

# Sexual Misconduct Policy

**Created:** June 2020

**Author:** Catherine Fenn

**Originating Directorate:** Student and Academic Services

**Approved by:** Academic Board

**Date of approval:** 1 July 2022

**Effective date:** September 2022

**Due for review:** June 2023

## **1. Introduction**

- 1.1 De Montfort University (the University) recognises that incidents of Sexual Misconduct as defined in the General Regulations & Policies Affecting Students, Chapter 2, paragraph 5.3.4, occur within our society and this is reflected within the University community.
- 1.2 The University commits to:
- Provide support and recognition to Students who report or disclose incidents of alleged Sexual Misconduct to University Staff.
  - Provide a structure/framework in which allegations will be investigated, if wanted by the reporting Student (or necessary in cases of Safeguarding) and guidance will be given on options available both internally and externally.
  - Raise awareness of appropriate behaviour by which the University expects our students to conduct themselves.
  - Train staff involved in receiving reports and progressing investigations into allegations internally.
  - Train staff who are involved in decision-making procedures affecting the students concerned.
  - Manage investigations in line with the General Regulations affecting students, in accordance with UK GDPR and as agreed by our Data Protection Impact Assessment.
  - Apply sensitivity when dealing with all parties involved in a case.

## **2. Scope**

- 2.1 This policy outlines how the University will support students who have disclosed or reported incidents of a sexual nature that contravene the General Regulations & Procedures Affecting Students, Chapter 2 paragraph 5.3.4. (See Annex 1 & 2 of this policy for types of behaviour and glossary of terms) or the Code of Conduct for Staff and Governors.
- 2.2 This policy applies to:
- All Students of the University who are governed by the General Regulations of the University.
  - This Policy relates to all incidents of Sexual Misconduct as defined in General Regulations & Procedures Affecting Students Chapter 2 Paragraph 5.3.4.
  - Under this Policy all students who have experienced an incident of Sexual Misconduct will have equality of access to support regardless of when the incident occurred.
  - Disclosures and reports made under this Policy are not limited to incidents that are alleged to have occurred on University premises.
  - When the person who is alleged to have committed an act of the Sexual Misconduct (the Responding Party) is a Student, the University will conduct a risk assessment to ensure the continued safety of reporting student and the wider University community.
  - When the Responding Party is a member of Staff, the University's HR department will lead any further investigations, whilst the Student who has made the allegation (the Reporting Student) will be supported in accordance with this Policy.
  - Allegations of Sexual Misconduct which appear to amount to criminal offences, as

judged by the person receiving the report, will not be pursued until an outcome from the police investigation is reached. Once this is completed, the University may then process the matter through internal University disciplinary procedures.

### 3. Parameters

- 3.1 **Alcohol and/or Drug Use:** Intoxication is never a defence for committing an act of Sexual Misconduct and/or Sexual Violence, or for failing to obtain consent. If there is any doubt as to the level or extent of one's own or the other individual's incapacitation.
- 3.2 **Consent:** Receiving consent once does not mean consent is given subsequent action.
- 3.3 **Equality and Diversity** Sexual Misconduct and Violence can be experienced by any individual, regardless of sex, gender, sexual orientation, relationship status, age, disability, faith, ethnicity, nationality and economic status. Women, members of the LGBT+ community, and individuals with disabilities are disproportionately affected by experiences of sexual violence. Experiences of sexual misconduct and violence may intersect with other forms of harassment and discrimination. See the University Dignity & Respect Policy: General Regulations Chapter 2 Annex 7.

