



## Magdalene College Guidance on, and Procedures for Handling Cases of Harassment or Sexual Misconduct 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 harassment and sexual misconduct:**  
[www.studentcomplaints.admin.cam.ac.uk/harassment-and-sexual-misconduct](http://www.studentcomplaints.admin.cam.ac.uk/harassment-and-sexual-misconduct)

**The College has a separate complaints procedure under which students can raise complaints about College academic and non-academic provision.**

1. Magdalene College has adopted the University's Code of Conduct in respect of Harassment and Sexual Misconduct (see *Appendix 2, Annex*) and affirms its commitment to providing an environment that is free from harassment and discrimination, and the right of all members to be treated with dignity and respect.
2. The College will treat any allegation of harassment or sexual misconduct (as defined in *Appendix 2, Annex*) towards a student by another student seriously, and the Code of Conduct and procedure described here apply to all students.
3. 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.
4. If students feel that they have been subject to harassment or sexual misconduct by another student they can:
  - seek advice, guidance and support;
  - seek alternative resolution;
  - raise a complaint with the College or with the University (but not both).
5. Both the complainant and the respondent will be advised to think carefully about what information they disclose to others at all stages of seeking resolution of the matter, and will be given a copy of the College's policy on the use of personal information (see *Appendix 3*). Students should ensure that they are aware of the issue of confidentiality and have considered any limits that may be applied to the principle of confidentiality, including how any information they provide might be used at later stages of the procedure if the case is escalated to more formal, including disciplinary, procedures, or if it is reported to the police. In the latter

case, such information would be liable to be used not only by the police, but also, if relevant, in any subsequent criminal investigation (see further *Appendix 2*).

### **Advice, guidance and support**

6. Students who feel they have been harassed or been the subject of sexual misconduct (as defined in *Appendix 2, Annex*) are advised to seek support from the College or from the University. Students can seek advice from their College Tutor or another point of contact within the College.
7. Students may also seek independent support and information from the Cambridge University Students' Unions' Advice Service (SUAS).
8. Sexual assault and rape are criminal offences, and students will be supported to come to an informed decision as to whether to report such an incident to the police.<sup>1</sup> However, if a student decides not to report the incident to the police, neither the College nor the University will require them to do so. No inferences will be drawn from the Complainant's decision not to report the incident to the police.
9. 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 complainant of their intention to report the matter to the police and their reasons before doing so.
10. If, at any stage, complainants feel that they are being disadvantaged or suffering reprisal from any member of the College, including the person they have made a complaint about, as a result of complaining about harassment or sexual misconduct, they should seek advice and guidance from the Senior Tutor or another senior member of the College.

### **Alternative resolution**

11. In some cases relating to harassment and sexual misconduct, students who are unhappy with the behaviour of another student may want to try to resolve the matter themselves directly with the other student.
12. If seeking alternative resolution in this way, however, a student is advised to seek support on a confidential basis from a College Tutor, the Senior Tutor, the Dean,

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<sup>1</sup> The University is planning to establish a post of Harassment and Sexual Assault Advisor at the Counselling Service from October 2017. This post will be able to offer specialist advice and guidance to students. In the meantime, students can seek support from the Counselling Service.

or another staff member, either to help them to work out what to say or to accompany them when they meet the person they are complaining about. Because of the possibility of counter-accusation or recrimination, it is recommended that students are advised to alert a supporting person, such as their Tutor, to the problem before approaching the person concerned, even if they feel able to take this action on their own.

13. Students should be encouraged to try to describe the behaviour very precisely, including where and when it happened. Students should also make it clear how they feel about what has happened, and describe the effect it is having on them. Finally, they should be encouraged to say precisely what they want to happen going forward.
14. If a direct approach has been tried and it has not worked, or if a student does not wish to make such an approach, the College Tutor or other College advisor may be able to seek to resolve the problem on their behalf. The College might also propose that both parties agree to co-operate with an independent mediator seeking to mediate - the University offers a mediation service, which could be used (*see Appendix 1 - Mediation*) in cases where the College is not able to provide a mediator.
15. If an attempt at an informal, alternative resolution has not had or would not have the desired effect, or if this approach would be inappropriate (including cases in which a student does not wish to make use of alternative resolution), a student can make a formal complaint to the College or to the University. There is no requirement that an attempt at alternative resolution has been made, however, before a formal complaint is raised.
16. Any statement made as part of an alternative resolution procedure is liable to be disclosed to the police, and used in any subsequent police investigation or criminal prosecution.

