

Policy on Student Harassment and Sexual or Physical Misconduct

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Introduction

This section introduces the policy and outlines the University's beliefs, values and position in relation to harassment.

1. Values and Purpose

- 1.1. Everyone at UEA should be treated equally with dignity and respect and all members of the University community share a responsibility to create and maintain a safe, inclusive and welcoming environment on campus.
- 1.2. The University is wholly committed to implementing the recommendations of the Universities UK 'Changing the Culture' 2016 Report¹ and supports, in partnership with UEA Students' Union, the Never OK campaign.²
- 1.3. The purpose of this policy is to outline the University's understanding and position in relation to harassment in all its forms, sexual and physical misconduct, criminal offences and Hate Crime.

2. Policy Statement on Harassment and Sexual or Physical Misconduct

- 2.1. The University of East Anglia is committed to maintaining a working, learning, living, and social environment that is free from any form of harassment and sexual or physical misconduct in whatever form this may take. Harassment and sexual or physical misconduct adversely affects the working, learning, living, and social conditions of University students and staff and can induce anxiety, fear or poor attendance on the part of the person who feels harassed. Harassment and sexual or physical misconduct is unacceptable and any incident of harassment and sexual or physical misconduct will be regarded very seriously.
- 2.2. All members of the University community have a responsibility for helping to ensure that individuals do not suffer any form of harassment and sexual or physical misconduct and that they are encouraged and supported in any legitimate complaint.
- 2.3. All members are expected to promote positive attitudes in all areas of equality and to recognise the rights and responsibilities explicit in this policy and other key policies.
- 2.4. The University recognises that the process of 'Changing the Culture' and embedding within the wider University community the values and standards articulated by this policy is part an ongoing process. The University will work in partnership with the Students' Union and other stakeholders to actively seek to enhance and improve this policy and its provisions.
- 2.5. Harassment and sexual or physical misconduct could constitute a breach of the University's General Regulations for Students and may be grounds for disciplinary action including suspension and exclusion from the University.

¹ 'Changing the Culture: Report of the Universities UK Taskforce examining violence against women, harassment and hate crime affecting university students', Universities UK [http://www.universitiesuk.ac.uk/policy-and-analysis/reports/Documents/2016/changing-the-culture.pdf].

² 'Never OK', UEA Students' Union [https://www.uea.su/campaigns/welfare/neverok, accessed 1 November 2017] and 'Never OK', University of East Anglia [https://portal.uea.ac.uk/neverok, accessed 1 November 2017].

3. Legal Framework

- 3.1. The University has a legal duty – called the Public Sector Equality Duty – under the Equality Act 2010 to have a due regard for the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Equality Act 2010.³ This policy and accompanying procedures aim to explain how the University understands, and seeks to implement, this legal duty.
- 3.2. The policy and accompanying procedures have been informed by the Office of the Independent Adjudicator's (OIA) guidance on Good Practice and Pinsent Masons' guidance for HEIs on handling alleged misconduct which may constitute a criminal offence.
- 3.3. In order to fully and coherently implement the provisions of this policy (particularly in relation to investigation and the implementation of safeguarding measures) the University and Students' Union (and other stakeholders as necessary) will agree a suitable information-sharing agreement in accordance with both the restrictions and provisions of the General Data Protection Regulation 2018.

4. Policy Aims

- 4.1. The University aims to:
 - (a) promote a positive environment in which all members of the UEA community are treated fairly and with respect;
 - (b) take a zero-tolerance approach to all incidents of harassment and sexual or physical misconduct;
 - (c) ensure all members of the UEA community understand their responsibilities in helping to ensure that individuals do not suffer any form of harassment and sexual or physical misconduct;
 - (d) provide a framework of support for staff and students and for all parties involved in any complaints or allegations;
 - (e) provide a mechanism for the resolving of disputes, whether informally or within the context of the University's disciplinary regulations.

5. Scope

- 5.1. This policy applies to UEA students registered on any course at the University. Students on placement, fieldtrips or study abroad, including overseas placement remain within the University's duty of care and are governed by all University legislation, including this policy.
- 5.2. Organisations that operate or deliver any activity on behalf of the University or on University-owned premises are expected to uphold the standards, or similar standards, outlined in this policy.
- 5.3. Separate policies and procedures exist for concerns relating to harassment and sexual or physical misconduct from staff members^{3.1}. Where the concern involves both staff and students the matter may be investigated jointly with involvement from Human Resources

³ The Equality Act 2010, part 11, ch. 1, s.149

[<http://www.legislation.gov.uk/ukpga/2010/15/part/11/chapter/1>, accessed 10 October 2017].

^{3.1} UEA HRD Disciplinary [<https://www.uea.ac.uk/hr/employee-information/policies/disciplinary>].

and the Student Support Service according to relevant University regulations, policies and procedures.

- 5.4. The University will seek to protect and assist student from harassment from third parties (i.e. individuals over whom the University does not have direct control, for example, visitors, contractors, suppliers or people known to the student but is not a University member) and will undertake safeguarding steps as necessary and appropriate and investigate concerns or allegations where possible or appropriate.

6. Harassment from a position of trust

- 6.1. Harassment can arise between people of unequal status, whereby a person in a position of authority harasses a person in a more junior position. The University values good professional relationships between staff and students. This is seen to be especially important where staff have some specific academic, other professional or institutional responsibility for students. Any act of harassment will be regarded by the University as particularly serious if it involves the abuse of a position of authority or trust, for example, where there are:
 - (a) explicit or implicit promises of rewards for compliance that are a misuse of institutional position (e.g. higher assessment marks for a student);
 - (b) explicit or implicit threats of penalties for non-compliance or complaint that are a misuse of institutional position (e.g. unreasonable refusal to provide appropriate support/advice/references or resources).
- 6.2. The University routinely has a small number of students who are under the age of 18. Sections 16-24 of the *Sexual Offences Act 2003* provides a criminal offence of abuse of position of trust where a person engages in sexual activity with an under-18 whilst holding a position of trust over the under-18 (see also section 28 below).

