



# **PROCEDURE 064 SEXUAL MISCONDUCT**

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## **Procedure 064: SEXUAL MISCONDUCT**

### **1. PURPOSE**

1.1 This procedure outlines ACM's approach to providing a campus environment in which all members of our community feel safe from sexual misconduct. For the purposes of this procedure, this includes sexual harassment, whether explicitly stated or not.

1.2 This procedure sets out our expectations around the unacceptability of sexual misconduct and sexual harassment.

1.3 This procedure makes clear the ways in which ACM supports students who have experienced any form of sexual misconduct or sexual harassment.

### **2. PROCEDURE DETAIL**

This document outlines our specific Process for handling allegations of sexual misconduct and sexual harassment.

#### **Making a Disclosure**

2.1 A disclosure is made when someone tells a member of ACM Safeguarding Team that they have experienced sexual misconduct or sexual harassment. A disclosure can be made in person, online or via other means such as phone or email.

2.2 Students can make disclosures of sexual misconduct or sexual harassment via ACM's online reporting disclosure link. Where a member of staff has received a disclosure in person or via other means, they may submit a disclosure on behalf of the person who has disclosed via ACM's online reporting disclosure link.

2.3 The person who has chosen to disclose does not need to provide the full details of their experience if they do not wish to. They will not be pressured to make a formal complaint.

2.4 If the incident is historical, the person who has experienced it can still disclose it to the ACM safeguarding team and receive support. They can access Wellbeing Support Services, which will be offered.

2.5 Disclosure does not create a formal complaint and is not an instruction for ACM to take action. The person who has disclosed will have the opportunity to be heard and to consider their options before proceeding with any further steps. No action will be taken immediately by ACM unless there is a concern about immediate safety or if ACM has a duty under safeguarding.

2.6 Where a person chooses to disclose anonymously via ACM's online reporting tool, no action will usually be taken on the basis of their disclosure. Anonymised data will help ACM to understand patterns in behaviour and inform future policy.

2.7 Where a person chooses to disclose, with contact details, via ACM's online reporting tool, their disclosure will be received by the ACM safeguarding team. The person who has made the disclosure will be contacted by a member of the safeguarding team as soon as is practical to do so.

2.8 Where a disclosure is made but is not submitted via ACM's online reporting tool, the person who has disclosed can still access support via Wellbeing Support Services.

2.9 The Academy of Contemporary Music recognises the importance of privacy for disclosures and formal complaints of cases of sexual misconduct and will only share information on a confidential, need-to-know basis. All personal data is recorded and held in accordance with the Data Protection Act 2018. ACM will retain anonymised data to understand patterns of behaviour and to inform future policy.

2.10 Confidentiality is not absolute secrecy. There may be circumstances where it is necessary or appropriate to share information either within ACM or with external organisations/bodies, for example to:

- Allow a case to be appropriately considered and investigated;
- Ensure those who disclose an experience or are alleged to have committed misconduct receive appropriate academic and pastoral support;
- Safeguard members of the ACM community and fulfil ACM's duty of care;
- Discharge ACM's duties or as required by law.

### **3. IMMEDIATE THREATS TO SAFETY**

3.1 If after reviewing a disclosure submitted via the ACM's online reporting tool, the ACM safeguarding team believes that there is a danger to the person who has disclosed or to anyone else, they will refer the disclosure to the ACM executive team along with a risk assessment.

3.2 If the ACM executive team decides via a risk assessment that it is necessary to take precautionary action, it will make a recommendation to the Registrar who will enact these measures. Such measures may include issuing a suspension of rights to restrict the person alleged to have committed the misconduct contact with the person who has disclosed, including restriction of access to campus facilities, and making a recommendation to the ACM safeguarding team regarding appropriate action.

3.3 If a suspension of rights is issued, the person alleged to have committed the misconduct will be informed in writing and, wherever possible, in person. They will be told what they need to do in order to comply with the suspension of rights. They will be assigned a member of the student services team, who will be their main point of contact.

3.4 If no suspension of rights is required, the person alleged to have committed the misconduct will not be informed of the disclosure or assigned a member of the student services team unless the person who has disclosed chooses to either pursue an informal resolution or submit a formal complaint to ACM.

