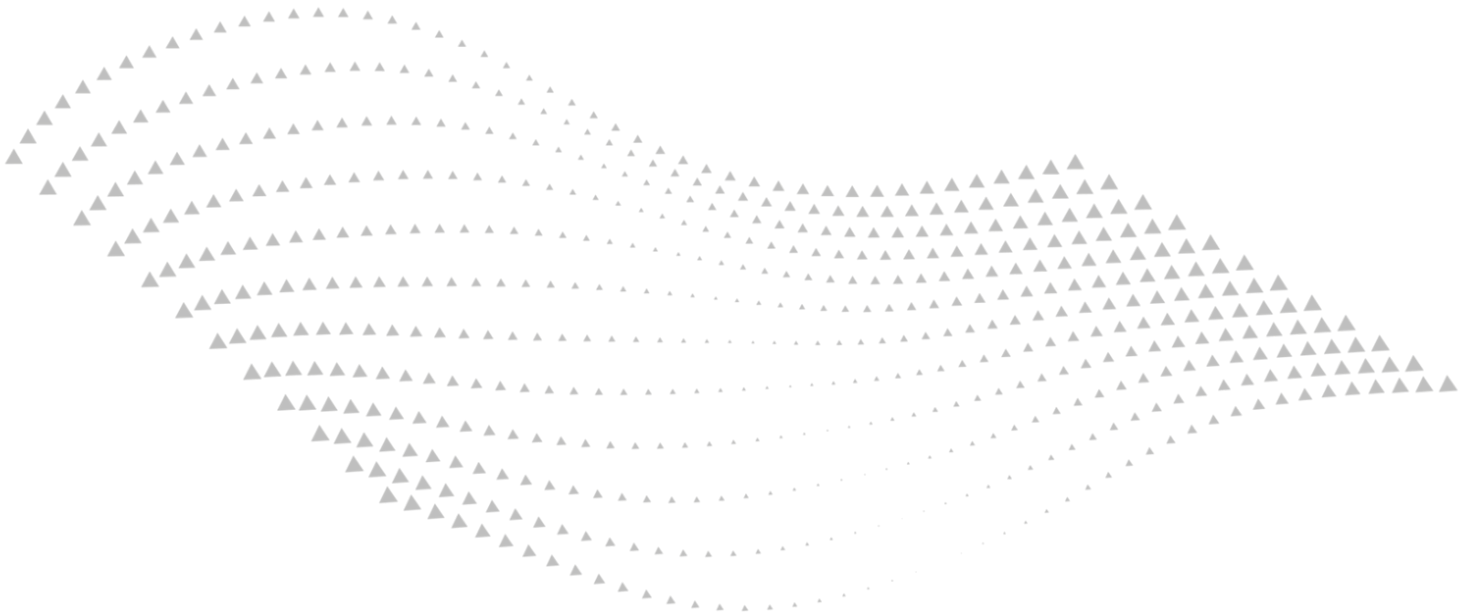


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# Sexual Misconduct Policy



Last approved: September 2021

Approved by: Academic Board

Next review due: September 2025

## **Introduction**

This Policy applies to all students registered on a course at BIMM University and to all staff at the University.

BIMM University is dedicated to creating a safe, welcoming, inclusive and diverse community which nurtures a healthy environment and culture of mutual respect and consideration, allowing all members to thrive without fear of harassment, bullying, discrimination, sexual violence, abuse, coercive behaviours or related misconduct.

BIMM University provides a range of support for students to access where they have experienced any form of sexual misconduct. Whether or not a student wants to report an incident, it is important that they have access to support in relation to their experience. Students should speak to a Student Support Officer for confidential guidance or advice, either in person or via mail or phone.

BIMM University also recognises that incidents of sexual misconduct may occur within its community and will not tolerate staff or Students who engage in behaviours which include forms of unwanted sexual contact, coercive and controlling behaviour, stalking and conduct that is likely to violate a Student's dignity, or that creates an intimidating, hostile, degrading, humiliating or offensive environment. If you have experienced behaviour of this kind where another Student or staff member is involved, you can make a report as set out in this Policy so that it can be thoroughly investigated and, if appropriate, action can be taken by BIMM University.