7. Freedom of Expression and Academic Debate

- 7.1. The Education (No.2) Act 1986 places a duty on the University to ensure that freedom of speech is secured for students, staff and visitors. Freedom of Expression is a fundamental right protected under the Human Rights Act 1998 by Article 10 of the European Convention on Human Rights and is a fundamental right under English common law.
- 7.2. Vigorous speech and comment, and the sharing of different views – some of which may shock, disturb or offend the deeply-held beliefs of others – should be expected in a Higher Education environment. However, freedom of expression does not protect statements that discriminate against or harass, or incite violence or hatred against, other people or groups of people.
- 7.3. The boundary between the expression of intolerant or offensive views and hate speech is not always easy to draw and where a complaint is made which may relate to speech and expression the University may draw upon guidance from the Equality and Human Rights Commission, Norfolk Constabulary or seek legal advice.⁴

⁴ 'Freedom of Expression', Equality and Human Rights Commission [https://www.equalityhumanrights.com/en/advice-and-guidance/freedom-expression accessed on 31 January 2018].

8. Implementation of Policy

- 8.1. The Student Support Service has responsibility for ensuring this policy and accompanying procedures are implemented. Any student wishing to raise a formal complaint under this policy is advised to speak to a Student Support Adviser in the Student Support Service. Other sources of support and advice are outlined later in this document.
- 8.2. The University recognises that students may undertake other duties and roles within the University (such as paid employment or other casual work) and that staff may undertake courses of study (such as the MA in Higher Education Practice) therefore careful consideration should be made on a case-by-case basis when implementing the provisions of this policy:
- as to the most appropriate and effective reporting and investigation routes, which are likely to differ depending on the context of the alleged misconduct and the nature of the relationship between the parties involved;
 - for the need to avoid multiple investigations relating to the same (or substantially similar) allegations, charges or evidence;
 - for the need to give due consideration to the circumstances of the matter and the steps that may have already been taken.

University definition of harassment

This section states what the University defines as harassment.

9. University Definition of Harassment

9.1. The University applies the following definitions of harassment:

- A person (X) harasses another person (Y) if X engages in unwanted conduct and the conduct has the **purpose or effect** of violating Y's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Y;
- A person (X) harasses another person (Y) if X treats Y less favorably because Y either rejected, or submitted to, unwanted conduct (either from X or another person) and the conduct has the **purpose or effect** of violating Y's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Y;

The two above definitions relate to the standard definitions of harassment created by the Equality Act 2010. The Act is described in more detail in the sections below.

- A person (X) harasses another person (Y) if X engages in repeated unwanted conduct on at least two occasions that has the **purpose or effect** of making Y feel alarmed, threatened, scared or distressed.

This definition relates to harassment under the auspices of The Protection from Harassment Act 1997. The Act is described in more detail in the sections below.

9.2. Whilst the perceptions of Y are an important factor, whether it is reasonable to regard something as harassment is not for the reporting party to decide, but is an objective test.⁵

9.3. In deciding whether the unwanted conduct has the **effect** referred to in s.9.1 above, each of the following must be taken into account:

- (a) the perception of Y;
- (b) the other circumstances of the case;
- (c) whether it is reasonable for the conduct to have resulted in that effect.

9.4. In applying the definitions outlined in s.9.1 above:

- (a) 'unwanted' includes 'unwelcome' and 'uninvited';
- (b) the unwanted conduct need not necessarily relate to a protected characteristic as defined by the Equality Act 2010;
- (c) the unwanted conduct can be of either a non-sexual or sexual nature;
- (d) unwanted conduct of a sexual nature constitutes **sexual misconduct**;
- (e) unwanted conduct of a non-sexual physical nature constitutes **physical misconduct**.

⁵ Public Bill Committee, 18th June 2009, col. 319-320
[<http://www.publications.parliament.uk/pa/cm200809/cmpublic/equality/090618/pm/90618s01.htm>, accessed 1 March 2012].

- 9.5. In considering cases of sexual and physical misconduct the University's position is that no person has the right to make physical contact with another person and can do so only if the person has consented.
- 9.6. In considering cases of sexual misconduct:
- (a) the burden of proof lay with the alleged perpetrator to demonstrate on the balance of probabilities that the reporting party had consented to the sexual conduct;
 - (b) in deciding whether the conduct was unwanted it should be determined how the alleged perpetrator had satisfied their mind that the reporting party had given consent;
 - (c) consent in the context of sexual relations can be either actual or apparent but not presumed; a person cannot be 'reasonably mistaken' in their belief they had consent;
 - (d) if it cannot be established that a reasonable person would have believed in the circumstances that consent had been obtained then the behaviour should be considered unwanted.
- 9.7. Whilst differences of attitude, background or culture and the misinterpretation of social signals may mean that what is perceived as harassment by one person may not seem so to another person, this does not necessarily make the conduct acceptable. Harassment may be deemed to have occurred even if offence is not intended.

Types of harassment

This section describes the sorts of behaviours that may constitute harassment, how the behaviours can be described, and how harassment may be commonly understood or enshrined in law.

