



## Magdalene College Guidance on, and Procedures for Handling Cases of Physical or Sexual Misconduct, or Abusive Behaviour, Raised by One Student (or Students) about another Student (or Students)

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**The following guidance and procedures have been designed to work alongside the University procedure for handling cases of student misconduct:**

**<https://www.studentcomplaints.admin.cam.ac.uk/harassment-sexual-misconduct/i-want-know-more-about-universitys-policies/report-inappropriate>**

**The College has a separate ‘Procedure for Dealing with Comments, Suggestions and Complaints from Students’, which addresses matters other than behaviour the subject of this document:**

**[https://www.magd.cam.ac.uk/system/files/2017-09/magdalene\\_college\\_student\\_complaints\\_procedure\\_0.pdf](https://www.magd.cam.ac.uk/system/files/2017-09/magdalene_college_student_complaints_procedure_0.pdf)**

The College has a Code of Practice on Freedom of Speech, available on the College’s website. This Code of Practice sets out the College’s commitment to freedom of speech, outlines the various legislative frameworks under which such freedoms must be upheld and may be circumscribed, and summarises the procedures used by the College to manage these issues.

Nothing in these College Rules should be read as undermining or conflicting with the Code of Practice on Freedom of Speech; and in case of any conflict the Code of Practice on Freedom of Speech will take precedence.

The Office for Students (OfS) operates a free speech complaints scheme. Under that scheme, the OfS can review complaints about free speech from members, students, staff, applicants for academic posts and (actual or invited) visiting speakers. Information about the complaints that the OfS can review is available on its website.

### **Introduction**

1. Magdalene College affirms its commitment to providing an environment that is free from physical or sexual misconduct or abusive behaviour, and the right of all members to be treated with dignity and respect.
2. Physical misconduct, sexual misconduct, and abusive behaviour are not tolerated in Magdalene College.

3. *Physical misconduct* is defined as any unwanted and unreasonable contact. Physical misconduct includes pinching, punching, slapping, pulling hair, biting, pushing, shoving, using weapons and using items as weapons.  
*Sexual misconduct* is defined as unwanted and unpermitted sexual activity. Sexual activity includes sexual acts, kissing, sharing private sexual materials of another person, touching through clothes, showing sexual organs and remarks of a sexual nature. Sexual misconduct can take place in physical or virtual environments.  
*Abusive behaviour* is defined as any unwanted behaviour which is reasonably likely to cause harm; or have the effect of violating another person's dignity; or create an intimidating, hostile, degrading, humiliating or offensive environment for that other person. It includes threats, abusive comments, the use or supply of illicit substances, making malicious accusations, repeatedly contacting someone, calling for the destruction of a particular national, ethnic, racial or religious group, and abuse that takes place within an intimate relationship. Abusive behaviour can take place in physical or virtual environments.
4. The behaviour covered by these forms of misconduct can include actions that appear to have been influenced by someone's protected characteristics or their perceived protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, sexual orientation. The behaviour can take place in physical or virtual environments. A non-exhaustive list of these types of behaviours includes:
  - (a) making sexually offensive comments about dress or appearance, the display or distribution of sexually explicit material, or demands for sexual favours;
  - (b) engaging in harassment on the grounds of a person's sexuality or gender (or assumptions about a person's sexuality or gender) including making derogatory homophobic, transphobic, or biphobic remarks or jokes aimed at a particular person, offensive comments relating to a person's sexuality, refusal to acknowledge a person's gender or identity, or threats to disclose a person's sexuality to others;
  - (c) making offensive references to a person's race, ethnicity, skin colour, religion or nationality, dress, culture, background or customs which have the effect of ridiculing or undermining an individual or fostering hatred and/or prejudice towards individuals or particular groups;
  - (d) ignoring, disparaging or ridiculing a person because of mistaken assumptions about their capabilities, or making offensive reference to an individual's appearance, in the context of their disability;
  - (e) controlling or coercive behaviour, such as pressure to subscribe to a particular political or religious belief.
5. The word 'unwanted' means 'unwelcome' or 'uninvited'. It is not necessary for a person to object to the behaviour for it to be unwanted.
6. The word 'unpermitted' means 'not permitted' or 'unauthorised'. A number of behaviours can indicate where permission has been given, for example, verbal comments or physical actions. Permission for an activity can only be given at the time it is taking place and where the person has the choice to give or not give permission. Where there is disagreement as to whether an activity was unpermitted, the applicable test shall be, taking all circumstances into account, whether a reasonable person would consider the activity was unpermitted.
7. The College will treat any allegation of physical misconduct, sexual misconduct, or abusive behaviour (as defined in paragraph 3) towards a student by another student seriously.

