prosecution and university disciplinary process may each be instituted

6.2.5 take no further action.

6.3 When outlining the options available, universities should ensure that the complainant understands the process related to each option and, in particular, understands the difference between criminal investigations/proceedings and university disciplinary investigations/proceedings.

6.4 A number of the key differences are set out below.

6.4.1 Under the criminal process, the complaint will be treated as a potential criminal offence. Under the disciplinary process, the complaint will be treated as a potential breach of discipline.

6.4.2 A disciplinary process will generally be completed in a much shorter timeframe than a criminal process

6.4.3 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 a university process, if a complaint of Sexual Misconduct is received, precautionary action will be considered, the complaint will be investigated and, if it is upheld on the balance of probability, a sanction (warning/suspension/expulsion/dismissal) will be imposed on the respondent/wrongdoer.

- 6.4.4 A disciplinary investigation will be more limited than a criminal investigation because forensic analysis and medical examinations may not be available to universities and universities have no general power to compel witnesses to give evidence.
- 6.4.5 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 student who is found to have committed a breach of discipline by a university is expulsion from the institution and, once the individual has left, any restrictions/conditions placed on them by the university will no longer be applicable. Likewise, the most severe sanction for a staff member would be dismissal. In addition, the complainant 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 complainant or any other person. Universities will have a general obligation to keep the information confidential and, subject to certain exemptions, specific obligations not to disclose the information to third parties under the Data Protection obligations. Another key difference is that the criminal process may take a significant length of time whereas a university disciplinary process may be resolved within a shorter timeframe.

## APPENDIX 1 – Examples of Sexual Misconduct

### Examples of Sexual Misconduct

- Predicating inclusion or access to work or study opportunities or other advantages on participation in interactions of a sexual nature
- Grooming, psychological abuse and coercive contact
- Making unwanted/unsolicited remarks of a sexual nature, either directly, or via text or social media apps. (sexting)
- Kissing without consent.
- Touching inappropriately through clothes without consent.
- Non-consensual taking or sharing of intimate images (upskirting etc).
- Sexual cyberbullying.
- Verbal, non-verbal or physical harassment in a sexual context (including verbal or physical advances, requesting sexual favours, asking about a person's sexual preferences or activities, making disparaging remarks of a sexual nature)
- Inappropriately showing sexual organs or images of sexual organs to another person without consent.
- Creating, accessing, viewing or distributing child pornography material online or offline.
- Stalking behaviours whether online or offline.
- Attempting to engage in sexual intercourse or engaging in a sexual act without consent.
- Sexual violence or engaging in a sexual act without consent.

Note that in relation to certain items universities may be entitled to expect higher standards of behaviour from staff that they might expect from students.

## Appendix 2 – Example Risk Assessment

Risk assessment for Student A

(This risk assessment should be drafted with assistance from specialists in this area).

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
<p><b>Academic progress:</b></p> <p>Student A failed to submit two pieces of coursework within the prescribed deadline</p>			
<p><b>Personal health and well-being:</b></p> <p>Student A has a history of mental health difficulties or is distressed with having to sit in a class with Student B.</p>			
<p><b>Safety :</b></p> <p>Student A is concerned that Student B will approach her in person or via social media/intent messaging and be abusive towards her</p>			
<p><b>[Others]</b></p>			

Review date .....

## Appendix 3 – Examples of other Universities

### Definitions of Sexual Misconduct

#### **Queens University**

Within this Policy, sexual misconduct means any unwelcome behaviour of a sexual nature that is committed without consent or by force, intimidation or coercion. Sexual misconduct can be committed by a person of any gender and it can occur between people of the same or different gender. Such behaviour will usually also constitute a criminal offence.

#### **DCU**

Sexual misconduct is a broad term encompassing any behaviour of a sexual nature that is committed without consent or could involve force, intimidation, coercion, or manipulation. Sexual misconduct can be committed by a person of any gender, and it can occur between people of the same or different gender. Such behaviour may also constitute a criminal offence or, at the very least, a breach of the DCU Respect and Dignity Policy.

#### **The University of Manchester**

The University views sexual misconduct as sexual violence and harassment, which can include a range of unwanted physical and nonphysical sexual behaviours affecting members of the University community. Sexual misconduct can be perpetrated by anyone. Non-consensual sexual activity which may amount to a prosecutable criminal offence is included in this definition. Appendix One of this Procedure provides a non-exhaustive list of what the University may view

#### **Cambridge University**

Sexual misconduct includes the following, whether or not within a sexual or romantic relationship, including where consent to some form of sexual activity has been given and then withdrawn, or if consent has been given on previous occasions:

- 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.