10. Types of Harassment

- 10.1. Harassing behaviour can come in many different forms which are explored in more detail below:
- (a) **Harassment related to identity:** where the behaviour relates to the 'protected characteristics' in anti-discrimination legislation as defined by the Equality Act 2010 (see Section x below).
 - (b) **Sexual Misconduct:** where the behaviour is of a sexual nature, as defined by Section 26 (2) of the Equality Act 2010. Sexual harassment or unwanted behaviour of a sexual nature can also constitute a criminal offence (see section x below).
 - (c) **Hate Crime:** Harassment on the grounds of disability, race or ethnicity, religion or belief, sexual orientation or transgender identity can also constitute a hate incident or hate crime (see section x below).
 - (d) **Bullying and Abuse:** where the behaviour has the same purpose or effect as harassment related to identity but which has no strict legal definition;
 - (e) **Abuse in relationships:** incidents of controlling, coercive threatening behaviour, violence or abuse between intimate partners or family members;
 - (f) **Online-Bullying:** where the behaviour is assisted by information communication technology, the legal implications of which are varied, but may be legislated against in

the Malicious Communications Act 1988, the Communications Act 2003, or the Criminal Justice and Courts Act 2015 (in the case of ‘revenge porn’).⁶

- (g) **Physical Misconduct:** where behaviour towards another has become physical.
- (h) **Harassment by course of conduct, and stalking:** where the behaviour would amount to a ‘course of conduct’ causing alarm or distress on at least two occasions, as defined by the Protection from Harassment Act 1997.

11. Harassment Related to Identity

11.1. The Equality Act 2010 introduced a standard definition of harassment which is applied by the University as described in s.9.1 above. The Act specifically prohibits harassment and discrimination in relation to ‘protected characteristics’. The protected characteristics are:

(a) Age

Age related harassment refers to unwanted behaviour relating to a person’s age or perceived age. **Examples could include:**

- being patronised as being ‘too young’ to understand or do something;
- being isolated or excluded from a seminar group because you’re ‘too old’.

(b) Disability

Disability related harassment refers to unwanted behaviour related to disability, impairment or additional need, and can include perceived disability. **Examples could include:**

- giving demeaning uninvited or un-necessary assistance;
- patronising or ‘talking down’ to someone with a disability.

(c) Gender Reassignment;

Harassment on the grounds of gender reassignment refers to unwanted behaviour related to transgender, transsexual or transvestite identities. ‘Trans’ is an inclusive term used to describe people who: have undergone, are undergoing or will undergo gender transition (commonly called a ‘sex change’); identify as someone with a different gender from the sex to which they were born, but who may have decided not to undergo medical treatment; or someone who chooses to dress in the clothing typically worn by a person of another gender.⁷ **Examples could include:**

- inappropriate moralising about a person’s gender reassignment;
- being ridiculed for wearing clothing traditionally associated with another gender.

(d) Marriage and Civil Partnership;

Discrimination on these grounds refers to unwanted behaviour relating to your marital or civil partnership status. **Examples could include:**

⁶ The Crown Prosecution Service has provided guidance on what social media communications may be prosecutable: http://www.cps.gov.uk/legal/a_to_c/communications_sent_via_social_media/index.html.

⁷ Equality Challenge Unit, ‘Supporting trans staff and students’ [<http://www.ecu.ac.uk/publications/trans-staff-and-students-in-he-and-colleges-improving-experiences/>], accessed 3 October 2017].

- being isolated or excluded from a group because you are married or in a civil partnership.

(e) Pregnancy and Maternity;

Discrimination on these grounds refers to unwanted behaviour relating to being pregnant or having recently (within 26 weeks) given birth. **Examples could include:**

- being told to stop breastfeeding in public.

(f) Race;

Racial harassment refers to unwanted behaviour related to race or ethnic background, which can include nationality, citizenship and language. **Examples could include:**

- ridiculing racial, ethnic or cultural differences;
- using racist symbols (for example Nazi swastikas);
- ridiculing someone for their use of language.

(g) Religion or Belief (including Non-belief);

Harassment on grounds of religion or belief refers to inappropriate and unwanted behaviour related to someone's religion, or lack of religion, or any religious or philosophical belief including a lack of belief. **Examples could include:**

- ridiculing items worn for religious reasons;
- denigrating cultural customs;
- derisory comments against an individual's beliefs;
- aggressive proselytising and the pushing of religious propaganda;
- the singing of sectarian songs.

(h) Sex;

Sexual harassment can occur in a variety of ways but always has a distinctive feature: the inappropriate and unwanted introduction of sexual comments or comments that relate to a person's sex. **Examples of Sexual Harassment could include:**

- comments that emphasise the gender or sexuality of an individual or a group;
- sexually suggestive and unwelcome comments and/or gestures;
- persistent unwelcome requests for social or sexual encounters and favours;
- display of, or electronic transmission of, pornographic, degrading or indecent pictures;
- unnecessary and unwelcome physical contact with non-intimate areas of the body.

(i) Sexual Orientation.

Harassment on these grounds refers to unwanted behaviour relating to a person's known or presumed sexual orientation. In law, sexual orientation is taken to mean a person's sexual orientation towards: people of the same sex; people of the opposite sex, or people of both sexes, but for the University's purposes this could include people who feel they have no sexual orientation (asexual). **Examples could include:**

- intrusive questioning about a person's domestic circumstances and/or sexual preferences;
- excluding same-sex partners from social events;
- actual or threatened unwanted disclosure of sexuality, i.e. 'outing'.

12. Sexual Misconduct

12.1. Section 26 (2) of the Equality Act 2010 prohibits unwanted conduct of a sexual nature.

12.2. Non-consensual intentional physical contact of a sexual nature and non-consensual sexual activity and sexual exploitation are particularly serious. **Examples of Sexual Misconduct could include:**

- unwelcome intentional contact with a person's genitals, buttocks or breasts;
- unwanted kissing, fondling or groping;
- intentional exposure of genitals that someone else might see them;
- observing a person doing a private for sexual gratification (also known as voyeurism);
- recording someone undertaking a private act;
- sharing private materials of another person without consent;
- attempting to engage in sexual intercourse or engaging in a sexual act without consent;
- sexual intercourse or engaging in a sexual act without consent.