8. Students are expected to take responsibility for their own conduct: the fact that a student against whom an allegation has been made was under the influence of alcohol or drugs at the time will not be viewed as mitigating the case.
9. If students feel that they have been subject to physical or sexual misconduct or abusive behaviour by another student they can:
  - seek advice, guidance and support;
  - raise a complaint with the College or with the University (but not both).
10. A complaint raised with College may be considered via:
  - a formal complaint under the College Rules, available at <https://www.magd.cam.ac.uk/administration/policies-and-procedures>
  - an informal resolution procedure (in the Appendix, below)
11. In this document, a 'student' means a Registered Student as defined in University Statute A X2(c); a 'Reporting Student' is a student who has made a complaint of misconduct, a 'Respondent Student' (or 'Respondent') is a student about whom a complaint has been made under this procedure; 'College' refers, unless the context otherwise requires, to Magdalene College.
12. Personal data will be processed in accordance with the College's Privacy Notice – Students, available at <https://www.magd.cam.ac.uk/privacy-notice-students>

### **Advice, Guidance, and Support**

13. Students who feel they have been subject to physical misconduct, sexual misconduct, or abusive behaviour (as defined in paragraph 3) are advised to seek support from the College or from the University. Students can seek advice from their College Tutor, the Head of Student Wellbeing, the Dean of Chapel, one of the Harassment Officers, or another point of contact within the College.
14. Students may also seek independent support and information from the Cambridge University Students' Union's Advice Service  
<https://www.cambridgesu.co.uk/advice/student-advice-service/>
15. Rape and sexual assault are criminal offences, as are certain types of physical misconduct and abusive behaviour. Reporting Students will be supported to come to an informed decision as to whether to report such an incident to the police. The College will not require a Student to report a matter to the police, but it should be noted that the police have investigative powers which the College does not possess. See also paragraph 27, below. No inferences will be drawn from the student's decision not to report the incident to the police. In cases where the complaint describes conduct that could constitute a criminal offence, the Reporting Student will be informed that if the complaint is considered through a College or University procedure before reporting it to the police this may undermine any later police investigation and subsequent proceedings.
16. In exceptional circumstances, where the facts as they emerge give rise to concerns that there is a significant on-going risk to members of the College or University community, or the wider community, the Senior Tutor and the Dean may make an executive decision to refer the matter to the police. The Senior Tutor and the Dean

will, in all but exceptional circumstances, inform the Reporting Student of their intention to report the matter to the police and their reasons before doing so.

### **Raising a Complaint of Physical or Sexual Misconduct, or Abusive Material**

17. Complaints can be raised under either the College or University procedures, but not both. All complaints about physical misconduct, sexual misconduct or abusive behaviour (as defined in clause 2 of the procedure below), whether they are raised with the College or with the University, will be considered on a case-by-case basis as to which is the most appropriate procedure for consideration.
18. If the complaint is about sexual misconduct, then students are strongly encouraged to use a University procedure, or to contact the police (if appropriate). College procedures are, however, available if a student does prefer.
19. If the complaint is about physical misconduct or abusive behaviour, students are normally expected to use a college procedure, and students at any college may use this procedure to raise a complaint about the conduct or behaviour of a student or students at Magdalene College. If the complaint is about the conduct or behaviour of a student at another college, it should be possible to raise it under that student's college's procedure; if this is not possible, the University's procedure can be used to raise such a complaint.
20. Complaints against students from more than two colleges, or relating to conduct occurring in the context of University societies or sports clubs, would normally be expected to be raised under the University procedure because of the likely complexity of such cases.
21. Magdalene College will provide pastoral support, as desired, to any Magdalene College student involved in a University or College procedure, whether as a Reporting Student or as a Respondent Student.