#### **IUA**

Any form of unwelcome behaviour of a sexual nature that may be subject to disciplinary proceedings. This includes crimes of sexual violence, sexual cyberbullying of any kind including non-consensual taking and/or sharing of intimate images, creating, accessing, viewing or distributing child pornography material online or offline, stalking behaviours whether online or offline in a sexual context, and any verbal or physical harassment in a sexual context.

## Appendix 4 – Dignity & Respect Practices Nationally and Internationally

	Definitions	Scope of Policy	Supports offered	Reporting procedure	Investigation	Sanctions	Other
<p><b>Trinity College Dublin</b></p> <p>Document from the Students Union – What do I do now?</p> <p>Cannot find it online??</p>	N/A	N/A	N/A	Information on the student’s union website directing to the dignity and respect at work procedure, under sexual harassment.	N/A	N/A	N/A
<p><b>DCU</b></p> <p>Student Sexual Misconduct Policy</p>	<p>Sexual misconduct is a broad term encompassing any behaviour of a sexual nature that is committed without consent or could involve force, intimidation, coercion, or manipulation. Sexual misconduct can be committed by a person of any gender, and it can occur between people of the same or different gender. Such behaviour may also constitute a criminal offence or, at the very least, a breach of the DCU Respect and Dignity Policy.</p>	<p>Registered students, on campus and all other occasions when they are representing the university or are identifiable as students of the University.</p> <p>Third level students from other institutions visiting the University.</p> <p>Staff sexual misconduct policy will deal with allegations against a staff member.</p>	<p>Contact the Director/Deputy Director of Student Support and Development.</p> <p>Approach any member of staff or the students unions.</p> <p>Director of SS&amp;D may in discussion with the student, refer to the DCU liaison Gardai</p>	<p>DCU encourages any student who has been a victim of an incident of sexual misconduct should consider reporting the incident to the Gardai.</p> <p>Allegations from a student under the age of 18, University will report to relevant authorities under the DCU Child Protection Framework.</p> <p>Allegations against staff will be dealt with under the staff sexual misconduct policy</p>	<p>Investigate allegations under the Student Code of Conduct.</p> <p>The policy to promote respect and dignity by preventing bullying and harassment.</p> <p>Allegation against staff: Staff Sexual Misconduct policy</p> <p>Not available online.</p>	<p>Penalties found in DCU Student Code of Conduct.</p> <p>The University reserves the right to take disciplinary action against a student accused of sexual misconduct of its own volition, even if the reporting student does not wish to make a formal complaint.</p>	
<p><b>The University of Manchester</b></p>	<p>The University views sexual misconduct as sexual violence and harassment, which can</p>	<p>Student Policy.</p>	<p>Sexual Violence and harassment response manager position</p>	<p>A Reporting Student may come through the University’s Report and Support</p>	<p>Student – student Sexual Violence and harassment</p>	<p>As appropriate under the regulation and</p>	<p>Procedure refers to the University not acting as the police or a court of law. The investigative ability of the</p>

	Definitions	Scope of Policy	Supports offered	Reporting procedure	Investigation	Sanctions	Other
Procedure for Handling Allegations of Sexual Misconduct (“Procedure”)	<p>include a range of unwanted physical and nonphysical sexual behaviours affecting members of the University community. Sexual misconduct can be perpetrated by anyone. Non-consensual sexual activity which may amount to a prosecutable criminal offence is included in this definition. Appendix One of this Procedure provides a non-exhaustive list of what the University may view</p> <p>Definition of consent: The University adopts the legal definition of sexual consent: a person consents if s/he agrees by choice, and has the freedom and capacity to make that choice.</p>	The regulation does not apply to the conduct of former students.	<p>appointed in March 2019.</p> <p>Training and resources</p> <p>Online course for responding to disclosures of sexual violence</p> <p>D&amp;R policy</p> <p>Guidelines for staff supporting students who are sexual violence survivors</p> <p>Guidelines for students who have experienced sexual violence</p>	<p>platform (<a href="https://www.reportandsupport.manchester.ac.uk/">https://www.reportandsupport.manchester.ac.uk/</a>). If the report relates to sexual misconduct, then the report will usually be routed directly through to the University’s Sexual Violence and Harassment Response Manager to make initial contact with the student.</p> <p>Informal or formal written complaint under student complaints procedure. Any complaints about sexual misconduct: Violence and Harassment response manager for consideration under this procedure.</p> <p>Disclosure (informal or formal) Through the dignity at work and study procedure, unless sexual misconduct – referred to the Sexual Violence and harassment response manager for consideration</p> <p>Student can make a disclosure in person to a member of staff. (staff guidance document available)</p>	<p>response manager</p> <p>Student – employee Sexual Violence and harassment response manager – consideration of the allegation will follow disciplinary procedures</p> <p>Option to investigation employee v student.</p> <p>The sexual violence and harassment response manager conducts an investigation and the case is referred to the head of campus life to consider whether further investigation/disciplinary action is required</p> <p><b>Reluctant complainant:</b></p>	<p>associated procedures (Conduct and discipline of students)</p> <p>Separate procedure for Student Criminal Offences.</p>	<p>University is not the same as the policy or courts. Conclusion reached are on the balance of probabilities, and not the criminal standards of beyond reasonable doubt.</p> <p>The University is mindful of the sensitive nature of processes which involve the consideration of allegations of sexual misconduct and will take steps to ensure that all affected students are supported. If a disciplinary hearing takes place, the Reporting Student may be asked to attend or participate in the hearing as a witness. The University will, where possible, make appropriate adjustments to the University’s processes to support affected students (for example, by ensuring that any direct contact during a hearing is limited where possible).</p> <p>The University’s ability to disclose details relating to the outcome of another student’s disciplinary hearing is limited as a result of the duties owed to that student. Therefore, whilst</p>