Further information about the behaviour expected of Students can be found in our [Student Code of Conduct](#), [Bullying & Harassment Policy & Procedure](#) and [Student Social Media Policy and Guidelines](#).

## **General Principles & Scope**

BIMM University requires that all members of its community treat each other with respect and that all members of its community are responsible for upholding these requirements.

BIMM University will actively respond to all Reports of Sexual Misconduct and, although recognising that some incidents may also constitute a criminal offence, it will ensure that in all cases that Reports are carefully and thoroughly investigated and addressed through a process that is fair, transparent and clearly communicated to individuals involved. BIMM University will respect an individual's choice about taking a Disclosure forward.

Where a Report of Sexual Misconduct constitutes a criminal offence, it may be addressed through criminal proceedings, internal disciplinary proceedings or, in appropriate cases, through both channels.

All Reports of Sexual Misconduct referred to BIMM University which are made against its staff or Students will be assessed on the balance of probabilities, in line with BIMM University's [Student Disciplinary Procedure](#) and the appropriate sector guidance.

Staff at BIMM University will be briefed in relation to this Policy as appropriate to their roles. All staff involved in its implementation will act with impartiality and discretion at all times and maintain confidentiality.

This Policy covers all incidents of Sexual Misconduct as defined within. Although it specifically covers incidents of Sexual Misconduct experienced in the course of work or study at BIMM University in which the Responding Party is a current student or staff member of BIMM University, Reports made under this Policy are not limited to the physical premises of BIMM University or its immediate surroundings.

Reports of Sexual Misconduct covered by this Policy will be considered by BIMM University under its own internal disciplinary processes. Where the Responding Party is a Student, this will be under BIMM University's [Student Disciplinary Procedure](#), and where the Responding Party is a staff member this will be under the Staff Disciplinary Procedure.

This Policy does not cover incidents of non-sexual harassment, as BIMM University has a separate [Bullying & Harassment Policy & Procedure](#) to deal with such matters. If there is a conflict or overlap between this and another of BIMM University's policies or procedures, then Academic Services will decide which policy should apply.

### **Definitions & Terminology**

BIMM University defines *Sexual Misconduct* as any unwanted conduct of a sexual nature, whether it occurred physically in person or by other means, including phone, e-mail, letter or digital or electronic means, such as social media. It includes the following (whether it is within a sexual or romantic relationship, whether any consent to sexual activity has been given previously and then withdrawn, or whether the behaviour happens physically or virtually):

- Making unwanted remarks of a sexual nature.
- Touching inappropriately without consent.
- Kissing without consent.
- Inappropriately showing sexual organs to another person.
- Sharing private sexual materials of another person without consent (images, video, voice recordings, text message, letters, emails, etc.).
- Attempting to or engaging in sexual intercourse or a sexual act without consent.
- Repeatedly following another person without good reason.
- Conduct of a sexual nature which creates (or could create) a degrading, intimidating or hostile environment for others, including making unwanted remarks of a sexual nature.
- Arranging or participating in activities or events which may reasonably be assumed to be degrading and humiliating to those who have experienced sexual violence, including inappropriately themed social and initiation events.

*Coercive or Controlling Behaviour* is defined as any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those who are, or have been, intimate partners or family members regardless of gender or sexuality. This can include, but is not limited to, psychological, physical, sexual, financial and/or emotional abuse.

*Complicity* is any act that knowingly helps, promotes, or encourages any form of Sexual Misconduct by another individual.

*Retaliation* may constitute any words or actions, including intimidation, threats, or coercion, made in response to Disclosures or Reports made under this Policy & Procedure by any individual, including both the Responding Party and the Reporting Party, as well as witnesses, friends or relatives.

*Coercion or Force* includes any physical or emotional harm or threat of physical or emotional harm which would reasonably place an individual in fear of immediate or future harm, with the result that the individual is compelled to engage in a sexual act.