### **How to make a complaint to the University**

22. The University procedure and guidance documents describe how the student's complaint will be considered, and the possible outcomes:  
<https://www.studentcomplaints.admin.cam.ac.uk/harassment-sexual-misconduct/i-want-know-more-about-universitys-policies>  
The Head of the University's Office for Student Conduct, Complaints and Appeals (OSCCA) will be able to answer any specific questions students or staff might have about the procedure and will endeavour to ensure that the students understand the procedure at each stage. OSCCA can be contacted at [OSCCA@admin.cam.ac.uk](mailto:OSCCA@admin.cam.ac.uk)

### **How to make a complaint to Magdalene College**

23. There are two College processes by which a complaint of physical or sexual misconduct, or abusive behaviour, by a student against a student of Magdalene College can be addressed:
  - A formal complaint: a process in which the College will determine what facts occurred and consider imposing a sanction on the Respondent

- An informal complaint: a procedure in which the College seeks to facilitate the Reporting Student and the Respondent reaching an agreement regarding future conduct, but the College does not determine what facts occurred and does not impose a sanction on the Respondent
24. If a student wishes to make a formal complaint against a student of Magdalene College, then the student should make the complaint to the Dean under Part F6 of the Magdalene College Rules, available at <https://www.magd.cam.ac.uk/administration/policies-and-procedures>
  25. If a student wishes to make an informal complaint against a student of Magdalene, then the student should make the complaint to the Dean under the Magdalene College Informal Student Complaint Procedure, at Appendix 1 below.
  26. A student bringing an informal complaint does not of itself prevent them from later bringing a formal complaint (even if agreement is reached under the informal complaint procedure); however, attention is drawn to the principle in Part F6 of the College Rules that complaints of breach of the College Rules should be submitted in a timely manner.
  27. Bringing a complaint under the College's procedure does not prevent the student from reporting the matter to the police at any time. If it appears to the Dean that there is the possibility of a criminal prosecution in consequence of the alleged conduct, then the College's procedure will not start until either it is clear that there will be no criminal prosecution, or until criminal proceedings have concluded. The College may, however, take precautionary action to ensure that a full and proper investigation can be carried out and/or to protect the Reporting Student, Respondent Student or others while the matter is being dealt with. Any precautionary measures are not intended to be punitive and do not make any assumptions about the merits of the complaint. Any precautionary measures would be imposed under the procedures in Part F6 of the College Rules.

## **Magdalene College Informal Student Complaints Procedure in Cases of Physical or Sexual Misconduct, or Abusive Behaviour**

### **1. Aim of this Procedure**

- 1.1 This procedure provides a mechanism to limit interactions between Reporting and Respondent Students by the agreement of both parties. This Procedure does not seek to investigate the misconduct which caused the Reporting Student to submit a complaint and it will not reach any findings on whether any misconduct has taken place. As a result, the procedure does not require the Reporting Student to provide a detailed account of the misconduct, nor does it require the Respondent Student to provide a response to the content of the complaint.
- 1.2 Because this Procedure places an emphasis on reaching consensual resolution, complaints made by a third party and anonymous complaints will not normally be accepted. Where there is a third party or anonymous complaint, the Dean may wish to discuss alternatives to the use of this procedure with others, including the Senior Tutor.
- 1.3 A complaint under this procedure may be brought by or against two or more Reporting Students from Magdalene College and/or against two or more Respondent Students where the complaint describes misconduct which is related. The Dean may determine whether matters are to be addressed together or through separate processes.
- 1.4 A complaint cannot be brought under this Procedure where the Reporting Student has previously made a complaint raising the same allegations which has been dealt with under the University's procedure or the College Rules.
- 1.5 In the event of any inconsistencies between this Procedure and the procedure detailed in the College Rules, the latter shall prevail.

