



## Briefing note no. 3: Precautionary measures on receiving a report of staff sexual misconduct, bullying or discrimination (August 2021)

1.1 Precautionary or interim measures refer to any measure that is reasonable for a higher education institution (HEI) to take in order to secure the safety of a reporting party during a complaints/disciplinary process, and to ensure their work/studies are not adversely affected by it. Many HEIs put in place precautionary measures while dealing with complaints of student-student sexual misconduct. These measures should not be regarded as prejudicial to the complaints process. Such measures are also needed in staff-staff or staff-student complaints and should help reporting parties to go forward with a formal complaint by reassuring them that they will be protected from at least some obvious forms of victimisation.

1.2 On receiving a disclosure or report of staff sexual misconduct, bullying or discrimination from a student or another staff member, an early step should be to consider and ask them whether any measures might help them feel safe on or off campus. The measures outlined below should be discussed, alongside any other requests the reporting party makes. These options should also be outlined wherever reporting information is given online, for example on an institution's Report and Support pages, so that students/staff know what measures can be taken following a complaint or disclosure. In some cases, a full risk assessment will also be needed, to explore and mitigate the risks of harm to the reporting party and/or other students/staff.

1.3 Consideration should be given to the formation of a Precautionary/Interim measures panel (an example describing this can be seen in [UCL's Prevention of Bullying, Harassment and Sexual Misconduct policy](#), point 9). In the absence of such a panel, discussion of these precautionary measures should take place between the reporting party, their supporter/advocate (eg union rep or sexual violence liaison officer), student services/HR, and the responding staff member's Head of Department (HoD). Anyone involved in investigation of the complaint or related decision-making should not be in contact with the reporting party, as this could or could be seen to prejudice the investigation. The responding staff member's HoD may need to be represented by someone else if they are likely to be involved in the complaint itself.

### Potential precautionary measures

**2.1 Implement a no-contact agreement.** This is a mutual agreement to protect the staff member and the reporting party from coming into contact with each other. It is voluntary on both sides, but once entered into, if it is repeatedly breached, it may be used as evidence in a disciplinary process. Points covered in such an agreement could include:

2.1.i Arranging days and times where the reporting party and/or the staff member are allowed to access certain parts of campus. Care must be taken that this is arranged fairly, rather than (for example) asking the reporting party to avoid all buildings where the staff member works. Such an arrangement needs to avoid any detriment to a student reporting party's ability to continue their studies.

2.1.ii Changing supervision and teaching arrangements. This may include changing a reporting student's seminar group.



2.1.iii Allocating an interim supervisor for postgraduate students who disclose or report misconduct from their supervisor. This may require bringing in a co-supervisor outside of the institution in order to avoid major interruption of the student's studies through not having specialist support.

2.1.iv Specifying that there is to be no social media contact between the parties; no email contact; and no direct communication of any kind.

2.1.v Requesting that supporters/colleagues/friends of the staff member should not contact the student(s) with regards to the complaint.

2.1.vi Moving the student(s) or staff member(s) to temporary offices in order to ensure that they do not see each other.

**2.2 Ensure that marking/assessment of a reporting student is not carried out by the responding staff member.** This should be the case even if marking is anonymised, as the staff member may recognise the student(s)' writing, or the student may feel nervous about their grades being affected anyway. This step builds trust with the student and lets them know that their concerns are being taken seriously.

2.3 In a situation where there are multiple complaints and/or one very serious and credible complaint, **the staff member should be removed from contact with students and/or other staff and may be suspended from work entirely for a period** (in line with ACAS guidance<sup>1</sup>).

2.4 For postgraduate students who are working on shared datasets or other intellectual resources with the responding staff member, **an agreement should be implemented** by the relevant HoD to regulate access to this data, intellectual property, and publication plans.

2.5 **There may be other requests for precautionary measures made by reporting parties.** If these are not disruptive they should be accommodated as far as possible. The measures should be tailored to the needs of the reporting student/staff member. Sometimes minor accommodations on the part of the HEI can make a difference to a reporting student/staff member, for example removing their name from a website where it appears alongside the reported staff member or removing them from a mailing list where they will hear about the staff member's activities. These are also steps that can help reporting parties to feel that they have some control over the process, an important principle in survivor-centred institutional responses to sexual misconduct.