#### **Raising a formal complaint**

17. Complaints can be raised under either the College or University procedures, but not both. All complaints about harassment or sexual misconduct (as defined in *Appendix 2, Annex*), 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 harassment, students are normally expected to use a College procedure, and students at any College may use this procedure to raise a complaint about the behaviour of a student or students at Magdalene College. If the complaint is about the 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.

19. Complaints against students from more than one College, or involving members of a University club or society, would normally be expected to be raised under the University procedure because of the likely complexity of such cases.
20. Magdalene College and the University anticipate that complaints about sexual misconduct (as defined in *Appendix 2, Annex*) will usually be directed to the University's procedure.
21. Magdalene College will provide pastoral support, as desired, to any Magdalene College student involved in the University procedure, whether as a Complainant or as a Respondent.

#### **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. 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 on [OSCCA@admin.cam.ac.uk](mailto:OSCCA@admin.cam.ac.uk).

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

23. A detailed procedure is appended (see *Appendix 2*). What follows is a **summary** of the procedure and further explanatory information about how it will be followed.
24. At all stages of the formal procedure, decisions on what action will be taken will be made by people who are trained to make those decisions. In deciding what, if any, action to take, Magdalene College will need to consider a variety of relevant factors including, for example, the evidence which is available to support an allegation of misconduct; any admission of responsibility by the person against whom the complaint has been made; the limitations of the College's internal procedure in terms of obtaining and assessing evidence; and the need to safeguard the rights of both parties.
25. 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 and the Tutor who assists the Dean with the procedure specified in Appendix 2 (the 'Responsible Tutor') (see definition in *Appendix 2*) 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 either no criminal prosecution, or the student is convicted of a criminal offence. The College may, however, take precautionary action to ensure that a full and proper investigation can be carried out and/or to protect the complainant, respondent 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. In taking any precautionary action the College must act in accordance with appendix E(VI) of the College Rules (see further, *Appendix 2* below).

26. In reaching a decision on what action, if any, to take, Magdalene College may seek legal advice at any point in the process.
27. Students should make their complaint in writing to the Senior Tutor and the Dean setting out details of the events that form the basis of the complaint, together with any evidence and, if appropriate, information on any attempts that have been made to resolve the matter informally. The complaint should normally be made within three months of the occurrence of the events that are the subject of the complaint. Otherwise, a student should provide the reason why they have waited until now to raise a complaint.
28. The Dean and the Responsible Tutor (see definition in *Appendix 2*) will give initial consideration to the complaint before a decision is made on whether it will be referred for investigation. Some cases may not be referred for investigation, but instead the student will be asked to seek alternative resolution of the matter, with support from their Tutor or other member of the College, or recommended to raise the complaint under the University's procedures. The complaint may be dismissed or rejected because it does not fall under the scope of the College's procedure (see *Appendix 2*).
29. The complainant will normally be told the outcome of this initial consideration within 10 working days of submitting their complaint.

### **Investigation**

30. If the case is referred for investigation a trained investigator will be appointed by the Dean and the Responsible Tutor to try to establish as many undisputed facts about what happened as possible. The investigation will be conducted fairly and objectively. The Head of OSCCA is able to help with identification of a suitable external investigator, if required.
31. If the parties are willing, the investigator will meet separately with both parties and may also meet any witness to the events that are the subject of the complaint. The investigator will then write a report and recommend a course of action.
32. Both the complainant and the respondent may wish to be accompanied by a supporter during the investigation, such as their Tutor (other than the Responsible Tutor), member of CUSU, the Students' Unions' Advice Service or the JCR/MCR, or a friend. Given the nature of the types of complaints that will be considered under the College, rather than the University, procedure, it is unlikely that it will be necessary for either party to bring a legal advisor to any meetings held under the procedure. Students would not, however, be prohibited from doing

so, and the respondent will be reminded before he or she meets with the investigator that they are entitled to seek independent legal advice. If a student wishes to take legal advice, this will be at their own expense.<sup>2</sup>

33. In some cases, after discussions with the investigator, both parties may agree that alternative resolutions should be explored through mediation. The University Mediation Service is available for students and may be useful in these cases (see *Appendix 1*).