### 4. Disclosure

- 4.1 **Disclosure** means an individual choosing to tell anyone who is part of the University community about an incident of Sexual Misconduct. A disclosure will be supported by the University. Disclosures may also be made to the specialist University service; The Mandala Project. More information and contact details can be found here: <https://www.dmu.ac.uk/current-students/student-support/wellbeing-disability/TheMandalaProject-project/index.aspx>
- 4.2 A disclosure is confidential and will only be shared with the express permission of the disclosing student. A disclosure may remain the first and last point of contact with the University. A student can progress a disclosure to a report at any time.
- 4.3 By exception the University may refer the case to the Police if the risk is deemed to warrant it, e.g. a safeguarding concern
- 4.4 The Mandala Project will offer support and can signpost to external agencies if required. This can include University welfare services ([https:// students/student-support/wellbeing-disability/index.aspx](https://students/student-support/wellbeing-disability/index.aspx)), external services such as JuniperLodge/UAVA ([https:// sexual-assault/support-for-victims-of-rape-and-sexual-assault/](https://sexual-assault/support-for-victims-of-rape-and-sexual-assault/)).
- 4.5 The Mandala Project will discuss a bespoke plan unique to the Student's circumstances. The Student Union can also offer guidance.
- 4.6 Having disclosed an incident, the student may wish to report the case for further investigation. This will be referred to the University Security Team.
- 4.7 The University has a duty to protect its Staff and Students, and there may be circumstances where the University considers that a matter which is raised informally must be pursued. The University reserves the right to take such action as it considers appropriate in relation to any matter raised, where it considers that it is in the interests of the University, its staff or students to do so.

- 4.8 **A Report** is the official sharing of information with a Staff member of the University regarding an incident of Sexual Misconduct experienced by that individual, for the purposes of initiating an investigation process by the University.
- 4.9 If an allegation is reported to the police, the police investigation will take precedence over the University's investigation process. The University cannot prejudice a criminal investigation and cannot run their own investigations concurrently. In this instance an internal risk assessment will be undertaken by the University Security Team to determine whether intermediate action is required by the University.
- 4.10 If a Student chooses not to report to the police, the University may investigate any breach of University regulations only (Chapter 2, General Regulations & Procedures Affecting Students). This investigation will be carried out by trained specialist investigators from the Security Team who will create a case file. The University is not in a position to carry out forensic investigations and will rely on evidence that is presented. An early report may assist investigators to gather timely and relevant evidence.
- 4.11 The University can only investigate reports on the Balance of Probabilities; i.e. that on the basis of the evidence available, it is more likely that something occurred than not.

## **5. Procedure**

- 5.1 Any Student that has been accused of Sexual Misconduct as defined in the General Regulations Chapter 2, paragraph 5.3.4 will be required to cooperate, in accordance with the agreement under the Student Contract and in line with the Regulations.
- 5.2 Support will be offered to any student who reports or discloses incidents of alleged Sexual Misconduct to the University, through The Mandala Project. Responders from the Project and the Academic Support Office can provide guidance regarding the procedure of an investigation to a reporting student.
- 5.3 Support may be offered to any student who is alleged to have breached the Disciplinary Code. The Students' Union is able to offer advice to all registered students.
- 5.4 Sensitivity will be applied to all parties involved in a case.
- 5.5 On completion of the investigation, the Responding Student may be subject to disciplinary action which will be heard by a University Discipline Committee (General Regulations & Procedures Affecting Students Chapter 2 Paragraph 17).
- 5.6 The procedure for investigating a report of Sexual Misconduct of any kind is the Disciplinary Procedure. Sexual Misconduct allegations will **not** be investigated under the Student Complaint Procedure. The University follows the disciplinary procedure in cases of Sexual Misconduct and harassment. The disciplinary pathway is attached to this policy at Annex 4.

## **6. Confidentiality**

- 6.1 Confidentiality will be maintained, where possible, throughout the disclosure, reporting and investigative processes in recognition of the sensitive nature of Sexual Misconduct and Violence matters. As such, information will usually only be shared with relevant individuals/entities (who may be internal or external to the University, e.g. internal counsellors, witnesses, external experts from specialist agencies like Rape Crisis, Sexual Assault Referral Centres or the Police) with the agreement of the Reporting Party.
- 6.2 The University reserves the right, and may be under an obligation, to share information in exceptional circumstances where such disclosure is necessary to protect any individual or the wider University community from harm or to prevent a crime from taking place.
- 6.3 All individuals involved in any process under this Policy must keep information that is disclosed to them as part of the process confidential.
- 6.4 Any unauthorised disclosure of confidential information will be considered a Policy violation and will be addressed accordingly.
- 6.5 Throughout all proceedings, the University will act in compliance with the General Data Protection Regulation (GDPR) and Data Protection Act 2018.