### **4. STUDENT SUPPORT**

4.1 ACM will assign a member of the student support team to the person who has made the disclosure. The member of the student support team will be the main point of contact throughout any subsequent steps, and will be able to help the person who has disclosed to make informed decisions about what happens next.

4.2 The member of the student support team does not represent the person they are assigned to within any subsequent Discipline Committee hearings. They are available to listen, to provide information and to facilitate practical support.

4.3 The member of the student support team will take into account the communications preferences of the person they are assigned to, and wherever possible will communicate key information in person, unless the person they are assigned to wishes otherwise.

4.4 The member of the student support team will contact the person who has made the disclosure as soon as is practical to do so to arrange a First Discussion Meeting between them and the member of the student support team. This will enable the person who has disclosed to talk about what they would like to happen. The member of the student support team will help them to consider the options and support available, to understand the role of the student support team, and to explore possible outcomes.

4.5 The outcome of an investigation, Discipline Committee hearing or Appeal will be shared with both parties and this will include setting out the rationale for the decision.

## 5. MALICIOUS REPORTS

5.1 Whilst extremely rare, the possibility of malicious reporting is recognised. ACM takes every disclosure seriously but reserves the right to cease consideration of a disclosure if it considers it to be malicious, vexatious or frivolous. In such cases, a member of the Safeguarding Team or its nominee will write to the reporting party explaining why consideration of the disclosure is being halted. This decision will be final.

## 6. CONDUCT

6.1 ACM recognises the possibility of retaliation against any individuals associated with a disclosure or formal complaint of sexual misconduct, including the Reporting Party, witnesses, the Responding Party, and staff.

6.2 Any retaliation will be dealt with under ACM disciplinary procedure as per policy.

6.3 If there is a further incident of sexual misconduct, anti-social behaviour or any other behaviour which breaches ACM's regulations that occurs whilst an investigation is being conducted under the Sexual Misconduct Policy, this may be considered as an aggravating factor and taken into account during decision-making.

## 7. OPTIONS FOLLOWING DISCLOSURE

7.1 After disclosure there are several options available to the person who has disclosed their experience. They can choose the level and types of support that are right for them.

7.2 After discussion with their member of student support the person who has disclosed may choose to:

**7.2.1 Take no further action at this time:** In this case advice will be provided regarding the preservation of evidence which may be needed if they subsequently decide to make a report

to the Police or to submit a formal complaint to ACM. They will also be informed of the ongoing support available to them via the student support team, Wellbeing Support Services and the safeguarding team.

**7.2.2 Undertake an informal resolution:** This option is dependent on the person alleged to have committed the misconduct being willing to participate. The member of student support assigned to the person who has disclosed will facilitate an informal resolution in collaboration with services such as Wellbeing Support Services and the safeguarding Team.

**7.2.3 Make a report to the Police:** In this case no disciplinary action will normally be taken by ACM whilst a Police investigation and legal proceedings are taking place, although ACM reserves the right to investigate and take action if it deems it necessary. Support will however still be available from the Wellbeing Support Services and the Safeguarding team.

**7.2.4 Make a formal complaint to ACM:** If the person who has disclosed chooses this option they will be asked to confirm that they wish ACM to proceed with a formal investigation. Support will be available from the Wellbeing Support Services and the Safeguarding team.

## 8. INFORMAL RESOLUTION

8.1 The person who has disclosed can always choose to make a formal complaint even if they have chosen informal resolution, and vice versa.

8.2 Where an informal resolution is appropriate, a member of student support will be assigned to the person alleged to have committed the misconduct. This will be a different member of student support to that assigned to the person who has made the disclosure.

8.3 The member of student support will arrange for the informal resolution to take place, in collaboration with services such as Wellbeing Support Services and the safeguarding team.

8.4 Informal resolution can only go ahead on the mutual agreement of both parties. The member of student support will follow up to check that the informal resolution has taken place, however as the allegation has not been proven they cannot enforce compliance.

8.5 Informal resolution may include, but is not restricted to, the following outcomes:

8.5.1 Written apologies

8.5.2 Attendance at awareness sessions

8.5.3 Participation in behavioural change programmes

8.5.4 No contact agreements

8.5.5 Any other penalties which are not punitive in nature

## 9. POLICE INVESTIGATION AND LEGAL PROCEEDINGS

9.1 If the person who has disclosed has made an independent report to the police they may still make a formal complaint to ACM.