#### **Consideration of the complaint and possible outcomes**

34. Following the investigation, the report and any recommendation will be considered by the Dean and the Responsible Tutor who may decide that:
  - with the agreement of both the complainant and the respondent, the parties should seek to resolve the matter through mediation or otherwise; or
  - resolutions should be proposed; or
  - the case should be referred for consideration under the College's disciplinary procedure; or
  - the complaint should be dismissed.
35. Acceptance of a resolution will not require the student against whom a complaint has been made to admit liability, nor imply that the College has made a finding of wrong-doing.
36. Resolutions might include asking the respondent to abide by a conduct agreement. This might stipulate that the respondent will refrain from contact with the complainant, either indefinitely or for a specified period in the first instance. It might be necessary for the respondent to move rooms. The respondent might also agree to intermit, or to attend behaviour awareness training.
37. A record of a conduct agreement will be retained by the College and may be taken into account if a further complaint is made against the respondent under this procedure, whether that subsequent complaint is made by the original complainant or a different complainant.
38. If the complaint is dismissed, the students involved will be offered help and guidance to restore reasonable relations between them. This process might include mediation.
39. The Dean and the Responsible Tutor will keep both the complainant and respondent informed of the general progress of the complaint. Where a complaint under the College's formal procedure leads to College disciplinary proceedings, the student who raised the complaint will be kept informed of the progress of the

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<sup>2</sup> Students for whom the cost of legal advice would represent a significant financial burden are encouraged to seek advice from the Assistant Bursar.

proceedings and will be formally notified of the outcome of any disciplinary hearing and any sanctions applied that impact upon the complainant.

40. If the student complainant or respondent is dissatisfied with the decision made using the procedure (see *Appendix 2*), they have the right to ask for a review of the decision. This review will be conducted in accordance with paragraph 6.4.2 of the procedure (see *Appendix 2*). If following the review the original decision is upheld, a Completion of Procedures letter should be issued to the student to enable them to raise the complaint with the Office of the Independent Adjudicator.

### **Discipline**

Information about the College's formal disciplinary procedures can be found at:  
[http://www.magd.cam.ac.uk/uploads/College\\_Documents\\_and\\_pdfs/COLLEGE\\_RULES\\_-\\_2016.pdf](http://www.magd.cam.ac.uk/uploads/College_Documents_and_pdfs/COLLEGE_RULES_-_2016.pdf)

## **Appendix 1 - Mediation**

Mediation offers a chance for both students to identify and discuss their concerns. Mediation will only be an option if both parties agree to engage with the process.

To support this process, and to complement the work already undertaken by College Tutors in resolution of disputes between students, the University offers a mediation service for students. The student mediation service uses dual mediation by two neutral, independent mediators to assist the students to resolve their differences and reach a mutually acceptable agreement on the way forward.

The mediators are members of staff who have volunteered for the role and who have received formal mediation training. The mediators are impartial; they have no vested interest in the outcome and will not impose an agreement. The mediators are only interested in helping the students to reach a mutually acceptable solution. The mediators will manage the whole mediation process, creating a safe and supportive environment so that both students can talk honestly and openly about what has happened and how it has affected them.

It should be noted that any statement made in mediation is liable to be disclosed to the police, and used in any subsequent police investigation or criminal prosecution.

## Appendix 2

### **Magdalene College Formal Procedure for Consideration of Cases of Harassment and Sexual Misconduct (Raised by One Student (or Students) about another Student (or Students))**

#### **1. Glossary**

1.1. In this procedure the following terms shall have the meanings set out below:

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|---------------------|--|
| • Code of Conduct   | The Code of Conduct for Students in respect of Harassment and Sexual Misconduct, as set out in the Annex to this Procedure   |
| • Complainant       | A Student who has made a complaint under this procedure  |
| • Responsible Tutor | A Student's Tutor, who will assist the Dean with this procedure (unless the Tutor feels it is inappropriate to act, in which case the Responsible Tutor shall be the Senior Tutor, or the Deputy Senior Tutor) |
| • Working Day       | Any day except weekends, public holidays and any other day when the University Offices are closed  |
| • Respondent        | A Student about whom a complaint has been made under this procedure  |
| • Student           | A matriculated student leading to the award of a degree, diploma, or certificate of the University   |

#### **2. Scope of procedure**

- 2.1. This procedure (the ‘Procedure’) applies where a Student wishes to complain that the behaviour of another Student contravenes the College’s Code of Conduct (see *Annex to Appendix 2*) in respect of Harassment and Sexual Misconduct.
- 2.2. Magdalene College has a general Complaints Procedure under which a Student may raise other types of complaint, including a complaint about the College experience or a member of College staff.
- 2.3. 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, College Tutors and others may wish to discuss alternatives to the use of this procedure with the Senior Tutor.