	Definitions	Scope of Policy	Supports offered	Reporting procedure	Investigation	Sanctions	Other
				<p>If an individual connected to a Reporting Student makes a disclosure, then they should be advised to encourage the Reporting Student to make a disclosure directly through one of the routes above.</p>	<p>Where the Reporting Student does not wish to pursue the allegations any further under this Procedure, or any other applicable process, the University will undertake a risk assessment to determine what further action (if any) is appropriate. In exceptional circumstances, the risk assessment may identify the need to take further action under this Procedure (for example, on the basis of risks to the wider university community), notwithstanding the wishes of the Reporting Student. The University will ensure that the Reporting Student continues to be fully supported by</p>		<p>the Reporting Student may be informed of any finding reached against the Reported Student, the University is unlikely to be able to provide further information in connection with the disciplinary process.</p> <p>Use the term reporting and reported student rather than complainant and respondent.</p>

	Definitions	Scope of Policy	Supports offered	Reporting procedure	Investigation	Sanctions	Other
					the University in these circumstances		
<p><b>University of Edinburgh</b></p> <p>Website based. No policy</p> <p>Investigations of sexual violence</p>		<p>If you make a complaint against a University student or staff member for sexual violence, including sexual assault or harassment, the University may decide to conduct an investigation into a breach of conduct.</p>			<p>Staff – investigated under the disciplinary procedure. Staff member is appointed to investigate.</p> <p><b>Student –</b> investigation under the student code of conduct.</p> <p>Carry out a risk assessment (precautionary measures)</p> <p><i>Limits of a University investigation</i> The investigation will be as thorough as reasonably possible, but will be more limited than a police investigation, since the University does not have access</p>		<p><b>Are there times when the University will not take action?</b></p> <p>The University has the same responsibilities towards all of its students. Sometimes there is not enough evidence available in a case for the University to take action against another student, or a member of staff.</p> <p>Where this occurs, the University will explain this to you, and try to find out whether there are other ways to support you. This may include taking steps to ensure that you do not have to come into contact with the person your complaint relates to.</p>

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					to forensics, and cannot compel witnesses to give evidence.		
<b>Cambridge University</b>  PROCEDURE ON STUDENT HARASSMENT AND SEXUAL MISCONDUCT	Sexual misconduct includes the following, whether or not within a sexual or romantic relationship, including where consent to some form of sexual activity has been given and then withdrawn, or if consent has been given on previous occasions: <ul style="list-style-type: none"> <li>• sexual intercourse or engaging in a sexual act without consent;</li> <li>• attempting to engage in sexual intercourse or engaging in a sexual act without consent;</li> <li>• sharing private sexual materials of another person without consent;</li> <li>• kissing without consent;</li> <li>• touching inappropriately through clothes without consent;</li> <li>• inappropriately showing sexual organs to another person;</li> <li>• repeatedly following another person without good reason;</li> </ul>	Applies where a student wishes to complain of the behaviour of another student.	Sexual assault and harassment adviser.  Emotional and practical support from the sexual assault and harassment advisor.  Anonymous reporting (statistical information)  Report to the police	Informal complaint procedure for student misconduct.  Formal – student disciplinary procedure – (through updated procedure)	The role of the investigator is to prepare a report, which sets out the undisputed facts of the case and any points of difference and makes recommendations based on the evidence and policies in place.  On receipt of the complaint, the panel may refer for consideration by another panel or they can consider appropriate action themselves.	No sanction listed, may refer for disciplinary.	