*Consent* is the agreement by choice where the individual has both the freedom and capacity to make that choice. Consent cannot be assumed on the basis of a previous sexual experience or previously given consent, or from the absence of complaint, and each new sexual act requires a re-confirmation of

consent as the foundation of a healthy and respectful sexual relationship. Consent may be withdrawn at any time before or during a sexual act.

*Capacity to Consent:* Free consent cannot be given if the individual does not have the capacity to give consent. An individual is incapacitated when asleep, unconscious, semi-conscious, or in a state of intermittent consciousness, or any other state of unawareness that a sexual act may be occurring. Incapacitation may occur on account of a mental or developmental disability, or as the result of alcohol or drug use.

*Freedom to Consent:* For consent to be present, the individual must freely engage in a sexual act. Consent cannot be inferred from a lack of verbal or physical resistance. Consent is not present when submission by an unwilling participant results from coercion, force, threat, intimidation or the exploitation of power.

A *Disclosure* involves an individual choosing to tell anyone who is part of BIMM University community, either in person or anonymously, about their experience of Sexual Misconduct (different from Report) on the understanding that such a disclosure cannot be used for the purposes of investigating any disciplinary allegation under this Policy.

A *Report* is the sharing of information with a staff member of BIMM University regarding an incident of Sexual Misconduct experienced by that individual for the purposes of initiating the investigation process as set out in this Policy and the accompanying procedures (different from Disclosure).

*Reporting Party* is the person(s) who has been the subject of the alleged incident of Sexual Misconduct or other Policy breach.

*Responding Party* is the person(s) whose behaviour it is alleged amounted to an incident of Sexual Misconduct or other Policy breach.

*Malicious reporting* occurs when an individual makes allegations of Sexual Misconduct that they know to be untrue.

*Vexatious reporting* involves the creation of persistent, unwarranted reports made under this Policy, or a refusal to accept any reasonable decisions arising from the application of the accompanying procedures to this Policy.

*Alcohol and/or Drug Use:* Incapacitation arising from alcohol or drug consumption should be evaluated on the basis of how the alcohol/drugs have affected the individual. Signs of incapacitation may include, but are not limited to, one or more of the following: slurred speech, unsteady gait, bloodshot eyes, dilated pupils, unusual behaviour, blacking out, a lack of full control over physical movements, a lack of awareness of circumstances or surroundings, and/or an inability to communicate effectively. Intoxication is never a defence for committing an act of Sexual Misconduct or for failing to obtain consent. If there is any doubt as to the level or extent of one's own or the other individual's incapacitation, the safest approach is not to engage in a sexual act.

BIMM University recognises that there are potentially additional types of behaviour that will constitute a breach of this Policy and which will, therefore, need to be considered under the relevant internal disciplinary regulations.

## **Confidentiality**

Confidentiality will be maintained, where possible, throughout the Disclosure, Reporting and investigative processes in recognition of the sensitive nature of Sexual Misconduct matters. As such, information will usually only be shared with relevant individuals/entities (who may be internal or external to BIMM University, including internal counsellors, witnesses, external specialists from agencies like Rape Crisis, Sexual Assault Referral Centres or the Police) with the agreement of the Reporting Party.

BIMM University reserves the right, and may be under obligation, to share information in exceptional circumstances where such disclosure is necessary to protect any individual or the University's wider community from harm or to prevent a crime from taking place. All individuals involved in any process under this Policy must keep information disclosed to them as part of the process confidential. Any unauthorised disclosure of confidential information will be considered a violation and will be addressed accordingly.

Throughout all proceedings, BIMM University will act in compliance with the relevant data protection regulations for the UK, Germany or Ireland, as appropriate.

## **Police Investigations & Criminal Proceedings**

This Policy aims to support the Reporting Party in bringing incidents of Sexual Misconduct to the attention of BIMM University and to support them when they assess and choose the course of action that is most appropriate for them.

Where a criminal investigation or proceedings are ongoing or are likely to commence in respect of a Disclosure, BIMM University can receive a Report of Sexual Misconduct. In the interest of not causing impediment to the criminal proceedings, BIMM University has the discretion to not commence an internal investigation or to suspend an ongoing investigation. In all instances, BIMM University will undertake any necessary precautionary action.