## **7. Timescales**

- 7.1 The University endeavours to investigate all incidents of misconduct within a timely manner.
- 7.2 It must be noted that a number of factors can impact the speed at which investigations can be conducted. These include police involvement, judicial procedures and availability of relevant witnesses or evidence.
- 7.3 The University has recommended timescales for processing major and minor disciplinary cases which can be found in the General Regulations & Procedures Affecting Students, Chapter 2 Annex 2.
- 7.4 Reporting Students and Reported Students will be kept informed on the progress of their case.

## **8. Outcomes**

- 8.1 Once an internal investigation is complete a report will be made to the Executive Director of Student and Academic Services, and the Student Appeals & Conduct Officer for consideration of any further action at Minor or Major disciplinary levels.
- 8.2 Authorised Officers and the Disciplinary Committee have a mandate to determine whether a Reported Student has breached the University Regulations and Code of Conduct, based on the evidence provided and the individual merits of each case.
- 8.3 The Authorised Officers and the Disciplinary Committee can only make a judgement on the balance of probabilities (see Annex 2) and will issue an appropriate penalty accordingly.

- 8.4 Once a case has been completed through the internal University Disciplinary Procedure the Reporting Student will be informed of its conclusion, and where appropriate, any further action taken by the University.
- 8.5 The University's decision regarding disciplinary action is final and no further action may be taken by the Reporting Student within the University's procedures.
- 8.6 Any Student reporting an incident involving sexual misconduct will be given support to enable their continued presence at the University and continue their learning.

## **9. Training**

- 9.1 Inquiries into reports of Sexual Misconduct require specialist training to ensure a robust, fair and impartial investigation. Reports of Sexual Misconduct by students, that require further investigation, will be conducted by Staff from the University Security team who have received Trauma Informed Training.
- 9.2 Inquiries into cases brought against members of Staff will be managed by the University HR department.
- 9.3 The University is committed to ensuring all panel members involved in cases of Sexual Misconduct receive the appropriate training and support.
- 9.4 The University provides all Staff with guidance on how to manage cases of disclosure through mandatory Safe and Supported training and the Healthy DMU Staff Toolkit.

## **10. Types of Reporting**

### **10.1 Anonymous Reporting**

The University cannot respond to anonymous reports. The University has made provision for anonymous disclosures through its anonymous reporting webform, but these are used for soft intelligence only. There will not be a free text option. The University does, however, recognise that students may wish to raise concerns confidentially. Any disclosure will be treated in the strictest confidence

- By knowing the identity of the complainant, the University will be able to implement its investigatory procedures to its fullest extent. It must be borne in mind that: The person or department which is the subject of a complaint may recognise the complainant because of the issues or allegations raised.
- No student will suffer reprisals for making a complaint in good faith.

### **10.2 Reports Made Without Basis and With Intent to Cause Harm**

The University reserves the right to terminate consideration of a report if it considers it to be frivolous, malicious or vexatious. In such instances the report will be referred to the Student Appeals and Conduct Officer (or their designated nominee). The Officer will write to the reporting Student explaining why they are terminating consideration of the matter. In such circumstances the

Student Appeals and Conduct Officer (or their designated nominee)'s decision is final and not subject to review by any other University body.

10.3 Should the Student Appeals and Conduct Officer (or their designated nominee) determine that a report is malicious or vexatious, the complaint will be closed, and appropriate disciplinary action may be taken against the complainant under the University's General Regulations and Procedures Affecting Students, Chapter 2, the link to which can be found on the following webpage:

<https://www.dmu.ac.uk/current-students/student-support/exams-deferrals-regulations-policies/studentregulations-and-policies/index.aspx>

10.4 Students are reminded of the expectation to abide by the Social Media Policy.

<https://www.dmu.ac.uk/documents/current-students/student-support/student-social-media-policy-2021-22.pdf>.

## **11. Review**

11.1 The university will:

- Ensure this policy, and any changes, is accessible to staff and students
- Annually review and update this policy, where appropriate, and any other associated policy and guidelines and publish details of any changes.