9.2 ACM does not have the legal investigatory powers of the Police, and is not able to make a determination of criminal guilt.

9.3 Any disciplinary action is undertaken as a breach of ACM's Sexual Misconduct Policy and is not a substitute for a Police investigation or a criminal prosecution.

9.4 The fact that criminal proceedings have been instituted or have concluded does not preclude ACM from taking its own disciplinary action, if it is thought fitting or necessary to do so.

9.5 The fact that the Police are unable or unwilling to proceed does not preclude ACM from taking its own disciplinary action.

9.6 A case which does not progress through legal channels, where a decision to take no further action has been made, and/or a 'not guilty' verdict has been returned, does not mean that the person has made a malicious or vexatious report.

9.7 The fact that criminal proceedings have returned a 'not guilty' verdict does not preclude ACM from taking its own disciplinary action.

9.8 If a student has been convicted of a criminal offence or accepts a Police caution in relation to behaviour that falls within the scope of ACM's Sexual Misconduct Policy, then ACM will accept this as conclusive evidence that the behaviour took place. It may not be necessary for a further full investigation to take place and the complaint will be deemed proven and proceed directly to mitigation.

## **10 MAKING A FORMAL COMPLAINT TO ACM**

10.1 The person who has experienced sexual misconduct may choose to make a formal complaint to ACM under the Sexual Misconduct Policy, and thereby seek a resolution via the ACM Disciplinary Procedure. A formal complaint is different to disclosure; it is a document informing ACM that something has happened and that the person who has made the complaint wishes ACM to take action. From this stage onwards, the person who has submitted the complaint is referred to as the Reporting Party, and the person who is alleged to have committed the misconduct is referred to as the Responding Party.

10.2 The complaint must be submitted via the online disclosure link. The complaints form may be completed by the Reporting Party, or if they prefer, someone can complete it on their behalf. The safeguarding team and Wellbeing Support Services can all provide help in completing the form.

10.3 The complaints form does not need to include in-depth detail about the experience. There does however need to be enough information so that ACM can take the complaint forward and understand what has happened.

10.4 The complaints form will be referred to the Student Discipline team. ACM will not take any action without the involvement of the Reporting Party unless there is an immediate threat to safety.

10.5 The Reporting Party has the right to withdraw their complaint and to stop the formal Sexual Misconduct Disciplinary Process at any time.

## **Freedom of Speech**

10.6 ACM has a statutory duty to protect the lawful speech of all staff, students and visiting speakers, which includes protecting the right to express views that are controversial or unpopular. However, vigorous debate does not mean students should be expected to tolerate harassment. Speech or other expression that amounts to harassment is not protected. ACM promotes a culture that is open and tolerant of differences, and students can expect to be able to take part in all aspects of university life without being harassed.

## 11. PROCEDURE SCOPE

11.1 The procedure applies to all members of the ACM community, including students at all levels and campuses, staff, applicants, associate members, visitors, contractors and volunteers.

11.2 This procedure applies to sexual misconduct which:

- occurs on ACM's property and/or land;
- occurs whilst a student is engaged in any ACM related activity (including placements and trips);
- occurs via electronic means including, but not limited to: internet, email, social media sites, chat rooms, text messages and instant messaging;
- results in a legal or police investigation, charge or conviction of an offence;
- raises questions about the fitness of the student on a fitness to practice programme; or
- in the view of ACM poses a serious risk or disruption to the institution or members of its community.

11.1 ACM recognises that sexual misconduct can be experienced by any individual, regardless of sex, gender, sexual orientation, relationship status, age, disability, faith, race, ethnicity, nationality or economic status.

11.2 Experiences of sexual misconduct may intersect with other forms of discrimination and harassment, for example in relation to sex, gender, sexual orientation, relationship status, age, disability, faith, ethnicity, nationality or economic status.

11.3 ACM has policies on Equality, Discrimination and Inclusion and does not tolerate any forms of bullying or harassment. ACM does not tolerate behaviour or attitudes supportive of sexual misconduct.