Reports of alleged incidents of Sexual Misconduct made under this Policy, including those where the Reporting Party chooses not to report the matter to the Police, will be reviewed by the Student Wellbeing Manager (or nominee). A review may also be conducted after the conclusion of a criminal investigation or proceedings where there are issues outstanding and pertinent to the parties involved.

A decision by the Police, Crown Prosecution Service or other law enforcement agency to take no further action in relation to a criminal matter or an acquittal at a trial does not preclude BIMM University from taking action under this Policy and related Procedures and does not mean the Reporting Party has made a vexatious or malicious Report.

In all cases, BIMM University will advise the Reporting Party that it does not have the legal investigatory powers of the Police and cannot make a determination on criminal guilt. An internal investigation is focused exclusively on whether a breach of this Policy has occurred. The internal process cannot, therefore, be regarded as a substitute for a Police investigation or criminal prosecution.

Where a student or staff member has been convicted of a criminal offence or accepts a police caution in relation to behaviour that falls within the scope of this Policy, the conviction/caution will be taken as conclusive evidence that the behaviour took place, and no further investigation shall be required by BIMM University. The case will be referred as an allegation of Major Misconduct via either BIMM University's [Student Disciplinary Procedure](#) or Staff Disciplinary Procedure.

## **Support**

BIMM University is committed to providing support for any members of its community affected by these issues and will provide information on support resources available and offer interim measures as appropriate to the Reporting Party, Responding Party and any witnesses involved in alleged incidents of Sexual Misconduct.

Support resources are available to any member of BIMM University who discloses an incident, regardless of their choice to make a Report to BIMM University or the Police, and this support remains available irrespective of the outcome of an investigation.

The Reporting Party and Responding Party will each have separate members of staff assigned to them to offer welfare and pastoral support and may be signposted to an appropriate external body to access free, impartial and confidential advice.

## **Disclosing or Reporting Sexual Misconduct to BIMM University**

If a Student at BIMM University has experienced any kind of Sexual Misconduct, they can disclose or report this to BIMM University as follows:

- Using the [Anonymous Disclosure Form](#), which helps BIMM University monitor the number and type of reports and reasons for those reports, with those reporting remaining anonymous.
- Provide an open but confidential Disclosure to BIMM University without being required to make a formal Report.
- Make a formal Report under this Policy, through which a student can request that another student's or staff member's behaviour is investigated.

Disclosure and Reporting are separate actions that the Reporting Party may choose to take. BIMM University recognises the importance of minimising the number of times the Reporting Party has to disclose an incident of Sexual Misconduct.

Following receipt by BIMM University of a Disclosure of an incident of Sexual Misconduct, the Disclosure may be received in a variety of ways and may not necessarily be brought forward by the Reporting Party.

A Disclosure may relate to a Responding Party who is or is not a member of BIMM University community, and it does not automatically result in a Report being made under this Policy. BIMM University respects the right of the Reporting Party to choose how to take forward a Disclosure.

Following a Disclosure, the Reporting Party will be given their reporting options along with information on resources for specialist support. BIMM University recognises that the Reporting Party may require time and reflection before making a decision. The Reporting Party will be given the option and support to do one or more of the following:

- Report to the Police.
- Report to BIMM University under this Policy.
- Make no report of the incident.
- Receive advice on the support that is available.

### **Before Completing an Anonymous Disclosure or Formal Reporting Form:**

- Read this Policy and the accompanying [Student Disciplinary Procedure](#) in full.
- Seek confidential advice or support from Student Support Officers.
- Contact the Student Support Team for answers to any questions about the process.

### **Anonymously Disclosing Sexual Misconduct**

A Student can anonymously Disclose any allegation of Sexual Misconduct to BIMM University using [this Anonymous Disclosure Form](#). This process is completely anonymous and enables BIMM University to understand the prevalence and type of misconduct happening, as well as the reasons why those disclosing wish to remain anonymous. However, its purpose is to collect statistical information and it will not result in any action being taken in relation to the disclosed incident.