12.3. Sexual misconduct behaviours are particularly serious and in most cases could constitute a serious criminal offence.

12.4. The University believes that:

- (a) a person consents to participate in sexual activity if they agree by choice and have the freedom and capacity to make that choice.⁸ Consent may be withdrawn at any time before or during the course of the activity, but consent cannot be withdrawn after the activity;
- (b) everybody has a responsibility to ensure that their partner is free to, and has the ability to, consent. A person's capacity to give consent can be reduced significantly by factors such as drinking alcohol and taking drugs;
- (c) any person who wants to or intends to make sexual advances should ensure that they are welcome to do so before going on to attempt or undertake the act. The legal implications of not obtaining clear, coherent consent before sex can be serious;
- (d) any person undertaking sexual activity should consider whether they and their partner are free to consent and able to consent. Someone who is drunk or affected by drugs may well have lost the capacity to consent; someone who is unconscious, asleep or unable to communicate cannot give consent; someone who has been threatened, blackmailed or coerced is not free to consent.

13. Hate Incidents / Hate Crime

13.1. A hate incident is any incident which is perceived by the victim or anyone else to be motivated by hostility or prejudice based on:

- Disability
- Race or Ethnicity
- Religion or Belief

⁸ Sexual Offences Act 2003, c.42, Part 1, s.74 [<https://www.legislation.gov.uk/ukpga/2003/42/section/74>, accessed 11 October 2017].

- Transgender identity, or
- Sexual orientation.⁹

13.2. The following are examples of hate incidents:

- a student is assaulted physically. The offender did this because they thought the student was gay. Whether the student is or not, this will be classed as a homophobic incident.
- the home of a Chinese student had its windows smashed. The student believes that the windows were smashed because she is Chinese. Even if the police can never prove whether or not the windows were smashed because she is Chinese, this will be recorded as a racist incident.

If you are a victim or witness to a hate incident, it is important to report it to the Police. You can also report it anonymously through Crime Stoppers on 0800 555 111. The Student Support Service and the Union of UEA Students' Advice Centre are able to report incidents on your behalf if you do not want to do so yourself.

13.3. If after investigation by the Police they determine that the incident constituted a crime, the hate incident will be referred to as a Hate Crime.

Students should be very careful about making flippant remarks related to any protected characteristic. The Police are obliged to investigate every hate incident reported to them.

14. Bullying and Abuse

14.1. Bullying is unwanted behaviour which humiliates and/or undermines an individual or group and need not be related to a 'protected characteristic' under law. Bullying may be carried out by an individual or group of individuals and can happen in public or in private.

Examples of bullying could include being:

- shouted at and/or subjected to sarcasm;
- verbally and/or physically abused;
- told off in front of fellow students, staff or other people;
- derided or belittled about work, personality and/or personal appearance;
- persistently ignored and/or talked down to;
- subject to practical jokes;
- subject of malicious rumours or gossip;
- excluded or ostracised.

15. Abuse in relationships

15.1. Bullying and abusive behaviour can go on even in apparently loving relationships. It can start with verbal or emotional abuse and could happen to anyone, including students in same-sex relationships.

⁹ True Vision, 'What is Hate Crime?', http://www.report-it.org.uk/what_is_hate_crime

- 15.2. Verbal and emotional abuse can often escalate into physical abuse, by which time a person's emotional well-being is likely to be damaged.¹⁰
- 15.3. Abusive behaviour can be: violent (hitting, kicking, slapping); emotional (humiliating and putting you down), or sexual (forcing you to engage in sexual activity unwillingly).

Examples of abusive behaviour could include:

- extreme jealousy;
- anger when you want to spend time with your friends and/or family;
- trying to control your life (how you dress, who you spend time with and what you say);
- threatening to harm you or to self-harm if you end a relationship;
- demanding to know where you are all the time;
- monitoring your calls, text messages and/or emails;
- using physical force during an argument;
- being verbally abusive and calling you names;
- threatening behaviour towards your friends;
- 'guilt-tripping' you into having sex when you don't want to.

16. Online-Bullying

- 16.1. Harassment does not necessarily happen face-to-face; it can occur by means of electronic information communication technology, such as telephone, email, text message, social media and networking sites, instant-messaging, web pages, and blogs. **Examples of online-bullying could include:**¹¹

(a) Denigration

When untrue or derogatory information about someone, or material in which that person is an object of ridicule, is posted online or communicated electronically. This could also include digitally altered images – often of a sexual nature – and videos or “memes” (images captioned usually with a sarcastic or cruel comment).

(b) Flaming

A situation where an on-line conversation, usually though not necessarily between two people, escalates into a heated argument and things are written or insults exchanged in the 'heat-of-the-moment'. In real life, a 'moment' can pass extremely quickly, but on-line moments can linger for hours or days.

Most 'flaming' exchanges are insulting in nature, but if a flaming exchange is available for public viewing and an untrue assertion is made and genuine harm is caused, it could be taken to be libellous and therefore potentially actionable under civil law.

(c) Non-consensual filming or photographing

A situation where a person films or photographs another person without that person's consent or knowledge.

¹⁰ Information and most examples here taken from DirectGov, 'This is Abuse' [<http://thisisabuse.direct.gov.uk>].

¹¹ Some examples taken from R. M. Kowalski, S. P. Limber, P. W. Agatson, *Cyberbullying: Bullying in the Digital Age*, Second Edition (Wiley-Blackwell, 2012).

We reasonably accept that when we are in public places we may be captured in the background of other people's photographs or video clips, but there is no reasonable expectation that a person should be the subject of the photograph or film unknowingly or without their consent.