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	<ul style="list-style-type: none"> <li>making unwanted remarks of a sexual nature.</li> </ul>						
<p><b>Goldsmiths, University of London</b></p> <p>Policy and procedure on sexual violence, sexual harassment, stalking, domestic violence and sexual misconduct</p>	<p>The term sexual misconduct describes misuses of power usually enacted by academic, professional, contracted, and temporary staff in their relations with students (on some occasions it can also occur in relations with other staff members and between students who have unequal institutional power). Sexual misconduct can include harassment, assault, grooming, bullying, sexual invitations, comments and non-verbal communication with sexual content or overtones, creation of atmospheres of discomfort, and promised resources in exchange for sexual access. The term 'sexual harassment' captures only some of the possible abuses of power that may occur. Sexual misconduct more specifically raises issues of unequal relationships, consent, and the</p>	For staff, students and visitors.	<p><b>Students</b> Wellbeing advisers Students union advice team Campus support Links to external support services.</p> <p><b>Staff</b> Staff assistance programme Staff counsellor Trade unions Staff wellbeing</p>	<p>Methods of reporting; Online In person</p> <p>Report anonymously or report with contact details.</p> <p>Or report in person.</p> <p>Staff</p> <ul style="list-style-type: none"> <li>Your HR Contact</li> <li>Your Head of Department/Service/Manager</li> <li>Staff Counsellor</li> <li>Trade Unions</li> </ul> <p>Students</p> <ul style="list-style-type: none"> <li>Student Wellbeing Team</li> <li>Campus Support Officers</li> <li>SU Advice Team</li> <li>Senior Tutor</li> </ul> <p>Visitors</p> <ul style="list-style-type: none"> <li>Campus Security</li> <li>Complaints Team</li> </ul> <p>College has a Triage team: senior member of HR, student experience, Governance and Legal Services, Chair of the against sexual violence board.</p>	<p>Investigated through disciplinary policy / student conduct regulations</p> <p>Internal investigations focus exclusively on whether a breach of the college policy has occurred</p>	No sanctions mentions but links to other procedures are include i.e. disciplinary procedure, student code of conduct.	<p>Section in the policy on expectations.</p> <p>Disclosure and reporting. Two different definitions: A disclosure: is when someone informs another that they have experienced sexual violence, sexual harassment, stalking, domestic violence and/or sexual misconduct. This may be the only step a Reporting Party takes and it may not be clear from the beginning of a conversation that a disclosure is about to occur. Disclosures should be recorded (this can be done anonymously or with details, depending on the wishes of the person disclosing). While action will not normally be taken as a result of disclosures there may be some cases where the college has a duty of care to act, usually in cases where someone is at immediate risk of harm or under our safeguarding policy. Anyone disclosing will be kept informed if it is</p>

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	prevention of equal access to education, opportunities and career progression. Intimate relationships between staff and students are strongly discouraged as detailed in the College's personal relationships policy.			This team reviews all cases of sexual violence, harassment or misconduct that have been reported and decides appropriate action. (including suspension)			felt that action needs to be taken.  A disclosure v a report. A disclosure is when someone informs another that they have experience sexual misconduct. Action will not normally be taken, unless in cases of immediate risk. A report is when someone informs the college via the online reporting support system or directly to a member of staff working for the college and the person would like the college to do something about it. A disclosure becomes a report if the person wants the college to do something about it.
<b>Universities Australia</b>  GUIDELINES FOR UNIVERSITY RESPONSES TO SEXUAL ASSAULT AND SEXUAL HARASSMENT			The university should commit to provide support and assistance to the student, which includes, but is not limited to: • access to information about appropriate emergency health, counselling,	The difference between a disclosure v formal report  Recommend offering multiple methods of making a formal report.	In line with natural justice		CONFIDENTIALITY AND PRIVACY – Gives examples of who will be informed of the complaint and in what circumstances.  CULTURAL COMPETENCE – when English is not their first language or where their culture does not typically encourage such disclosures

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			security and accommodation providers; <ul style="list-style-type: none"> <li>• assistance to ensure understanding of the available options, including reporting to police and making a formal report to the university;</li> <li>• information about and assistance with navigating the university's formal report and misconduct investigation processes;</li> <li>• information about, and support navigating, the university's special consideration process if the student wishes to apply;</li> <li>• referral to internal and external support services; and</li> <li>• regular and timely</li> </ul>				For inclusion in policy  Policy – contain a statement from Uni Leadership that sexual assault and sexual harassment are unacceptable.  outline the scope of the policy, for example, whether it applies to university-affiliated clubs and groups;  REFLECTING THE NEEDS OF THE UNIVERSITY STUDENT POPULATION  CONTACT POINTS FOR REPORTING consider appointing a single point of contact to whom all formal reports of sexual assault or sexual harassment are made.  How to deal with reports from third parties.  Reports about third parties

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			communication about the process and its resolution				

