

Appendix A

Procedure for consideration of cases of student on student physical misconduct, sexual misconduct and abusive behaviour

1. Glossary

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

Facilitator	A trained person appointed by the Senior Tutor to handle the consideration of the case and provide a report following
Misconduct	Behaviour as described in paragraph 2
OSCCA	The Office of Student Conduct, Complaints and Appeals
Reporting Student	A Student who has made a report under this procedure
Respondent Student	A Student about whom a report has been made under this procedure
Student	A matriculated student currently pursuing a course of study at the University

2. Types of behaviour amounting to misconduct under this procedure

2.1. Physical misconduct is any unwanted and unreasonable contact. Physical misconduct can include, but is not limited to, pinching, punching, kicking, slapping, pulling hair, biting, pushing, shoving, using weapons and using items as weapons.

2.2. Sexual misconduct is any unwanted or unpermitted sexual activity. Sexual activity includes, but is not limited to, sexual acts, kissing, sharing private sexual materials of another, touching through clothes, showing sexual organs and remarks of a sexual nature. Sexual misconduct can take place in physical or virtual environments.

2.3. Abusive behaviour is any unwanted behaviour which is reasonably likely to cause harm; or have the effect of violating another's dignity; or create an intimidating, hostile, degrading, humiliating or offensive environment for that other. It includes, but is not limited to, threats, abusive comments, the use of or supply of illicit substances, making malicious accusations, repeatedly contacting someone, and abuse that takes place within an intimate relationship. Abusive behaviour can take place in physical or virtual environments.

2.4. Abusive behaviour can include, but is not limited to, 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 person or online. A non-exhaustive list of these types of behaviours include:

- 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.
- 2.5. The word 'unwanted' means 'unwelcome' or 'uninvited'. It is not necessary for a person to object to the behaviour for it to be unwanted.
- 2.6. 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.

3. Scope of procedure

- 3.1. Pembroke College is committed to providing an environment that is free from physical misconduct, sexual misconduct and abusive behaviour and affirms the right of all members to be treated with dignity and respect.
- 3.2. 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 is described by the Reporting Student 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 report made by the Reporting Student.
- 3.3. Pembroke College has a general Complaints Procedure under which a student may raise other types of complaint, including a complaint about the College experience or about a member of College staff.
- 3.4. As this procedure places an emphasis on reaching consensual resolution, complaints made by a third party and anonymous complaints will not normally be accepted. College Tutors and others may wish to discuss alternatives to the use of this procedure with the Senior Tutor.
- 3.5. It is possible for a complaint under this procedure to be brought by or against two or more Pembroke College students where the report relates to behaviour arising from the same event(s). In such cases, references in this procedure to the 'Reporting Student' or the 'Respondent Student' shall be construed as appropriate as referring to more than one person.
- 3.6. A Reporting Student may choose to report behaviour 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 report relates to sexual misconduct; or
 - (b) the report relates to conduct occurring in the context of University societies or sports clubs; or
 - (c) the Respondent Students include students from more than one College.
- 3.7. Behaviour can be reported under this procedure whether or not it has been reported to the Police – but see paragraph 4.6 below.
- 3.8. Behaviour cannot be reported under this procedure if it has already been raised under the University’s procedure.
- 3.9. No inferences or assumptions shall be drawn from whether the Reporting Student chooses to report the behaviour to the College procedure, the University procedure or the Police.

4. General principles

- 4.1. Any reference in this procedure to a College officer or other named role includes a deputy appointed by that officer or role-holder to exercise the functions assigned to that officer under this procedure.
- 4.2. The College will act reasonably in considering reports 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.
- 4.3. Reporting Students who believe they have suffered any reprisal, or have received a threat of reprisal, as a result of making a complaint in good faith should raise the matter with the Senior Tutor.
- 4.4. The Senior 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 Reporting Student and the Respondent Student as appropriate.
- 4.5. Where the events which are the subject of a complaint under this procedure have been reported to the Police, the Senior Tutor will normally suspend the procedure pending the outcome of any police investigation and/or criminal proceedings.
- 4.6. Under this procedure the Master, on the advice of the Senior Tutor, shall have power to impose any precautionary measures set out below for a period of up to 21 days, in the first instance, where the Master considers that any such measures are necessary:
- (a) to ensure that a full and proper investigation can be carried out in relation to any matter (whether under a procedure in the College, or by the University or 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.