- 2.4. A complaint under this procedure may be brought by or against two or more Students from Magdalene College where the complaint is about harassment arising from the same event(s). In such cases references in this Procedure to the ‘Complainant’ or the ‘Respondent’ shall be construed as appropriate as referring to more than one person.
- 2.5. A Complainant may choose whether to raise a complaint under this Procedure or under the University procedure. However, it is the expectation of the College and the University that the University procedure will be used where:
  - (a) the complaint relates to sexual misconduct; or
  - (b) the complaint relates to harassment occurring in the context of University societies or sports clubs; or
  - (c) the complaint relates to harassment and the Respondents include students from Magdalene College and another College.
- 2.6. A complaint of harassment or sexual misconduct may be brought under this Procedure whether or not it has been reported to the police – (but see paragraph 2.5 above, and paragraph 3.6 below).
- 2.7. A complaint cannot be brought under this Procedure where the Complainant has previously made a complaint about the same event(s) which has been dealt with under the University’s procedure.
- 2.8. No inferences shall be drawn from the Complainant’s choice of avenue to pursue the complaint, be it via the College’s procedure, the University’s procedure, or the Police.
- 2.9. In the event of any inconsistencies between this Procedure, and the procedure detailed in appendix E(VI) of the College Rules, appendix E(VI) of the College Rules shall prevail.

### **3. General principles**

- 3.1. 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.
- 3.2. The time limits set out in this Procedure may be waived by agreement of all the parties involved.
- 3.3. A written decision issued in accordance with this Procedure shall also include the reasons for that decision.
- 3.4. The Dean and the Responsible Tutor may suspend the consideration of a complaint at any stage of this Procedure and/or refer the matter for consideration under another procedure, after consultation with the Complainant and the Respondent as appropriate.
- 3.5. If it appears to the Dean and the Responsible Tutor that there is the possibility of a criminal prosecution in consequence of the alleged conduct, then the College procedure will not proceed until it becomes clear that there will be either no criminal prosecution, or there has been a conviction.
- 3.6. If it appears to the Dean and the Responsible Tutor that it may be necessary under this Procedure to temporarily suspend a student (or take other precautionary action) in order:

(a) to ensure that a full and proper investigation can be carried out in relation to any matter (either under a procedure in the College or by the police); and/or

(b) to protect any person while any matter is being dealt with under a procedure in the College or as part of a criminal process

then the Dean and the Responsible Tutor shall only have the power to take any precautionary action provided they abide by the procedures specified in appendix E(VI) of the College Rules. The procedure in appendix E(VI) of the College Rules provides for (but is not limited to) the right of the person to be permitted to make representations.

- 3.7. Whenever a person is given the opportunity to make representations under this procedure (when read in conjunction with appendix E(VI) of the College Rules), the Dean and the Responsible Tutor shall warn that person that the College may be required to provide as evidence in any subsequent criminal investigation or proceedings in a court of law information regarding the matter, including any admission made in representations regarding the temporary suspension, and that any such admission may also be used as evidence in College disciplinary proceedings.
- 3.8. The Dean (or the Senior Tutor) will inform the University, through the Head of the Office of Student Conduct, Complaints and Appeals, of any precautionary action taken in respect of individual students.
- 3.9. Individual students who are subject to any precautionary measures imposed under this procedure have the right to ask for a review of this decision. This review will be conducted in accordance with paragraph 6.4 of this procedure, and appendix E(VI) of the College Rules.
- 3.10. Where, at any point during this procedure, the Complainant and Respondent have agreed to seek alternative resolution of the complaint under paragraph 5 but have been unable to reach an agreed outcome, the Dean and the Responsible Tutor will consider whether further action should be taken under this procedure and, if so, at what stage of the Procedure.
- 3.11. The Complainant 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.
- 3.12. To ensure that there are no conflicts of interest, no person serving under this Procedure as a member of a decision-making body or as an investigator will have any previous knowledge of the case nor any material connection to the Complainant or the Respondent. The Complainant or the Respondent (or their representatives) will be entitled to object to the involvement of an individual for good cause.
- 3.13. In the event that the Dean has a conflict of interest, this shall be communicated to the President, in writing, who shall take the necessary steps to appoint a replacement.