### **Reporting Sexual Misconduct and the Student and Staff Disciplinary Procedures**

The Reporting Party may choose to make a formal Report to BIMM University under this Policy with the intention of initiating an investigation process under the relevant BIMM University [Student](#) or Staff Disciplinary Procedure, as set out below. To make a formal Report to BIMM University, the Reporting Party should complete and submit [this Reporting Form](#), setting out the allegation of Sexual Misconduct and indicating the Responding Party and any witnesses. A Report cannot be investigated if the Reporting Party does not wish the substance of the allegation to be made known to the Responding Party.

If a case is reported by a Student in respect of the conduct of another Student, it will be referred for consideration under the [Student Disciplinary Procedure](#); if it relates to the conduct of a staff member, it will be referred under the Staff Disciplinary Procedure:

- BIMM University will acknowledge the Report and offer to meet with the Reporting Party to discuss it in more detail. The Reporting Party will be given a point of contact in the Student Support Team who will deal with the ongoing case. BIMM University will then decide pursuant to the [Student Disciplinary Procedure](#) or Staff Disciplinary Procedure whether there is enough evidence to consider pursuing a student for a breach of this Policy.
- BIMM University will then follow the process in the Student Disciplinary Procedure or Staff Disciplinary Procedure.
- If, on the balance of probabilities, there is sufficient evidence that the terms of this Policy have been breached, then sanctions up to and including temporary or permanent exclusion from BIMM University can be imposed.

Retaliation of any kind, including any words or actions, intimidation, threats or coercion, against a student for instigating or engaging with an investigation will be dealt with as Misconduct.

### **Levels of Sexual Misconduct**

Breaches of this Policy that are likely to constitute matters of Minor Misconduct under the University's [Student Disciplinary Procedure](#) may include:

- Kissing another person on the hand or cheek without consent where the evidence indicates that an element of force or other harassment behaviours were not involved.
- A single incident of following another person without good reason where no threatening or abusive behaviour is involved.
- Making a single remark of a sexual nature where there was clearly no intention to cause offence.

- One-off acts of nudity involving inappropriate display of sexual organs to others where the act is not focused upon any individual and does not contravene any other Regulation, Code, Policy or Procedure of BIMM University.

If it is determined that a breach of this Policy constitutes Minor Misconduct under the University's [Student Disciplinary Procedure](#), BIMM University will apply sanctions following the Minor Misconduct procedure as set out therein.

Breaches of this Policy which are likely to constitute matters of Major Misconduct under BIMM University's [Student Disciplinary Procedure](#) may include:

- Engaging or attempting to engage in a sexual act without consent.
- Kissing another person without consent where the presence of force is substantiated by the evidence.
- Sexually touching an individual without consent.
- Threatening or abusive behaviour of a sexual nature.
- A pattern of coercive or controlling behaviour.
- Recording, sharing and/or distributing intimate images or recordings of another person without their consent.
- Instances where non-major Sexual Misconduct and violence breaches are frequent or repeated or where the Responding Party fails to comply with disciplinary decisions or sanctions.
- A conviction of a criminal offence or a Police caution in relation to behaviour that falls within the scope of this Policy & Procedure.

If it is determined that a breach of this Policy constitutes Major Misconduct under BIMM University's [Student Disciplinary Procedure](#), BIMM University will apply sanctions following the Major Misconduct procedure as set out therein.

In the case of findings of Sexual Misconduct under BIMM University's [Student Disciplinary Procedure](#), BIMM University may apply the following specific sanctions in addition to those set out therein, but only in respect of cases falling within the scope of this Policy:

- A requirement to undertake additional training and/or a recommendation to attend an appointment for counselling.
- A permanent restriction on contact with a named person or persons (a 'No Contact Order').

In the case of findings of Sexual Misconduct under BIMM University's Staff Disciplinary Procedure, BIMM University will apply sanctions following the Major Misconduct procedure as set out therein, including or in addition to the specific sanctions listed above.