### **2. General Principles**

- 2.1 Any reference to the Dean can be read as referring to the Assistant Dean, or any Deputy Dean appointed by the Master in relation to a specific complaint. References to a Facilitator are to a trained person whom the Senior Tutor or Dean will appoint to handle the consideration of the case and provide a report following such consideration.
- 2.2 The College will act reasonably in considering complaints under this Procedure, having regard to the individual circumstances of the case. Every effort will be made to ensure that all parties are treated with fairness and dignity and that there is no unreasonable delay.
- 2.3 If, at any stage, a Reporting Student feels that, as a result of making a complaint in good faith, they are being disadvantaged or suffering reprisal, or have received a threat of reprisal from any member of the College, including the person about whom they have made a complaint, they should seek advice and guidance from the Senior Tutor or Deputy Senior Tutor or, if neither can act, another senior member of the College.

- 2.4 The time limits set out in this Procedure may be waived by the Dean or the Facilitator, where there is good reason, and to do so would not prevent the matter being dealt with fairly.
- 2.5 The Dean may suspend the consideration of a complaint at any stage of this Procedure and/or refer the matter for consideration under another procedure.
- 2.6 The Dean may impose precautionary measures, in accordance with Part F6 of the College Rules (including the right for a student subject to precautionary measures to request a review).
- 2.7 If a person is given the opportunity to make representations under this procedure, the Dean or Facilitator shall warn that person that the College may be required to provide information regarding the matter as evidence in any subsequent criminal investigation or proceedings in a court of law, including any admission made in representations, and that any such admission may also be used as evidence in University disciplinary proceedings or under the College Rules.
- 2.8 The Reporting Student may withdraw a complaint at any time during this Procedure, by notifying the Dean in writing. Where a complaint is withdrawn no further action will be taken under this procedure.
- 2.9 Nobody may act as a Facilitator or decision-maker in relation to a matter where they are biased, or a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that they were biased. A person may not act as a decision-maker or Facilitator where they are the Tutor or Director of Studies of, or have had close involvement with, any person directly involved in the case.
- 2.10 Any failure to follow an element of this Procedure will not invalidate the rest of this Procedure unless it is no longer possible for the matter to be dealt with fairly.
- 2.11 The approach to the use of personal information under this Procedure is set out in an Appendix, below. The Reporting Student and Respondent Student will be informed of this policy at the earliest practicable opportunity.

### **3. Support and Guidance**

- 3.1 The Dean can provide advice at the outset to help both Reporting Students and Respondent Students to understand this Procedure. Parties will be directed to appropriate sources of advice and support, where appropriate.
- 3.2 Reporting Students, Respondent Students, and witnesses are entitled to be accompanied by a supporter at any meeting held under this Procedure. A supporter may be a Tutor, student representative or a friend. Although it is highly unlikely that it will be necessary or appropriate, Reporting Students and Respondent Students will not be prohibited from being accompanied by a legal representative at such meetings at their own cost.
- 3.3 First contact with possible student witnesses at another College will normally be made via their Senior Tutor.

### **4. Raising a Complaint**

- 4.1 A Reporting Student who wishes to make a complaint under this Procedure must do so in writing. The Reporting Student should set out details of the complaint, addressed to the Dean.
- 4.2 In cases where the complaint describes conduct that could constitute a criminal offence, the Reporting Student will be informed that if the complaint is considered through a College or University procedure before reporting it to the police this may undermine any later police investigation and subsequent proceedings.
- 4.3 A complaint should be made as soon as practicable after the events alleged.
- 4.4 On receipt of the complaint, the Dean will give the case initial consideration and determine whether to:
  - (a) refer the complaint for consideration under this procedure
  - (b) dismiss the complaint because it is considered to be without merit, vexatious, frivolous or malicious;
  - (c) reject the complaint because it does not fall within the scope of this procedure;
  - (d) reject the complaint because of unreasonable delay on the part of the Reporting Student;
  - (e) recommend that the complaint is raised under the University procedure, or the College Rules;
  - (f) decline to refer the complaint for investigation under this Procedure.
- 4.5 The Dean will notify the Reporting Student in writing of his/her decision within a reasonable time of receipt of the written complaint.