#### **4. Support and guidance**

- 4.1. The Dean and the Responsible Tutor will provide advice at the outset to help both Complainants and Respondents to understand this Procedure.

- 4.2. Complainants, Respondents, and witnesses are entitled to be accompanied by a supporter at any meeting held under this Procedure. A supporter may be a Tutor (other than the Responsible Tutor), student representative or a friend. Although it is highly unlikely that it will be necessary or appropriate, Complainants and Respondents will not be prohibited from being accompanied by a legal representative at such meetings.
- 4.3. Appendix 3 sets out the College's policy on the use of personal information under this procedure. A copy of this policy will normally be provided to Complainants, Respondents and witnesses to events relating to the complaint so that they understand how their personal information will be used and the limits on confidentiality. The policy indicates the College and University officers with whom the information is likely to be shared.
- 4.4. First contact with possible student witnesses at another College will normally be made via their Senior Tutor.

## **5. Alternative resolution**

- 5.1. Alternative resolution may be suitable for dealing with some cases that are brought under this Procedure, and wherever appropriate, Complainants are encouraged to consider seeking alternative resolution to their concerns before bringing a formal complaint under this Procedure.
- 5.2. If seeking alternative resolution in this way, a Student is advised to seek support on a confidential basis from a College Tutor, the Senior Tutor, the Dean, or another staff member, either to help them to work out what to say or to accompany them when they meet the person they are complaining about. Because of the possibility of counter-accusation or recrimination, it is recommended that Students are advised to alert a supporting person, such as their Tutor, to the problem before approaching the person concerned, even if they feel able to take this action on their own.
- 5.3. Students should be encouraged to try to describe the behaviour very precisely, including where and when it happened. Students should also make it clear how they feel about what has happened, and describe the effect it is having on them. Finally, they should be encouraged to say precisely what they want to happen going forward.
- 5.4. If a direct approach has been tried, and it has not worked, or if a student does not feel able to make such an approach, the College Tutor or other College advisor may be able to seek to resolve the problem on their behalf. The College might also propose that both parties agree to co-operate with an independent mediator seeking to mediate - the University offers a mediation service, which could be used (*see Appendix 1 above - Mediation*) in cases where the College is not able to provide a mediator.
- 5.5. Where an attempt at an informal, alternative resolution has not had or would not have the desired effect, or if this approach would be inappropriate (including cases in which a Student does not wish to make use of it), a Student can make a formal complaint to the College or to the University. There is no requirement that an attempt at alternative resolution has been made before a formal complaint is raised.
- 5.6. Any statement made as part of an alternative resolution procedure is liable to be disclosed to the police, and used in any subsequent police investigation or criminal prosecution.

5.7. Alternative resolution may not be appropriate for some complaints of harassment because the relationship between the parties has broken down. In such cases the complaint will be considered in accordance with the formal procedure in paragraph 6.

## **6. Formal procedure**

### **6.1. Raising a complaint**

6.1.1. A Student who wishes to make a complaint under this Formal procedure must do so in writing. The Complainant should set out details of the complaint together with details of any attempts at alternative resolution, if appropriate.

6.1.2. The complaint should be addressed to the Senior Tutor and the Dean.

6.1.3. A complaint should normally be made within three months of the occurrence of the events that are the subject of the complaint (but see paragraph 3.2).

6.1.4. On receipt of the complaint the Dean and the Responsible Tutor will give the case initial consideration and determine whether to:

- (a) dismiss the complaint because it is considered to be without merit, vexatious, frivolous or malicious;
- (b) reject the complaint because it does not fall within the scope of this procedure;
- (c) decline to refer the complaint for investigation under this procedure and recommend to the Complainant that they should raise it under the University procedure;
- (d) decline to refer the complaint for investigation under this procedure for other reasons;
- (e) recommend to the Complainant that he or she should seek alternative resolution of the complaint;
- (f) refer the complaint for investigation under paragraph 6.2 of this procedure.

6.1.5. The Dean and the Responsible Tutor will notify the Complainant in writing of the decision of the Dean and the Responsible Tutor within ten Working Days of receipt of the written complaint.

6.1.6. In the event that a decision of the Dean and the Responsible Tutor falls within paragraph 6.1.4 (a)–(e) and the Complainant is unhappy with that decision, the Complainant shall have the right to request a review of that decision. The review will be considered by a Panel appointed in accordance with paragraph 6.4.