The Master shall have the power to extend any precautionary measures imposed for additional periods of no more than 21 days in duration.

- 4.7. The precautionary measures which the Master may impose are any one or more of the following:
- (a) excluding the person from some or all of the College’s facilities and/or premises;
 - (b) imposing conditions on the person
 - (i) in connection with that person’s use of the College’s facilities and/or premises or that person’s contact with other persons, or
 - (ii) in such other ways as may be considered necessary; and

(c) suspending the person in question either in full or in part from their studies.

- 4.8. The Senior Tutor will inform the University, through the Head of the OSCCA of precautionary action taken in respect of individual students.
- 4.9. Individual students who are subject to precautionary measures imposed by the Head of House under this procedure have the right to provide representations when the decision regarding precautionary action is made, or where a decision is required to be made immediately as a result of the level of risk, as soon as possible following the decision. Students who are subject to precautionary measures also have the right to appeal the decisions or ask for a review of the decision if there is a material change in the circumstances of the case. The appeal will be conducted in accordance with paragraph 6.4 of the procedure.
- 4.10. The Reporting Student may withdraw a report at any time during this procedure, by notifying the Senior Tutor in writing. Where a report is withdrawn no further action will be taken under this procedure, but the Senior Tutor may refer the matter for consideration under another College or University procedure.
- 4.11. 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 a Facilitator will have any previous knowledge of the case nor any material connection to the Reporting Student or Respondent Student. The Reporting Student or the Respondent Student (or their representatives) will be entitled to object to the involvement of an individual for good cause.

5. Support and guidance

- 5.1. The Senior Tutor will provide procedural advice at the outset to help both the understanding of both the Reporting Student and the Respondent Student. All parties will be directed to appropriate sources of advice and support throughout the procedure.
- 5.2. Reporting Students and Respondent students are able to bring a supporter to any meeting held under this procedure. However, the supporter should not be someone who could be a witness to events related to the misconduct. A College Tutor or an advisor from the Students' Unions' Advice Service are good sources of support for all Students, and the Sexual Assault and Harassment Advisor is available to support Reporting Students reporting sexual misconduct. As this is an informal procedure it is not normally necessary for a Reporting Student or a Respondent Student to have a legally qualified supporter. However, both the Reporting Student and the Respondent Student may access and use legally qualified supporters at their own cost.
- 5.3. Appendix B of this procedure sets out the College's policy on the use of personal information under this procedure. A copy of the 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.

6. Reporting misconduct

- 6.1. A student considering reporting misconduct may discuss or meet with the Senior Tutor, who can provide further information about the procedure.
- 6.2. A Student who wishes to make a report under this procedure must do so in writing to the Senior Tutor of the Respondent Student's College. The Reporting Student should set out details of the complaint together with details of any attempts at directly engaging with the

student, if appropriate. Reporting Students can be assisted in reporting the behaviour by a supporter.

- 6.3. On receipt of the Report, the Senior Tutor will consider the matter and determine whether to:
 - (a) refer the Report for consideration under this procedure;
 - (b) recommend to the Reporting Student that they should raise it under the University procedure;
 - (c) dismiss the complaint because it is considered to be without merit;
 - (d) reject the complaint because it does not fall within the scope of this procedure;
 - (e) decline to refer the Report for consideration under this procedure for other reasons.
- 6.4. The Senior Tutor will normally notify the Reporting Student in writing of the outcome of this initial consideration within a week of receiving the report.
- 6.5. If the Reporting Student is dissatisfied with the Senior Tutor's decision, the Reporting Student shall have the right to request a review of that decision in accordance with paragraph 9.