## **5. Consideration of the Complaint**

- 5.1 Where a complaint is referred for consideration, the Dean will appoint a trained Facilitator to consider the case. The role of the Facilitator is to prepare a report which sets out any undisputed facts of the case and makes recommendations around proposed actions for resolution, based on the responses of both the Reporting Student and Respondent Student, and any other evidence.
- 5.2 The Facilitator shall determine how to handle the case, within the context of the general principles set out in Section 2 above. The Facilitator will invite the Reporting Student and Respondent Student, and any witnesses if appropriate, to separate meetings with the Facilitator. The aim of the meetings will be to establish actions with which both parties would agree and which would limit interaction between the two parties. Each meeting will be minuted and the minutes agreed with those present as a correct record (or any disagreement noted).
- 5.3 If it is of assistance in the process of considering the matter, the Facilitator may seek additional statements or evidence from the Complainant and the Respondent and any other person involved in the events that are the subject of the complaint.
- 5.4 Before a Respondent attends an interview, the Facilitator must:
  - (a) provide sufficient information to enable the Respondent Student to understand the nature of the complaint, the identities of those involved and the place and time where the described behaviour is said to have occurred;
  - (b) inform the Respondent Student that there does not need to be any response to the complaint and that no adverse inferences may be drawn from the



Respondent Student's failure to attend for interview or otherwise participate in this procedure;

- (c) warn the Respondent Student that the College may be required to provide information regarding the complaint as evidence in any subsequent criminal investigation or proceedings in a court of law, including any admission made in the course of this procedure (or any subsequent disciplinary proceedings) and that any admission made in the course of this procedure may also be used as evidence in College disciplinary proceedings.

- 5.5 Where the Respondent Student declines to cooperate with the Procedure, the Facilitator may nevertheless continue with consideration of the issue.
- 5.6 The Facilitator will aim to provide the report to the Dean within four weeks of the complaint being referred for consideration, but some cases may require longer, in which case the Facilitator will keep the Reporting Student, the Respondent Student and the Dean updated.
- 5.7 The Investigator's report will normally be released to the Reporting Student and the Respondent Student, save that parts may be redacted where to do so is in the reasonable interests of the Reporting Student, Respondent Student, or any witness.

## **6. Determining the Outcome of a Complaint**

- 6.1 On receipt of the Facilitator's report, the Dean may:
  - (a) decide that no further action is required;
  - (b) refer the matter, with the consent of the Reporting Student, to the disciplinary process under Part F6 of the College Rules;
  - (c) propose a resolution of the complaint.
- 6.2 The Dean may propose a resolution to the complaint, which may include:
  - (a) that the Respondent Student will agree to abide by a conduct agreement issued by the Dean. A conduct agreement may include an undertaking by the Respondent Student to refrain from contact with the Reporting Student for a specified period of time. A record of the agreement will be retained by the College. The agreement may also be taken into account if a further complaint is made against the Respondent Student under this Procedure, or the College Rules.
  - (b) that the Respondent Student change accommodation;
  - (c) that the Respondent Student attend behaviour awareness training or workshops;
  - (d) that the Respondent Student make a formal apology to the Reporting Student.
- 6.3 In appropriate cases, the Dean may recommend that the Respondent Student take a period of intermission from study. In such a case, this recommendation will be considered by a meeting of the Tutors. Any period of intermission from study would require the prior approval of the relevant University body.
- 6.4 The proposed resolution will stand only if the agreement of both the Reporting Student and the Respondent Student is obtained. The Facilitator, Dean, or other senior College Officer will facilitate the process of reaching agreement between the Reporting Student and the Respondent Student and will issue written confirmation of any agreed resolutions to them.
- 6.5 If attempts at reaching an agreed resolution are unsuccessful, the Dean may refer the matter, with the consent of the Reporting Student, to the disciplinary process under Part F6 of the College Rules.