### **6.2. Investigation**

6.2.1. Where a complaint is referred for investigation, the Dean and the Responsible Tutor will appoint a trained Investigator to carry out an investigation of the case. The role of the Investigator is to prepare a report which sets out the undisputed facts of the case and any points of difference, and makes recommendations based on the evidence and policies in place.

6.2.2. The Investigator shall conduct the investigation as they think fit, within the context of the general principles set out in paragraph 3. The Investigator may interview (with their consent) the Complainant and the Respondent and any other person involved in the events that are the subject of the complaint and consider or request any other evidence that appears to the Investigator to be relevant.

- 6.2.3. If it is necessary to ensure the fairness of the investigation, the Investigator 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 at any stage of the investigation.
  - 6.2.4. The Complainant and Respondent will be made aware that the College may be required to provide as evidence in any subsequent criminal investigation or proceedings in a court of law information regarding the complaint, including any admission made in the course of this procedure (and/or any admission made during mediation and 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.
  - 6.2.5. The Investigator will offer to have individual meetings with the Complainant and with the Respondent, and may also seek to have a meeting with any witnesses (all of whom may be accompanied, as noted in paragraph 4.2). Each meeting will be minuted and the minutes agreed with those present will be taken to be a correct record (or any disagreement will be noted). The Complainant and the Respondent shall be provided with details as to what the other respective party, and any witnesses, have said (although the Respondent shall not be provided with a copy of Complainant's written complaint in advance of the meeting with the Investigator but they shall be provided with sufficient information on the substance of the allegation(s) (see further paragraph 6.2.6(a) below)). The notes of any individual meetings will not form part of the Investigator's report unless the consent of the respective party has been given, but they will be liable to disclosure to the Police and may also be used, if relevant, in any subsequent criminal prosecution.
- 6.2.6. When or before inviting the Respondent to interview, the Investigator must:
- (a) give the Respondent (and if relevant, her or his representative) sufficient information to enable the Respondent to understand the nature of the alleged misconduct, including the name of the complainant (see also Appendix 3), and including a summary of the evidence and the number and identities of those alleged to have been involved, together with the place where, and the time when, the misconduct is alleged to have been carried out;
  - (b) notify the Respondent that he or she does not have to say anything and that no adverse inferences will be drawn from the Respondent's failure to attend for interview or otherwise participate in the investigation;
  - (c) warn the Respondent that the College may be required to provide as evidence in any subsequent criminal investigation or proceedings in a court of law information regarding the complaint, including any admission made in the course of this procedure (and/or any admission made during mediation 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;
  - (d) remind the Respondent that he or she is entitled to seek independent legal advice, and provide sufficient notice of the interview as the Respondent may reasonably require to secure such advice if he or she wishes.
- 6.2.7. Where the Respondent declines to cooperate with an investigation, the investigator may still continue with the investigation in the absence of the Respondent's cooperation.

6.2.8. The Investigator will aim to complete the investigation within twenty Working Days of the complaint being referred for investigation, but some cases may require longer, in which case the Investigator will keep the Complainant and the Respondent informed about progress.

6.2.9. The Investigator's report will normally be released to the Complainant and the Respondent, save that parts may be redacted where the Complainant or the Respondent or any witness reasonably objects.

6.2.10. On receipt of the investigator's report, the Dean and the Responsible Tutor may:

- (a) recommend to the Complainant and the Respondent that they should seek alternative resolution of the complaint;
- (b) propose one or more of the resolutions set out in paragraph 6.3.1;
- (c) refer the complaint for consideration under the College's disciplinary procedures;
- (d) dismiss the complaint because it is considered to be without merit, vexatious, frivolous or malicious;
- (e) decide that no further action should be taken under this procedure.

6.2.11. The Complainant and the Respondent will normally be notified in writing of the decision of the Dean and the Responsible Tutor within twenty Working Days of the receipt of the investigator's report.

6.2.12. In the event that a decision falls within paragraph 6.2.7 (a), (b), (d) or (e) and the Complainant is unhappy with that decision, the Complainant shall have the right to request a review of that decision in accordance with paragraph 6.4.

### 6.3. Resolutions

6.3.1. The Dean and the Responsible Tutor may propose a resolution to the complaint, which may include:

- (a) that the Respondent will agree to abide by a conduct agreement issued by the Dean, a record of which will be retained by the College and which may be taken into account if a further complaint is made against the Respondent under this procedure;
- (b) that the Respondent change accommodation;
- (c) with the prior approval of the relevant University body, that the Respondent will take a period of intermission from study (provided any such measure is taken in accordance with the procedures specified in appendix E(VI) of the College Rules);
- (d) that the Respondent will attend behaviour awareness training or workshops.