## 12. RELATED POLICIES

- Safeguarding Policies
- Safeguarding Procedures
- Staff Code of Conduct
- Student Charter
- Data Protection Policy
- Prevent Policy
- External Speaker and Events Policy
- Acceptable Use of IT and E-Safety Policy
- Social Media Policy
- Student Disciplinary Policy
- Student Complaints and Grievances Policy
- Equality & Diversity Policy
- Staff Recruitment Policy
- Health & Safety Policy

- Whistleblowing Policy
- Criminal Convictions Policy

### 13. PROCEDURE OWNER

13.1 The responsibility for this Policy falls under the remit of the Designated Safeguarding Lead, overseen by the Student Experience and Opportunity Board.

13.2 The responsible committee will ensure the cyclical review of this Policy is carried out under ACM's Quality Assurance Framework.

### 14. DEFINITIONS

**Sexual Misconduct:** Sexual Misconduct covers a broad range of inappropriate and unwanted behaviours of a sexual nature. It covers all forms of sexual violence, including sex without consent, sexual abuse (including online and image-based abuse), non-consensual sexual touching, sexual harassment (unwanted behaviour of a sexual nature which violates your dignity; makes you feel intimidated, degraded or humiliated or creates a hostile or offensive environment), stalking, abusive or degrading remarks of a sexual nature, and a vast range of other behaviours.

**Consent:** Consent is the agreement to participate in a sexual act where the individual has both the freedom and capacity to make that decision. Consent cannot be assumed on the basis of a previous sexual experience or previously given consent, and consent may be withdrawn at any time.

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

- 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 feels 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. Incapacitation may occur when an individual is 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 also occur on account of a mental or developmental disability, or as the result of alcohol or drug use.

- **Alcohol and/or Drug Use:** Incapacitation arising from alcohol or drug consumption should be evaluated on the basis of how the alcohol/drugs have affected the individual; signs of incapacitation may include, but are not limited to, one or more of the following: slurred speech, unsteady gait, bloodshot eyes, dilated pupils, unusual behaviour, blacking out, a lack of full control over physical movements, a lack of awareness of circumstances or surroundings, and/or an inability to communicate effectively. Intoxication is never a defence for committing an act of Sexual Violence and Misconduct, 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 to not engage in a sexual act.

**Disclosure:** Disclosure means that an individual tells a member of the ACM community that they have experienced Sexual Misconduct (this is different from a formal Complaint).

**Formal Complaint:** Submitting a formal Complaint to ACM regarding an individual's experience of Sexual Misconduct is an instruction for ACM to take appropriate action. The Complaint will allow ACM to investigate the misconduct as set out in this Policy and the accompanying processes.

**Reporting Party:** The Reporting Party is the person(s) who has made a formal Complaint regarding an experience of sexual misconduct.

**Responding Party:** The Responding Party is the person(s) named in a formal Complaint who is alleged to have committed an act of sexual misconduct.

**Safeguarding:** Safeguarding is the action that is taken to promote the welfare of all people and protect them from harm.

**Abuse:** any action that intentionally harms or injures another person

**DSL:** Designated Safeguarding Lead is the member of staff that coordinates all safeguarding concerns and oversees all referrals.

**DDSL:** Deputy Designated Safeguarding Lead is the member of staff who supports the DSL in maintaining the function of safeguarding throughout all campuses.

**LADO:** Local Authority Designated Officer

## 15. EXHIBITS/APPENDICES/FORMS

This procedure has been written in accordance with, and with reference to, the following statutory guidance and legislation:

- Keeping Children Safe in Education (DfE, 2021)
- Working Together to Safeguard Children (HM Government, 2018)
- What to do if you're worried a child is being abused (DfE, 2015)
- The Prevent Duty (DfE, 2015, updated 2019)
- Child sexual exploitation; definition and guide for practitioners (DfE, 2017)
- Sexual violence and harassment between children in schools and colleges (DfE, 2018)
- The Children Act 2004 (with later amendments)
- Safeguarding Vulnerable Groups Act 2006
- The Sexual Offences Act 2003
- Office for Students (OfS) Condition E6 Harassment and Sexual Misconduct
- Guidance for English Higher Education Institutions (HEIs) (DIUS, 2007)
- Protection of Freedoms Act 2012
- Children and Families Act 2014
- Care Act 2014
- Information sharing: advice for practitioners providing safeguarding services to children, young people, parents and carers (HM Government, July 2018)

**16. DOCUMENT HISTORY AND NEXT REVIEW**

|             |                   |
|-------------|-------------------|
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