(d) Recorded Assault

Because of the practicalities involved, recorded assault is usually undertaken by two or more people, where one perpetrator records or films another perpetrator slapping, hitting, assaulting, or otherwise perpetrating an unwelcome act upon the victim. The recording of the event is often then shared with others – initially at least with the perpetrators' friends – and/or posted online, adding further to the embarrassment and distress already felt by the victim during the initial act. The victim may be either known or unknown to the perpetrator.

Almost all cases of recorded assault could constitute a criminal offence. See the section on Criminal Offences below.

(e) Impersonation

Impersonation refers to instances where the perpetrator poses as the victim – usually by stealing the victim's password and accessing their genuine on-line account – and behaves inappropriately to the detriment of the victim, for example by posting negative or inflammatory comments, or sending nasty or other inappropriate messages et cetera, as if they were from the victim. Alternatively, the perpetrator could try to pose fraudulently as the victim by setting up a new on-line account and taking a username which is the same or similar to the victim's name.

(f) Outing and trickery

Outing is the sharing of personal or confidential information with others without the consent of the person who the information is about. For example, the victim may disclose private information to, or share photographs or videos with, the perpetrator, who then passes this on to other people, causing embarrassment and distress to the victim because of the sensitivity of the information.

A victim may also be tricked into sharing personal, confidential, or sensitive information, for example when the perpetrator is impersonating someone whom the victim trusts. A victim may also be tricked when their own naivety or lack of judgement lets them down, for example by sharing such information with a complete stranger with whom it is impossible to make any judgements as to their motives or trustworthiness.

(g) Revenge Porn

'Revenge Porn' is the disclosure to others of private sexual photographs and films without the subject's consent and with the intent to cause distress and is a criminal offence under Section 33 of the Criminal Justice and Courts Act 2015.

(h) Sexting

Sexting is the sending of lewd or sexually explicit messages, risqué or sexually explicit photographs or videos, by mobile phone text message, email, or similar electronic

communication software. In the context of harassment, the messages received would be unwanted and unwelcome.

Students should exercise extreme caution if indulging in sexting. Texts and images once sent cannot be controlled and can be easily distributed by the recipient. As with outing and trickery, a student's own naivety and lack of judgement can serve to compound the act of harassment.

(i) **Trolling**

Trolling is the term in current usage to describe the process by which a person (known as a 'troll') posts repeated negative, hurtful, inflammatory or irrelevant statements on forums, comment pages, or social networking sites, usually in an attempt to incite an online-argument (flaming), emotional outrage from other users, or to target and upset an individual. An example is the repeated attempt to steer an online conversation towards an inflammatory topic of that person's (the troll's) choice, or where the person (the troll) makes comments specifically intended to be offensive on a memorial or other site.

17. Physical Misconduct

17.1. Occasionally harassing and bullying behaviour can include physical violence. **Examples of physical misconduct can include:**

- Punching
- Kicking
- Spitting
- Slapping
- Pulling hair
- Biting

17.2. Most cases of physical violence can constitute a criminal offence, such as common assault, assault by beating, actual bodily harm, or grievous bodily harm.

18. Harassment by course of conduct, and stalking

18.1. Harassment can involve being subject to persistent and unwanted behaviour from someone where the behaviour does not appear to be related to any of the 'protected characteristics' discussed above or where the nature of the behaviour may not be 'bullying' as is commonly understood. **Examples of harassment by course of conduct could include:**

- being followed or watched (commonly referred to as 'being stalked');
- being frequently contacted either in person or by social media;
- receiving anonymous phone calls or text messages;
- being sent unwanted bunches of flowers, other gifts or take-away deliveries.

18.2. The perpetrator could be known to the student (such as an ex-boyfriend or ex-girlfriend, an estranged family member, someone who thinks that a relationship exists with the person, or someone who has a grudge against a person following a disagreement or other incident) or someone who is unknown and has an unwanted interest in the student for no clear reason. Sometimes the student may never know the reason for the other person's behaviour, but they will know that the behaviour is unwelcome and distressing.

- 18.3. Under the **Protection from Harassment Act 1997** it is both a criminal and civil offence for a person (X) to pursue a 'course of conduct' which amounts to harassment or which X knows or ought to know amounts to harassment if a reasonable person would think the course of conduct amounted to harassment.¹² Harassment under the auspices of this act is defined as a course of conduct causing alarm or distress on at least two occasions.¹³
- 18.4. Students should rest assured that the University will not confirm or deny to an external caller or visitor that a person is a student here, nor will it give out any personal information in person, by phone, or by electronic means to anyone without a student's express consent (except where legally required to do so by the Police or other law enforcement agencies).¹⁴
- 18.5. The University is able to undertake safeguarding assistance if a student is being stalked by a student or staff member, but if the stalker is not a member of the University the University's response will be more limited. In such cases we advise students to contact the Police and the University will work with the Police as appropriate and necessary and offer practical assistance to minimise risk to students.
- 18.6. It is particularly important that UEA Security are made aware of potential stalkers so that vigilance can be raised and necessary arrangements can be made as appropriate.

UEA Security can provide personal advice on personal safety and protection whilst on University property. It may be possible for Security staff to provide students with an escort whilst on campus at vulnerable times or places during the 48-hour period following the initial report; this will give a student time to discuss alternative protection measures with family, friends, the Student Support Service, Security and the Police. In some circumstances a temporary parking permit could be arranged entitling a student to park in specific car parks. UEA Security has a protocol for dealing with stalkers and other related harassment.¹⁵

¹² The Protection from Harassment Act 1997, s.1, *infra*

[<http://www.legislation.gov.uk/ukpga/1997/40/section/1>, accessed 9 March 2012].