### **Accompanying Documents to this Policy**

Annex 1	Types of Behaviour
Annex 2	Glossary
Annex 3	Disclosure Process Pathway
Annex 4	Disciplinary Pathway
Annex 5	Reported Student Pathway

## Annex 1 Types of Behaviour

The Sexual Misconduct Policy makes reference to terms that may not be familiar to the reader. Below are some explanations of terms used in the Policy and the General Regulations and Procedure affecting Students (GRPaS)

**Sexual Misconduct** is any unwanted conduct of a sexual nature which occurred in person or, by letter, telephone, text, email or any other electronic and/or social media. It includes, but is not limited to, the following behaviour:

- Engaging, or attempting to engage in a sexual act with another individual without consent
- Sexually touching another person without their consent e.g. kissing
- Conduct of a sexual nature which creates (or could create) an intimidating, hostile, degrading, humiliating, or offensive environment for others including making unwanted remarks of a sexual nature (this could take place in public spaces or as part of a group);
- showing body parts to another, in person or electronically in a sexually inappropriate way;
- Recording and/or sharing intimate images or recordings of another person without their consent; and
- Arranging or participating in events which may reasonably be assumed to cause degradation and humiliation, for example inappropriately themed social events or initiations.
- Activities where consent has been given however the level of sexual violence used exceeds the level of reasonableness of the implied consent e.g. BDSM. Consent can be withdrawn and must be sought on every occasion.

### **Sexual harassment**

Sexual harassment in the context of this Policy is defined as behaviour which makes another person feel distressed, intimidated or offended and, the behaviour is of a sexual nature. It may include for instance behaviour that does not involve physical contact e.g. inappropriate text messaging. If contact or violence is involved, the offence may become sexual assault. A factor in considering whether behaviour amounts to sexual harassment is whether the person towards whom the behaviour is directed has actively consented to it, or if they have asked the person engaging in the behaviour to stop doing it.

- Sexual comments or jokes
- Displaying pictures, photos or drawings of a sexual nature
- Sending emails or other forms of electronic communication with sexual content
- Physical behaviour (but which stops short of contact), including unwelcome sexual advances and stalking
- Continued advances or invitations to social activities when the invitee has made it clear the advances or invitations are not welcome.

Examples of **Domestic abuse and coercive or controlling behaviour** include incidents of controlling, coercive, threatening behaviour, violence or abuse between individuals

who are, or have been, intimate partners, in a close relationship or family members. Stalking may be conducted by an individual unknown to the Student. This can include, but is not limited to, psychological, physical, sexual, financial and/or emotional abuse.

**Examples of Complicity** includes any act by a person that knowingly assists, aid and abets, promotes, or encourages any form of misconduct including Sexual Misconduct and Violence by another individual.

**Examples of Retaliation** may constitute any words or behaviour including intimidation, threats, omissions or coercion, made in response to disclosures or reports made under this Policy. This includes the Responding Party and the Reporting Party, as well as witnesses, friends, or relatives.

The GRPaS contains comprehensive details of behaviours that are unacceptable in relation to this policy and processes to be followed.

Examples of **Vexatious reporting** involves the creation of unwarranted or fictitious reports made under this or any other Policy, or a continuous refusal to accept any reasonable decisions arising from the application of the accompanying procedures to this Policy.

**Malicious reporting** occurs when an individual makes allegations of Sexual Misconduct and Violence that the individual knows to lack a basis in fact.

## Annex 2 Glossary

**Disclosure** involves an individual choosing to tell anyone who is part of the University community about their experience of Sexual Misconduct and Violence (different from Report).

**Report** is the formal sharing of information with a staff member of the University regarding an incident of Sexual Misconduct or Sexual Violence experienced by that individual for the purposes of initiating the investigation process by the University, as set out in this Policy and the accompanying procedures (different from Disclosure).

**Reporting Party** is the person(s) who has been the subject of the alleged incident of Sexual Misconduct or Sexual Violence or other policy breach.

**Reported Party** is the person(s) whose behaviour it is alleged amounted to an incident of Sexual Misconduct or Sexual Violence or other policy breach.

**Active Consent** is the agreement by choice where the individual has both the **freedom** and **capacity** to make that choice. Consent cannot be assumed on the basis of a previous sexual encounter or previously given consent, or from the absence of complaint, and each new sexual act requires a re-confirmation of consent as the foundation of a healthy and respectful sexual relationship. Consent may be withdrawn at any time before or during a sexual act.

**Freedom to consent:** For consent to be present, the individual has to freely engage in a sexual act. Consent cannot be inferred from a lack of verbal or physical resistance. Consent is not present when submission by an unwilling participant results from coercion, force, threat, intimidation or the exploitation of power.