7. Consideration of the Report

- 7.1. Where a Report is referred for consideration, this will be carried out by a trained Facilitator, appointed by the Senior Tutor. The role of the Facilitator is to prepare a report that sets out the undisputed facts and makes recommendations based on the responses of both the Reporting Student and the Respondent Student.
- 7.2. The Facilitator shall determine how to handle the case, within the context of the general principles set out in paragraph 4. The Facilitator will invite the Reporting Student and the Respondent Student 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), at which point any other record of the meeting will be destroyed. A note taker will be appointed by the Senior Tutor.
- 7.3. When or before inviting the Respondent Student to a meeting, the Facilitator must:
 - a) provide sufficient information to enable the Respondent Student to understand the nature of the report, including a summary of the report, the identities of those involved and the place and time where the described behaviour occurred;
 - b) inform the Respondent Student that there does not need to be any response to the report 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 as evidence in any subsequent criminal investigation or proceedings in a court of law information regarding the report, 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;
 - d) remind the Respondent Student that it is not normally necessary to bring a legally qualified supporter to any meetings during this procedure. However, Respondent Students are not prevented from using legally qualified supporters at their own cost.
- 7.4. Where the Respondent Student declines to cooperate with the process, the Facilitator may continue with the consideration in the absence of the Respondent Student's cooperation.

The Senior Tutor shall draw no adverse inferences from the Respondent Student's failure to participate in the investigation.

- 7.5. The Facilitator shall normally provide a report to the Senior Tutor within four weeks of being appointed by the Senior Tutor, where a longer timeframe is required the Facilitator will keep the Reporting Student and the Respondent Student updated.
- 7.6. On receipt of the Facilitator's report, the Senior Tutor may:
 - (a) Propose one or more of the agreed actions set out in paragraph 8;
 - (b) With the consent of the Reporting Student, refer the report for consideration under the College's disciplinary procedures;
 - (c) dismiss the report because it is considered to be without merit;
 - (d) determine that no further action should be taken.
- 7.7. The Reporting Student and the Respondent Student shall normally be notified in writing of the decision of the Senior Tutor within two weeks of the Senior Tutor receiving the Facilitator's report.
- 7.8. If the Reporting Student is dissatisfied with the decision of the Senior Tutor, the Reporting Student shall have the right to request a review of that decision in accordance with paragraph 9.

8. Agreed Actions

- 8.1. The Senior Tutor may propose one or more agreed actions, which may include (but is not limited to) the following:
 - (a) that the Respondent Student will agree to abide by a conduct agreement issued by the Senior Tutor, 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. If the agreement is breached then this breach can be investigated and sanctioned under the College discipline procedures. In addition, the agreement may also be taken into account if a further report is made against the Respondent Student under this procedure;
 - (b) that the Respondent Student change accommodation;
 - (c) with the prior approval of the relevant University body, that the Respondent Student will take a period of intermission from study;
 - (d) that the Respondent Student will attend behaviour awareness training or workshops.
- 8.2. Both the Reporting Student and the Respondent Student must agree to the proposed agreed actions. The Senior Tutor, or Facilitator at the request of the Senior Tutor, will facilitate the process of agreeing the proposed agreed actions between the Reporting Student and the Respondent Student. Providing agreement is received, the Senior Tutor will issue written confirmation of any agreed actions to the Reporting Student and the Respondent student.
- 8.3. If attempts at reaching agreed actions are unsuccessful, the Senior Tutor shall refer the matter for consideration under the College's disciplinary procedures, with the consent of the Reporting Student.
- 8.4. If there are grounds to believe that the Respondent Student has failed to comply with the terms of an agreed resolution, the Senior Tutor shall determine whether the matter should be referred for consideration under the College's disciplinary procedures.

9. Review

- 9.1. The Reporting Student may seek a review of a decision made under this procedure. A request for a review shall be made in writing, accompanied by all supporting documentation and sent to the Master within 15 Working Days of written notification of the relevant decision (unless, for good reason, the Master permits a longer period).
- 9.2. 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 Reporting Student's report;
 - (b) that there was bias or prejudice on the part of the Senior Tutor or the Facilitator;
 - (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.
- 9.3. The review will be carried out by a panel of three persons appointed by the Master. The review panel will consider the request for review and the documentation available to the Senior Tutor at the time of the decision. The review panel may, at its discretion, hold a hearing and regulate arrangements for the conduct of the hearing.
- 9.4. The review panel will issue an adjudication in writing as soon as possible, and normally within four weeks of the receipt of the request for a review or (if a hearing is held) within a week of the hearing taking place. The review panel shall have power to confirm, quash, or amend the original decision or refer it back to the Senior Tutor for further consideration.
- 9.5. The review panel will issue a Completion of Procedures letter to the Reporting Student, informing the student of the result of its adjudication. Where the Reporting 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.

10. Reporting

- 10.1. 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.
- 10.2. The Senior Tutor will be responsible for the regular review of this procedure.