¹³ The Protection from Harassment Act 1997, s.7 [<http://www.legislation.gov.uk/ukpga/1997/40/section/7>, accessed 9 March 2012].

¹⁴ See Student Support Service, *Confidentiality Policy* (2012). Fair processing of personal details (for example for voting registration and council tax exemption purposes) is defined in the University's Student Privacy Notice: https://intranet.uea.ac.uk/is/strategies/infregs/dp/student_dpa.

¹⁵ UEA Security, 'Guidelines and Protocol for dealing with 'Stalkers' and other 'Harassment' matters' (2007).

Student harassment and criminal offences

This section outlines the University's policy where harassment and sexual or physical misconduct may constitute criminal offences.

19. Student Harassment and Criminal Offences

- 19.1. In many cases harassment and sexual and physical misconduct can also constitute criminal offences. Because of the potential seriousness of the incident the University advises students to seek help immediately, whether the student is the victim, a witness, or even the perpetrator of an act that they may come to regret.
- 19.2. The Student Support Service can offer advice and information to assist a student in their decision to report an incident to the police. Any student will be supported in any decision they make.
- 19.3. The Student Support Service will also provide advice and support to those who are concerned that they may be guilty of an offence, or have been formally accused of one.
- 19.4. If a student has been, or believes they have been, victim of a crime perpetrated by another student it is particularly important for the University to be informed so that appropriate safeguarding measures and risk assessments can be made.

The University is not routinely informed by the Police about crimes committed by or perpetrated upon its students unless the student consents for the information to be shared, or the Police needs information from the University in order to assist the enquiry, or to be questioned by the Police as part of their investigation.

If a victim or witness of a crime does not inform the University of an incident, the University may never know about the incident.

- 19.5. Whilst the University will give any student support and practical help and can pursue cases of misconduct under the Disciplinary Procedures, it is important for the Police to be informed of criminal activity so that any person involved can be offered professional police help and the protection they, and others affected, may need.
- 19.6. The University advises any person who is the subject of any incident that may constitute a criminal offence to report the incident to the Police, who have a range legal powers and investigatory resources not available to the University. (See Section 21 below)

Some students, for a variety of reasons, do not wish to go to the Police. In most cases, the University may be able to pursue the matter under its own disciplinary procedures, however, the circumstances of the incident and the quality of the evidence that the University is able to gather may mean it would be difficult for the University to resolve the matter definitively or satisfactorily.

- 19.7. A decision whether to report an incident to the police will ordinarily be that of the student reporting the incident, however if there is a concern the student lacks capacity or may be at risk of harm to self or others, or safeguarding concerns are raised (e.g. the allegations involve minors) the University may need to report the matter without the student's consent.

20. Criminal Sexual Offences

20.1. Criminal Sexual Offences can take many forms including, but not limited to:

- Rape;
- Assault by penetration;
- Sexual assault (non-consensual intentional physical contact of a sexual nature, such as unwelcome contact with a person's genitals, buttocks or breasts, unwanted kissing, fondling or groping)
- Causing sexual activity without consent;
- Sexual abuse of minors;
- Rape within marriage or relationships;
- Forced marriage;
- so-called honour-based violence;
- Female Genital Mutilation (FGM);
- Trafficking;
- Sexual exploitation.

20.2. All members of the University community have a responsibility for helping to ensure that victims of criminal sexual offences are encouraged and supported in any legitimate complaint.

20.3. The University will undertake a safeguarding risk-assessment in all cases of reports of sexual offences and will follow protocols for providing emergency and on-going assistance to all student victims of sexual offences and other crime.

University discipline and student crime

This section outlines how the University's disciplinary procedures relate to the Criminal Justice system, how they differ, and how the University would respond were a matter of harassment and sexual or physical misconduct reported to the police and the alleged perpetrator is a UEA student.

21. University discipline and student crime

21.1. The University recognises that allegations of sexual or physical misconduct that may constitute a criminal offence are likely to have an adverse impact on all students involved. The University is committed to ensuring that all students involved, particularly the reporting student and the accused student, have access to support, advice and assistance throughout the process.

21.2. The nature and scope of the University's disciplinary process and the nature and scope of the criminal process are fundamentally different:

- (a) The University's disciplinary process is a matter relating to the civil law and is based on an allegation that a student has breached the University's regulations; the allegation has to be proven on the balance of probabilities, and the most serious sanction possible is permanent exclusion from the University.
- (a) The criminal process is an external process, deals with allegations that a student has committed a criminal act; the allegation has to be proven beyond a reasonable doubt, and the most serious sanction possible is imprisonment.

21.3. In light of the differences outlined above, the University will follow two key principles when dealing with matters which may constitute criminal offences:

(b) If a matter has been reported to the police the criminal process should take priority. The University will not duplicate that process and excepting taking any necessary precautionary action (outlined in section 22 below) the internal disciplinary process should be suspended until the criminal process is at an end.

(c) If the matter is not being dealt with under the criminal process or where the criminal process has concluded, the University will investigate whether a breach of the University's regulations appears to have occurred, and if so, refer the matter for consideration under the Disciplinary procedures.

21.4. The University will not normally take any other action until the completion of criminal proceedings or a decision not to prosecute has been taken. The reasons for this are:

(a) Any immediate threats or dangers can be dealt with by way of precautionary action (see section 22 below);

(b) There is a substantial risk that an internal investigation could interfere with or prejudice a criminal investigation (for example, in relation to witness evidence an internal investigation may involve an element of 'rehearsal' of evidence prior to a criminal trial with the potential for memories to be tainted, or the alteration of accounts because of what has been said, heard or disclosed during the process).