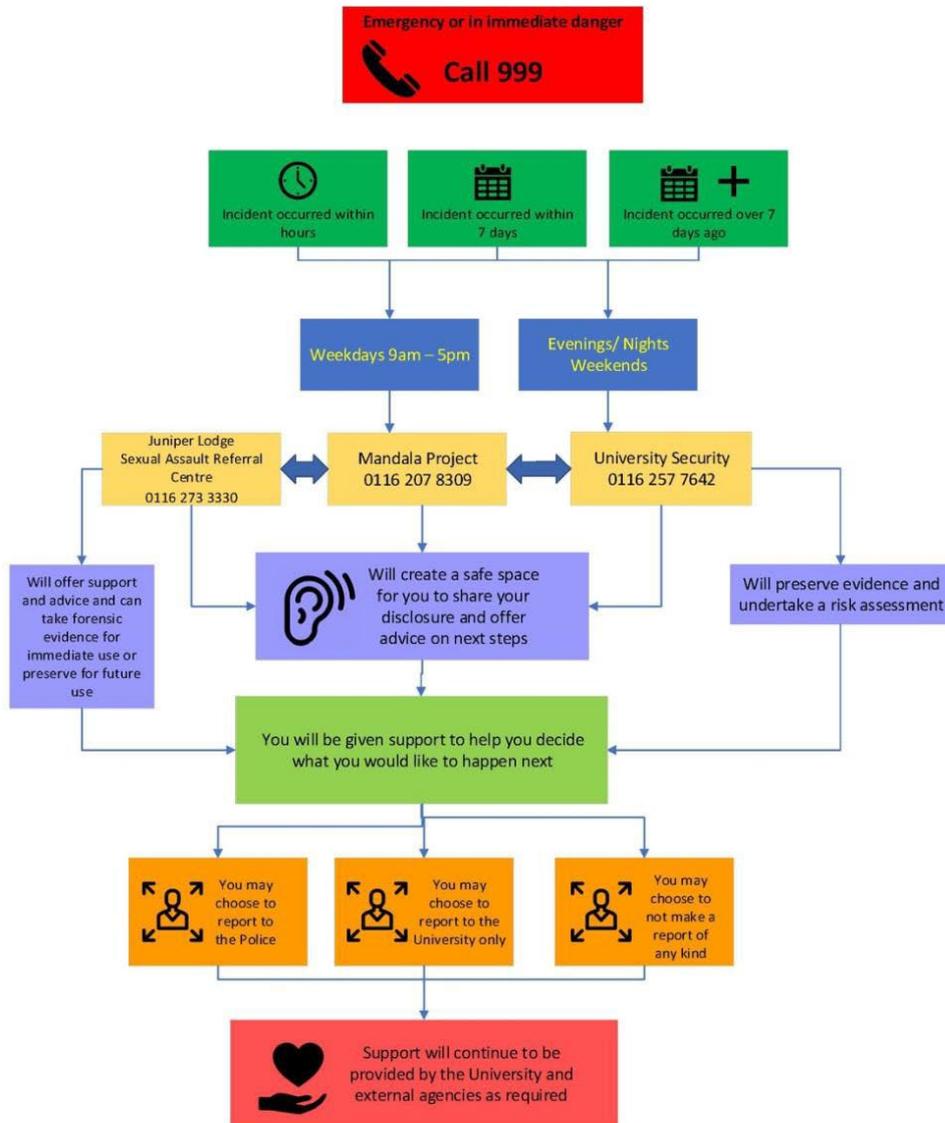
**Coercion or Force** includes any physical or emotional harm or threat of physical or emotional harm which would reasonably place an individual in fear of immediate or future harm, with the result that the individual is compelled to engage in a sexual act.

**Capacity to consent:** Free consent cannot be given if the individual does not have the capacity to give consent. An individual is incapacitated when asleep, unconscious, semi-conscious, or in a state of intermittent consciousness, or any other state of unawareness that a sexual act may be occurring. Incapacitation may occur on account of a mental or developmental disability, or as the result of alcohol or drug use.

