

# **De Montfort University Kazakhstan Sexual Misconduct Policy**

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# 1. Introduction

1.1 De Montfort University Kazakhstan (the University) recognises that incidents of Sexual Misconduct as 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 and data protection guidelines.

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.

2.2 This policy applies to:

2.2.1 All Students of the University who are governed by the General Regulations of the University.

2.2.2 This Policy relates to all incidents of Sexual Misconduct.

2.2.3 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.

2.2.4 Disclosures and reports made under this Policy are not limited to incidents that are alleged to have occurred on University premises.

2.2.5 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 individuals and the wider University community.

2.2.6 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.

2.2.7 Allegations of Sexual Misconduct which appear to the person to whom they have been disclosed to amount to criminal offences may be referred to the police, in which case the University's investigation will be stayed pending the outcome of police investigations. Once these are 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 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, the safest approach is not to engage in a sexual act.

**3.2 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.

### 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.

**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** The University team can liaise confidentially with relevant faculty staff to ensure continuity of support. This will always be discussed first with the disclosing student.

**4.4** Having disclosed an incident, the student may wish to report the case for further investigation.

**4.5** 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.

**4.6 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 purpose of initiating an investigation process by the University.

**4.7** 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.

**4.8** A risk assessment will be made by the University Team who will determine whether intermediate action is required whilst the police investigate.



4.9 If a student chooses not to report to the police, the University may investigate any breach of University regulations. 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.

## 5. Procedure

- 5.1 Any Student that has been accused of Sexual Misconduct as defined in the General 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 University Staff through. Responders from the Academic Support Office can provide advice and guidance surrounding the procedure of an investigation to a reporting student.
- 5.3 Support will be offered to any student who is alleged to have breached the Disciplinary Code. The Students' Union is able 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 All students involved in a disciplinary case can be supported by the University Student Welfare Service.
- 5.7 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.



## **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) 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.
- 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 Head of Student Services, and the nominated 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 and will issue an appropriate penalty accordingly.

8.4 Once a case had 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 Reports of Sexual Misconduct by students, that require further investigation, will be conducted by Staff from the University Senior and Student Services team.

9.2 Inquiries into cases brought against members of Staff will be investigated by the University HR department with the support of the Senior team.

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.

## **10. Types of Reporting**

### **10.1 Anonymous Reporting**

The University cannot respond to anonymous reports. The University does however recognise that students may wish to raise concerns in confidence. In such cases the investigation team will try to resolve the issue without disclosing the student's identity. It must be borne in mind that:

10.1.1 It may be difficult to investigate complaints without revealing the identity of the complainant.

10.1.2 It may be possible to make preliminary investigations without revealing the identity of the complainant but if the allegations are serious or the case is complex, the complainant may need to be identified if the case is to be pursued further. In such instances the investigation team will discuss the situation with the complainant before the case proceeds.

10.1.3 The person or department which is the subject of a complaint may recognise the complainant because of the issues or allegations raised.

10.1.4 No student will suffer reprisals for making a complaint in good faith.

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

The University reserves the right to terminate consideration of a complaint if it considers it to be frivolous, malicious or vexatious. In such instances the Student Appeals and Conduct Officer (or their designated nominee) will write to the complainant or their representative 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 complaint is frivolous, 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.

## **11. Review**

11.1 The university will:

- 11.1.1 Ensure this policy, and any changes, is accessible to staff and students
- 11.1.2 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:

- 11.1.3 Engaging, or attempting to engage in a sexual act with another individual without consent
- 11.1.4 Sexually touching another person without their consent e.g. kissing
- 11.1.5 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);
  - 11.1.6 showing body parts to another in person or electronically in a sexually inappropriate way;
- 11.1.7 Recording and/or sharing intimate images or recordings of another person without their consent; and
- 11.1.8 Arranging or participating in events which may reasonably be assumed to cause degradation and humiliation, for example inappropriately themed social events or initiations.

### **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.

- 11.1.9 Sexual comments or jokes
- 11.1.10 Displaying pictures, photos or drawings of a sexual nature
- 11.1.11 Sending emails or other form of electronic communication with a sexual content
- 11.1.12 Physical behaviour (but which stops short of contact), including unwelcome sexual advances and stalking
- 11.1.13 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. 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 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.

**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.”