(c) The prosecutor has to prove its case and defence lawyers will insist on seeing evidence before advising the accused student on how to proceed. A student's engagement with an internal investigation could impact upon their defence in the criminal proceedings therefore a student's lawyer is likely to advise them not to engage with internal proceedings. If the University goes ahead with an internal investigation, due to constraints on the student by virtue of the criminal process, that student will be denied a right to a fair hearing, which would be grounds for challenge.

(d) An internal investigation may therefore not only risk prejudicing an accused student's defence, it also risks jeopardising a successful prosecution on the part of the reporting student.

21.5. The University can take action under the disciplinary procedures at the same time as a criminal process is underway if the disciplinary case is based on facts and matters which are different to those being dealt with under the criminal process.

Precautionary action

This section outlines how the University will undertake immediate safeguarding measures and precautionary action if the alleged perpetrator of misconduct which may also constitute a criminal offence is a UEA student.

22. Precautionary Action

- 22.1. If a student is accused of misconduct which may also constitute a criminal offence, or a criminal offence is under investigation by the Police, or has been investigated and is awaiting trial, the University will consider whether any immediate safeguarding measures and precautionary action should be taken by the University to protect the interests of the victim, other students, or the functioning of the University.
- 22.2. Precautionary action is not a penalty or sanction and does not indicate that the University has concluded that the student accused of an offence has committed a breach of regulations or a criminal offence.
- 22.3. Precautionary action will be undertaken following a risk assessment made on a case-by-case basis. The type of misconduct, the circumstances of the incident, the circumstances of the students involved, and the views of the police or prosecutor will be relevant in assessing risk and determining precautionary action. The risk assessment will include consideration of the students' accommodation situation, the teaching, placement and research environment and social engagement (i.e. involvement in clubs or societies).
- 22.4. Precautionary action will be reasonable and proportionate in order to ensure that any measures are such that best protect the investigation and/or the reporting party student or other students from harm whilst having minimal impact on the accused student. Such action may include:
 - (a) Imposing conditions on the accused student, for example, requiring the accused student not to contact directly or indirectly the reporting student and/or certain witnesses, and/or requiring the accused student to move accommodation;
 - (b) Suspending the accused student from their studies;
 - (c) Excluding the accused student from University activities, using University facilities and/or entering University grounds or premises, either qualified, partially, or fully.
- 22.5. The precautionary action and risk assessment should be reviewed at regular intervals and reconsidered as the case develops.
- 22.6. Any failure to comply with a precautionary measure should trigger a review and is likely to result in more serious measures being put into place.
- 22.7. The University will take in to account the interests and welfare of both students and endeavour to treat them fairly and equally when undertaking the risk assessment and ascertaining the potential effectiveness and impact of precautionary measures.

Reporting, pursuing and investigating an internal complaint

This section outlines how the University will enable a student to report and pursue an internal complaint against another UEA student.

23. Reporting, pursuing and investigating internal complaints

- 23.1. The University is committed to ensuring that all staff who are likely to be first point of contact in the disclosure or reporting of incidents of harassment and sexual or physical misconduct are trained to respond appropriately.
- 23.2. Any student who wishes to report and pursue a complaint against another student in relation to any of the behaviours discussed in this document should refer to the accompanying 'Procedures for Dealing with Harassment and Sexual or Physical Misconduct'.
- 23.3. The 'Procedures for Dealing with Harassment and Sexual or Physical Misconduct' should reflect:
- that the most appropriate and effective reporting and investigation procedures are likely to differ depending on the context of the alleged misconduct and the nature of the relationship between the parties involved;
 - the need to avoid multiple investigations relating to the same (or substantially similar) allegations, charges or evidence;
 - the need for due consideration to be given of the circumstances of the matter and the steps that may have already been taken.
- 23.4. On receipt of a formal report the University will aim to pursue steps with a due regard for the need to:
- eliminate any discrimination, harassment, victimisation;¹⁶
 - prevent any recurrence;
 - remedy the effects of what has happened.
- 23.5. Any cases of misconduct which could constitute a criminal offence will be investigated and dealt with as a potential breach of regulations and not as a criminal offence, therefore no criminal offences will be referred to when seeking to define unacceptable behaviour during the investigation by the University and in any subsequent proceedings.
- 23.6. Only a criminal court can make findings of criminal offences. Alleged student misconduct that may constitute a criminal offence will be dealt with in the same way as other potential breaches of discipline.

¹⁶ This is a statutory requirement under the Equality Act 2010.

Support for students affected by crime or other distressing circumstances

This section outlines the support provisions made by the University for students affected by crime or a distressing situation relating to harassment and sexual or physical misconduct.

24. Support for students

- 24.1. The University will do what it can to help and support any student who is affected by crime or is in a distressing situation relating to harassment and sexual or physical misconduct, whether the student is a victim, alleged perpetrator, or witness. The University will consider a student's individual circumstances and will offer support through its various student support services if a student wishes to accept it.
- 24.2. Student Support Advisers in the Student Support Service will advise a student on the various reporting options and what support is available to help in their circumstances and will undertake a risk assessment and implement any necessary safeguarding steps in order to uphold the safety and wellbeing of the students involved and to manage any risks to individuals and the University community.

Student Support Advisers in the Student Support Service are experienced in dealing with sensitive problems confidentially and in providing an immediate response to critical incidents relating to crime, harassment and sexual or physical misconduct.

25. Accommodation Arrangements

- 25.1. If after a risk assessment a student is deemed to be unsafe in their current accommodation the University can usually provide immediate short-term emergency on-campus accommodation in a private room with private bathroom facilities.

Emergency accommodation can be arranged through the Student Support Service directly, or if out-of-hours, through the Warden Team or the Security Lodge.