6.3.2. Both the Complainant and the Respondent must agree to the proposed resolution of the complaint. The Dean and the Responsible Tutor will facilitate the process of reaching agreement between the Complainant and the Respondent and will issue written confirmation of any agreed resolution(s) to the Complainant and the Respondent.

6.3.3. If attempts at reaching an agreed resolution are unsuccessful the Dean and the Responsible Tutor shall refer the complaint for consideration under the College disciplinary procedures.

6.3.4. If there are grounds to believe that the Respondent has failed to comply with the terms of an agreed resolution, the Dean and the Responsible Tutor shall determine whether

the complaint should be referred for consideration under the College disciplinary procedures.

#### 6.4. Review

6.4.1. The Complainant or Respondent may seek a review of a decision made under this procedure. The review will be carried out in accordance with the procedures detailed in appendix E(VI) of the College Rules.

6.4.2. A request for a review shall be made in writing and sent to the Senior Tutor (or the Deputy Senior Tutor, where the Senior Tutor is the Responsible Tutor) within 15 Working Days of written notification of the decision (unless, for good reason, the Senior Tutor permits a longer period). The request for review shall specify the grounds for review which may be only one or more of the following:

- (a) that there was material procedural irregularity in the consideration of the Complainant's case;
- (b) that there was bias or prejudice on the part of the decision-maker;
- (c) that the decision reached was perverse in that it was one which no reasonable decision-maker could have reached on the available evidence;
- (d) that new material evidence is available, which was not available and/or not presented for good reason at the time of the original decision.

6.4.3. The request for a review should be accompanied by supporting documentation.

6.4.4. The reviewing body shall be convened by the Senior Tutor (or the Deputy Senior Tutor, where the Senior Tutor is the Responsible Tutor) and shall consist of the Tutors (excluding the Dean and the Responsible Tutor). The Tutors will consider the request for review and the documentation available to the original decision-maker. The reviewing body may, at its discretion, hold a hearing. A hearing shall take place in accordance with the procedures detailed in appendix E(VI) of the College Rules.

6.4.5. The reviewing body will issue an adjudication in writing as soon as possible, which shall normally be within twenty Working Days of the receipt of the request for a review or (if a hearing is held) within ten Working Days of the hearing. The reviewing body may decide to confirm, quash, or amend the original decision or refer it back to the decision-maker for further consideration.

6.4.6. If the reviewing body confirms the original decision, the Student will be issued with a Completion of Procedures letter when provided with the adjudication. If the reviewing body issues an amended decision then the Student will be offered a Completion of Procedures letter when provided with the adjudication. Where the Student remains dissatisfied with the outcome of the Procedure, the Completion of Procedures letter will enable the Student to submit a complaint to the external ombudsman, the Office of the Independent Adjudicator.

### 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 Senior Tutor will be responsible for the regular review of this procedure.

## **Annex to Appendix 2**

### **Code of Conduct for Students in respect of Harassment and Sexual Misconduct**

Magdalene College is committed to providing an environment that is free from discrimination and affirms the right of all members to be treated with dignity and respect. The College will not tolerate harassment of one member of its community by another nor sexual misconduct. The College will take allegations of harassment and sexual misconduct very seriously and may take action, including disciplinary action, in response to a complaint from a student.

In line with the University, the College defines harassment as single or repeated incidents involving unwanted or unwarranted conduct towards another person which it is reasonable to think would have the effect of (i) violating that other's dignity or (ii) creating an intimidating, hostile, degrading, humiliating, or offensive environment for that other.

Harassment may be verbal, psychological or physical, in person or via a virtual platform or through other methods of contact. Harassment may occur in the course of an academic, sporting, social, cultural or other activity either within the Precincts of the University or elsewhere in the context of a person's membership of the University, or in circumstances where the victim of the harassment is a member, officer, or employee of the University or a College.