2.6 **The reporting party/ies and responding staff member need to be clear as to who they should notify about breaches of this agreement,** and who is responsible for taking action if breaches occur. Action should include the possibility of suspending the responding staff member if they break the agreement.

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<sup>1</sup> ACAS Code of Practice on disciplinary and grievance procedures (2015, March 11) <https://www.acas.org.uk/acas-code-of-practice-for-disciplinary-and-grievance-procedures/html> Decision-making around suspensions is discussed in Professor Nicole Westmarland's 2017 [review](https://www.sussex.ac.uk/webteam/gateway/file.php?name=westmarland-review.pdf&site=303) <https://www.sussex.ac.uk/webteam/gateway/file.php?name=westmarland-review.pdf&site=303> [accessed 13 August 2021] as well as the most recent [Universities UK report on the Changing the Culture implementation](https://www.universitiesuk.ac.uk/policy-and-analysis/reports/Pages/changing-the-culture-two-years-on.aspx) <https://www.universitiesuk.ac.uk/policy-and-analysis/reports/Pages/changing-the-culture-two-years-on.aspx> [accessed 13 August 2021]



### 3 Confidentiality measures

3.1 Alongside the precautionary measures outlined above, confidentiality measures need to be discussed explicitly with the reporting and responding parties at the outset of a complaints process and/or on receiving a disclosure.

3.2 The precise extent of confidentiality required during the investigation should be discussed with the student reporting party(s) and responding party staff member. This discussion should also clarify how breaches of confidentiality will be dealt with. A formal confidentiality agreement is one way of doing this, but care should be taken that this is formulated in dialogue with the reporting party<sup>2</sup>. The terms of the confidentiality agreement should be provided to the investigator, and any student(s) or staff member(s) who have breached confidentiality should be contacted to remind them of their obligations.

3.3 It should also be explained that after the investigation is closed, the HEI does not request any lasting confidentiality about the reporting party's allegations. Anyone is free to speak about their own experience, subject to the usual constraints (defamation, harassment).

3.4 Blanket confidentiality requirements should not be imposed. During an investigation, reporting parties should still be allowed to talk about what happened to them as long as they do not give detail about the incident or name the reported party. It is also good practice to provide information for friends of the reporting party around what to do/not do, including guidance around confidentiality and social media.

3.5 An agreement should be made about what communication is appropriate between the reporting party and other potential reporting parties and witnesses. While the reporting party may feel that their coming forward would encourage others to come forward, any discussion between reporting parties risks contaminating evidence or charges of collusions. Instead of asking either party to seek out witnesses, each party should forward a list of potential witnesses or other victims/survivors to the investigator.

3.6 Where possible, any existing support that is in place for the student(s) or staff member should continue so that support is not disrupted. Financial support may be needed to enable reporting party(s) to travel to meetings or to compensate them for loss of work days when they are attending meetings related to their case.

3.7 Student reporting parties may wish to continue getting support from the member of staff that they have disclosed to. Wherever possible this should be enabled. This member of staff may then also be subject to the confidentiality requirements of the investigation. However, support should primarily be provided by a staff member with specialist expertise around sexual and gender-based violence.

3.8 Support for the reported staff member should be provided.

### 4. Notification of funders where applicable

4.1 Some funders, most notably the Wellcome Trust and the British Heart Foundation, require that grant holding organisations notify them when an investigation is launched relating to bullying or harassment by a PI.

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<sup>2</sup> Sharon Persaud QC's review of Warwick's student disciplinary and appeals processes suggested that during an investigation, confidentiality agreements could be signed by all parties (2019: 1). These confidentiality agreements must not be given in exchange for any kind of redress or settlement and both parties must be given equal access to legal advice.

[https://warwick.ac.uk/newsandevents/independent\\_external\\_review/review/independent\\_external\\_review\\_10\\_july\\_2019.pdf](https://warwick.ac.uk/newsandevents/independent_external_review/review/independent_external_review_10_july_2019.pdf) [accessed 21 August 2020]