**Balance of Probabilities 51/49%**

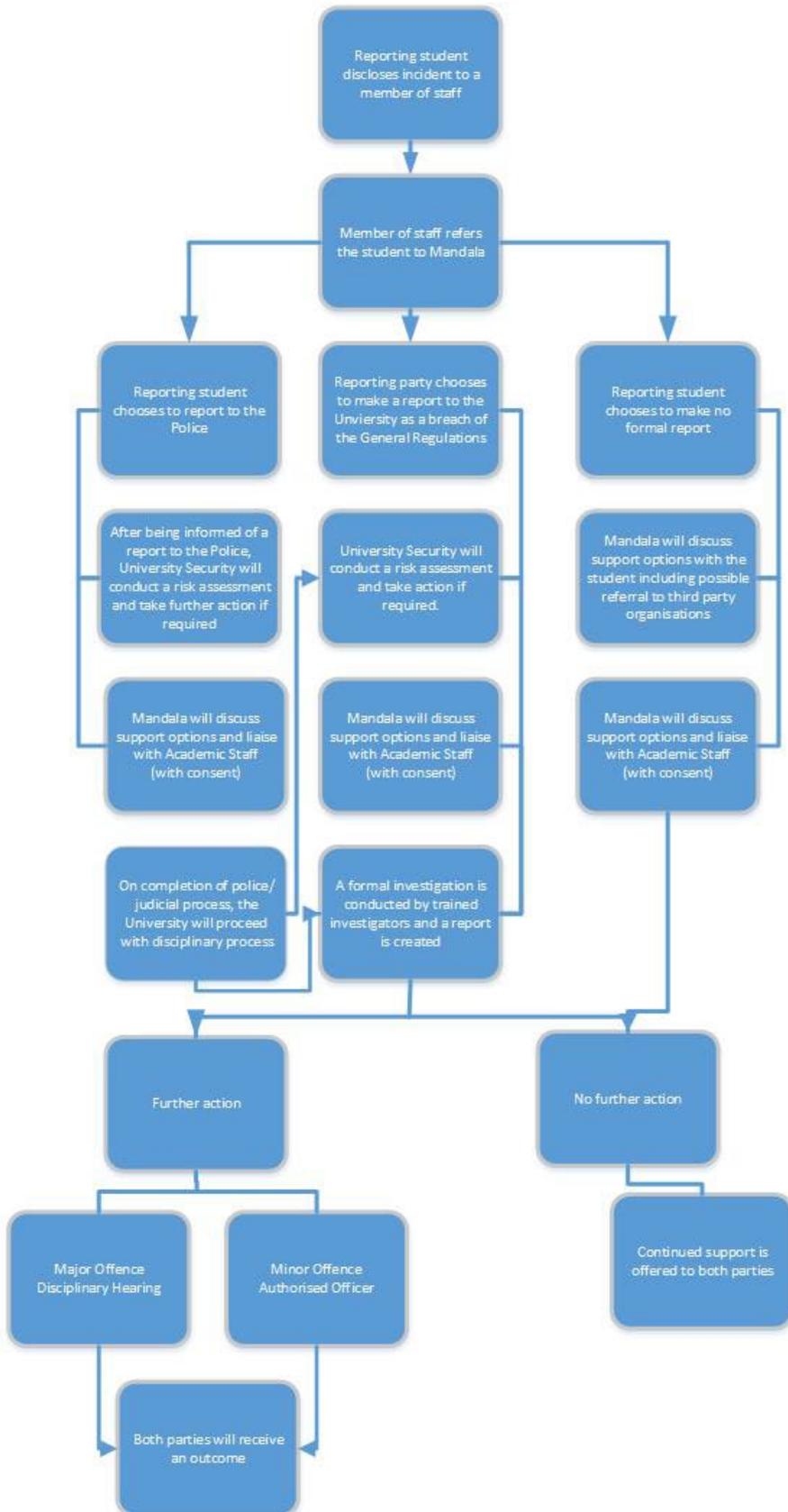
“...The standard of proof is the balance of probabilities, i.e. that on the basis of the evidence available, then it is more likely that the alleged breach occurred than not.”

## Annex 3 Student Disclosure Pathway



- No pressure will be made for you to report either externally or internally.
- Be aware that the sooner a report is made, there is a greater opportunity to gather and preserve evidence.
- Support will be offered whether you choose to report, or just disclose.
- If you are unsure how to proceed, remember forensic evidence can be gathered at Juniper Lodge within a time period and can be preserved to be used at a later date.

## Annex 4 Disciplinary Pathway



## Annex 5 Reported Student Pathway