Under this Code of Conduct unacceptable behaviour, whether intentional or not, can take a variety of different forms. The following descriptions are not exhaustive, but give an indication of the types of behaviour which the University and the College consider to be unacceptable:

- making sexually offensive comments about dress or appearance, the display or distribution of sexually explicit material, or demands for sexual favours;
- engaging in harassment on the grounds of a person's sexuality (or assumptions about a person's sexuality) 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;
- making offensive references to a person's race, ethnicity, skin colour, religion or nationality, dress, culture, background or customs;
- ignoring, disparaging or ridiculing a person because of assumptions about their capabilities, or making offensive reference to an individual's appearance, in the context of their disability;
- controlling or coercive behaviour, such as pressure to subscribe to a particular political or religious belief.

Online harassment may take the form of intimidating, offensive or graphic posts on social media sites or chat rooms, or communications by email, text or instant messaging.

Sexual misconduct includes the following, whether or not within a sexual or romantic relationship, including where consent to some form of sexual activity has been given and then withdrawn, or if consent has been given on previous occasions:

- sexual intercourse or engaging in a sexual act without consent;
- attempting to engage in sexual intercourse or engaging in a sexual act without consent;

- sharing private sexual materials of another person without consent;
- kissing without consent;
- touching inappropriately through clothes without consent;
- inappropriately showing sexual organs to another person;
- repeatedly following another person without good reason.

### **Appendix 3**

#### **Policy on the use of personal information under the Procedure for Handling Cases of Student Harassment and Sexual Misconduct**

*A copy is to be provided to the complainant, the respondent and any witnesses at the earliest contact.*

1. Magdalene College has published a general statement, which explains how it uses students' personal information:  
[http://www.magd.cam.ac.uk/uploads/Freedom\\_of\\_information/MagdaleneCollegeDataProtectionPolicy.pdf](http://www.magd.cam.ac.uk/uploads/Freedom_of_information/MagdaleneCollegeDataProtectionPolicy.pdf). This statement provides information about how the College will use your personal information if you are a complainant or a respondent in a case considered under the procedure for handling cases of student harassment and sexual misconduct. Most of the information is already covered by the general statement, but there are some additional uses of personal data that need to be brought to your attention.
2. A summary of the information you provide as part of your complaint or response to a complaint (or a witness testimony) and procedural notes (e.g. a record of any actions and decisions and the dates they were taken; the dates of meetings) will be stored in a computer database, which can be accessed by staff in the Tutorial Office. This data will be used to compile anonymous statistics about the use of the procedure. Those involved in the case may also make notes at meetings with you; you will be given an opportunity to comment on a written up copy of those notes so that they can become an agreed part of the record. The information held by the Senior Tutor may be shared with others in the course of dealing with the complaint, and will be treated confidentially in line with the College's general statement on use of personal information.
3. In the interest of fairness to all parties, the College will not normally accept an anonymous complaint under this procedure. It should be assumed that any information provided in support of the complaint, including the identity of the complainant, will be provided to the respondent. If you have concerns about the sharing of information between the complainant and respondent, you should seek advice from the Senior Tutor who has discretion to withhold information in exceptional circumstances.
4. The Senior Tutor, the Dean, and the Tutor of both the student making the complaint and the student against whom the complaint has been made, will normally be provided with a summary of the complaint, including the names of both parties, so that they are aware of the complaint and able to assist in providing support:

In some cases, it may also be deemed appropriate to inform the following:

Your Head of Department or Faculty  
Your Supervisor (if you are a research student)

The College will aim to seek your consent for sharing information with those listed above but in exceptional cases may decide that such sharing of information is necessary, for example, because it is in the public interest or to protect the interests of the complainant or the respondent. These decisions will be taken on a case-by-case basis, bearing in mind all the circumstances of the particular case. You will be informed of our intention to share the information and the reasons before doing so.

If a complaint is referred for investigation under the procedure, the College will seek your permission for the release of your personal information as included in the investigator's report before providing a copy of the report to the complainant and the respondent.

5. The College will normally respect the wishes of a person who is the victim of a crime and does not wish to report the matter to the police. However, in exceptional circumstances, where the facts as they emerge give rise to concerns that there is a significant risk to members of the community, the Senior Tutor and the Dean may make an executive decision to refer the matter to the police. Unless there are exceptional reasons related to the case, the complainant will be informed of the intention to report the matter to the police and the reasons before doing so.
6. **Any admission made in the course of this procedure (including any made in an agreement reached during mediation or during subsequent disciplinary proceedings) may be used as evidence in any subsequent proceedings in a court of law.**
7. Any admission made in the course of this procedure may also be used as evidence in College disciplinary proceedings.
8. If you have any questions or concerns about this statement, please contact the Senior Tutor in the first instance.