- 6.6 If there are grounds to believe that the Respondent Student has failed to comply with the terms of an agreed resolution, the Dean shall determine whether the alleged breach of the agreed resolution, and/or (with the consent of the Reporting Student) the original complaint should be referred for consideration under Part F6 of the College Rules.

## **7. Reporting**

- 7.1 An annual report of complaints considered under this procedure will be made to the College Governing Body, in which references to individual cases will be made anonymously.
- 7.2 The Dean will be responsible for the review of this procedure.

## **Appendix – Policy on the use of personal information under the Magdalene College Informal Student Complaints Procedure**

1. The overall purpose of processing personal data in the context of the consideration and resolution of complaints under this procedure is to decide what steps can appropriately be taken in response to such complaints. Personal data will be disclosed only to those persons who need to see such data for the purposes of preparing a report following receipt of a complaint, or determining or recommending a resolution, or deciding what other steps can appropriately be taken. Such persons may include the Head of OSCCA, the Senior Tutor, the Tutors, the President, the Master, the Dean, and the Facilitator. Documentation generated in the course of the consideration of a complaint under the procedure may not be disclosed in full to the Reporting Student and the Respondent Student except in so far as is reasonably necessary to conduct and to progress a fair consideration of the complaint, or where a person has explicitly consented to the disclosure of personal data to the extent that the data relate to her or him.
2. Where relevant, the College shall share the written communication providing the complaint, the Facilitator's report and agreed actions for resolution, with University bodies (for example, OSCCA or a fitness to practise committee), regulatory bodies (for example, the Disclosure and Barring Service), professional bodies (for example, the General Medical Council), or other organisations with whom the Respondent Student may be connected, where it is appropriate to do so (for example, where the Respondent Student holds a position of responsibility for children or vulnerable adults).
3. Where formally requested to do so by one or more of the bodies listed in paragraph 2, where requested by the police, or where the College considers that someone may be at significant and immediate risk of harm, the College may disclose information received through this procedure to the police. When initiating a consideration, the Facilitator will inform the Respondent Student in writing that information about the case will be provided to the police if formally requested by one or more of the bodies listed in paragraph 2, or by the police, or if the Dean considers that there is an immediate and significant risk of harm, including to the College or the Collegiate University Community. Unless there are exceptional reasons, the Dean will normally inform the Reporting Student of the intention to report the matter to the police and give reasons before doing so.
4. The Facilitator's report will normally be released to the Reporting Student and the Respondent Student, but the minutes of any individual meetings will not usually be disclosed with the report. If the matter subsequently becomes the subject of disciplinary proceedings under Part F6 of the College Rules, all materials relating to this procedure will form part of the evidence in those proceedings and can therefore be expected to be disclosed to both sides in full.
5. Following completion of the procedure, the Facilitator's report and a record of the outcome, including any conduct agreement entered into by the Respondent Student, will be retained securely in accordance with the College's Data Protection Policy. This information will be used for the purposes of responding to any complaints regarding the application of this procedure as well as for compiling anonymous statistics regarding its use. Further, where any complaint is subsequently submitted under this Process or under Part F6 of the College Rules in respect of the same Respondent Student, giving the University reasonable cause for concern regarding an emerging pattern of potential misconduct, this information may be taken into account by the Dean or other decision-maker, as appropriate, in reaching a decision. Information may also

be provided to OSCCA, the University Advocate, the University Student Discipline Officer or other relevant officer if relevant for the purposes of conducting disciplinary proceedings or referral for consideration under another procedure.

6. Nothing in this policy is intended to prejudice any rights of access to personal data which any person may have under the General Data Protection Regulations or otherwise.
7. If there are any questions or concerns about this Policy, please contact the Dean in the first instance.