- 25.2. Depending on a student's circumstances, and any advice the police may provide, students living off-campus may, depending on room availability, be offered the option to move into on-campus accommodation for the remainder of the academic year, or for a time period to be mutually agreed, and students living in residences may have the option to move into alternative on-campus accommodation, again depending on room availability.

26. Emotional and Psychological Support

- 26.1. If a student has been affected by crime or a distressing situation relating to harassment and sexual or physical misconduct, the student will be offered on-going support from one or more of the range of services in the Student Support Service, according to the circumstances.

27. Extenuating Circumstances Support

- 27.1. If a student has been affected by crime or a distressing situation relating to harassment and sexual or physical misconduct and the Student Support Service has been involved in supporting the student involved, the Student Support Service is able to provide a letter on confidential terms in support of the student's request.

Harassment of under-18s and vulnerable adults

28. Harassment of under-18s and vulnerable adults.

- 28.1. A very small number of student under the age of 18 are admitted to UEA courses each year. Such students are minors in the eyes of the law, and the University thus owes them an enhanced duty of care until they reach the age of majority (18 years). The *UEA Safeguarding Policy, Procedure and Guidance (Safeguarding of Children, Vulnerable Adults and Prevention of Exploitation)*¹⁷ and *The UEA Policy for Admission of Applicants Under 18*¹⁸ outlines the enhanced support arrangements in place for such students, including the provision of a Designated Child Protection Officer¹⁹ whom University staff (and others) should contact if they believe that any under-18 year old student is in any way at risk, including risk of bullying or other abuse.
- 28.2. Additionally, many students on professional courses that involve placements are likely to encounter children or vulnerable adults (including those with certain disabilities and specific learning difficulties) in the placement environment. If abuse is encountered or suspected it is particularly important that action is taken as quickly as possible. Students in professional Schools should follow their local guidance on reporting abuse. If the abuse is taking place outside a placement environment, or when the reporter wishes to maintain confidentiality, they may initially raise their concerns with the University's designated Child Protection Officer.

Confidentiality and natural justice

29. Confidentiality and Natural Justice

- 29.1. As a general principle, when a student seeks help to deal with harassment, confidentiality will be agreed and maintained wherever possible. However, there may be situations where confidentiality has to be broken, and this will be made clear to the student. For example, if a student tells someone, in confidence, something which demonstrates an unreasonable risk to them or to someone else, the person will need to draw this formally to the University's attention.²⁰
- 29.2. It is important for a student and the University to recognise that the alleged perpetrator must not be prejudged and that they have rights; this includes being informed of any allegations which are to be investigated, having the chance to state their case, and the right to have the matter remain confidential.
- 29.3. The decision about whether action is taken by the University to deal with harassment normally rests with the reporting student, but the University will have to act if it judges there to be an unacceptable risk to that student or to someone else.

¹⁷ Currently undergoing committee approval. Link here once confirmed and hosted.

¹⁸ UEA Admissions Marketing and Recruitment, 'Admission of Applicants Under the Age of 18' [<https://www.uea.ac.uk/study/undergraduate/apply/our-admissions-policy/admission-of-applicants-under-the-age-of-18>], accessed 2 March 2018]

¹⁹ Currently the Director of Student Services, Dr Jon Sharp.

²⁰ Student Support Service, *Confidentiality Policy* (2012).

- 29.4. Both parties will be informed of the outcome of any investigation undertaken under the auspices of this policy and whether a referral for formal disciplinary action is or is not made and whether the complaint was upheld.
- 29.5. If an allegation of harassment is pursued by a student through these procedures but found to have been brought with vexatious, mischievous or malicious intent, it may provide grounds for disciplinary action to be taken against that student.

Advice and support

At UEA a number of advice and support services are available for students to have a confidential discussion in relation to, or to make a first report of, harassment and sexual or physical misconduct. The Procedures for Dealing with Harassment and Sexual or Physical Misconduct go into further detail about the practical steps students may follow to raise a formal concern.

30. Advice and support

30.1. The following staff members and support services offer impartial, confidential information and advice and have enhanced training, knowledge and experience in supporting students with a wide range of sensitive and complex problems:

- Student Support Service (01603 59 2761)
 - Student Support Advisers
 - Wellbeing Advisers
 - Counselling Team
- Warden Team (out-of-hours and students in UEA accommodation)
- UEA Security (01603 59 2352)
- University Counselling Service (01603 59 2651)
- Multifaith Centre (01603 59 2214)
- Students' Union Advice Centre (01603 59 3463)
- Nightline (01603 59 2500 - term time only 8pm to 8am)

30.2. The following academic staff members are trained to signpost and guide students to the right sources of support:

- Head of School
- Personal Advisers and Senior Advisers
- UEA Research Supervisors and School Postgraduate Research Directors.

Further information

Direct.gov.uk, 'This is Abuse' – <http://thisisabuse.direct.gov.uk>

Direct.gov.uk, 'Bullying' – <http://www.direct.gov.uk/en/YoungPeople/HealthAndRelationships/Bullying/index.htm>

Equality Act 2010 – <http://www.legislation.gov.uk/ukpga/2010/15>

Equality Challenge Unit – <http://www.ecu.ac.uk>

The Harbour Centre (Sexual Assault Referral Centre) – <http://www.theharbourcentre.co.uk>.
Telephone: 0845 456 4810, Monday – Friday, 8am - 5pm.

The Sue Lambert Trust - <http://www.suelambertrust.org>

Mankind - <http://www.mankindcounselling.org.uk>

National Rape Crisis Helpline - 0808 802 9999

M. J. McCormack, UEA Security, 'Guidelines and Protocol for dealing with 'Stalkers' and other 'Harassment' matters' (2007).

Stop Hate UK – <http://www.stophateuk.org>

True Vision – <http://www.report-it.org.uk>