

# 8 Tips for University Sexual Misconduct Investigations



# Your Presenters today



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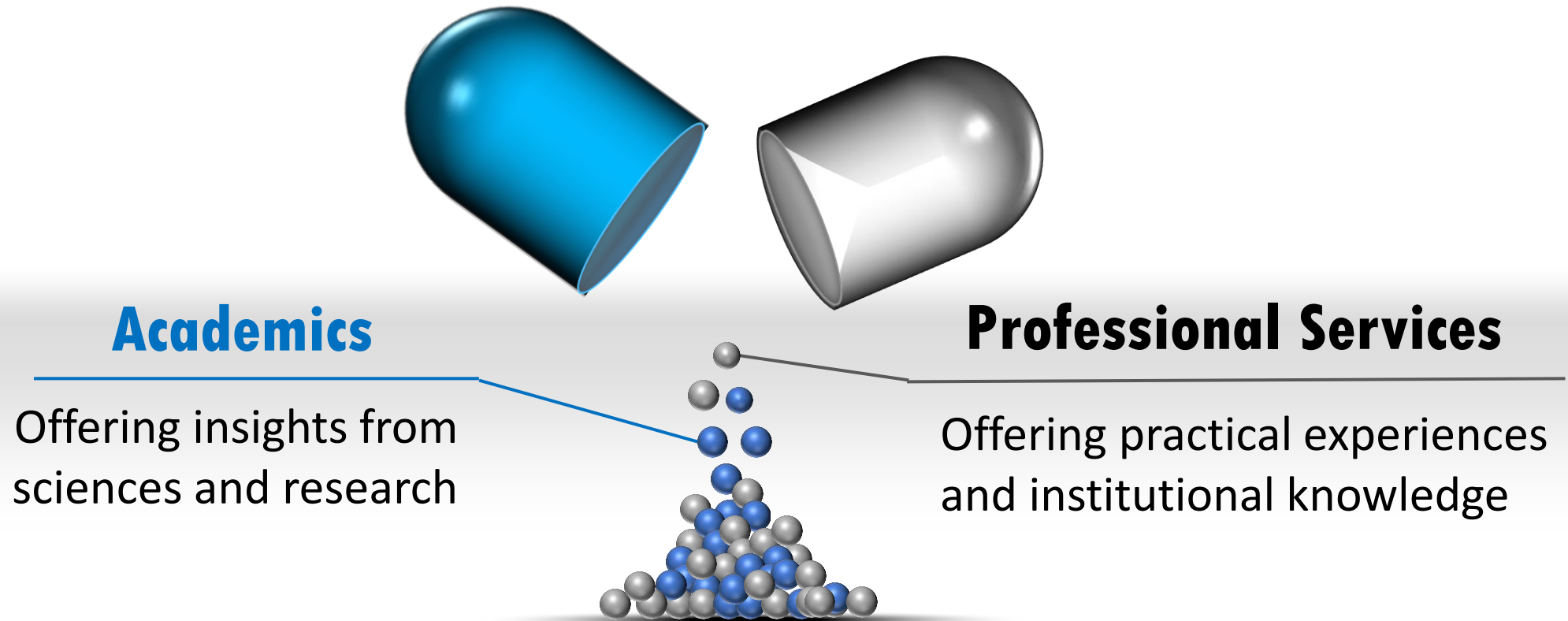


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Case Manager, Office of  
Student Complaints,  
Appeals & Regs



# Team Effort. Best Practices. Improved Student Outcomes.





## Tip 1 – Understanding the ‘layers’ of consent

Consent = an *internal* feeling of willingness + an *external* communication of this willingness + a *behaviour* that someone (the initiator) *interprets* as willingness

Straightforward... or not?





# Disentangling internal and external consent

- Consent does not require the person to *want* whatever they are consenting to, but should involve *willingness*
- Internal feelings of willingness may relate to factors beyond the actual sexual activity,
- A verbal (or other) indication of consent may be provided despite **an absence of willingness** e.g.:
- Consent may be interpreted by the initiator despite an absence of willingness and/or an absence of intent to communicate consent

# Implications of the distinctions between internal and external consent

At what point is the responding party responsible for any incongruence between internal and external consent?

What *\*counts\** as consent communication?

Even if the responding party is not held formally responsible, what acknowledgment or care may be reporting party need?

More broadly, how can we encourage a deeper understanding of the nuances of the consent and the conditions in which individuals formulate and enact consent?

Tip 2 – Moving  
beyond the binary  
in sexual  
misconduct  
allegations

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Adversarial investigations hold that the allegation must either be upheld (judged, on the balance of probabilities, to be 'true') or not

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If not, does this mean the reporting party was lying?

# 'False accusations'

- A narrative that 'false accusations' (particularly levelled at boys and young men from girls and young women) is currently prevalent
- Stems from an overly legalistic framing of sexual behaviour as either acceptable (legal) or unacceptable (illegal)
- Where there is an allegation of sexual misconduct, the veracity of the allegation is judged regarding whether it is upheld, formally, as 'true'
- Various claims are made regarding girls' and young women's supposed propensity toward 'lying',







# Truth vs. Lies

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- Current socio-cultural narratives of false accusations misrepresent the reality of the situation
- But... drawing attention to the inaccurate nature of predominant claims about false accusations is not enough
- It is also necessary to engage with how individuals party to a sexual interaction may both genuinely hold disparate perceptions and beliefs about the situation vis-à-vis consent
- The reality may lie somewhere in between

## Tip #3: Use trauma-informed investigation techniques to conduct safe, ethical and more accurate investigations

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*Why didn't she  
say "no"?*

*Why didn't  
she try to get  
away?*

*Why didn't he  
fight back?*

*How could she  
not remember  
something so  
significant?*

...

?

...

*He can't get his  
story straight...*

Tip #3: Use trauma-informed investigation techniques to conduct safe, ethical and more accurate investigations

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## Why investigations must be trauma-informed

Trauma impacts an individual's response and memory production **during an incident** and memory retrieval and presentation **after an incident**

Trauma-informed interviewing allows investigators to retrieve more complete and reliable information whilst preventing retraumatising survivors

Trauma-informed approach does not favour Reporting Parties or disadvantage Responding Parties, but provides more accurate outcomes – it is international best practice

# Tip #3: Use trauma-informed investigation techniques to conduct safe, ethical and more accurate investigations

## Response



- Fight
- Flight
- Freeze / Tonic Immobility
- Flop / Collapsed immobility
- Friend /Appease

## Memories



- Unconnected
- Non-linear
- Sensory
- Fragments infused with intense emotion
- Gaps in memory
- Inconsistent statements due to errors in recall

## Presentation



- Delayed reporting is expected
- Avoid eye contact
- Fidget / Stammer
- Display a wide range of emotional responses



## Tip #4: Mitigate for rape myth acceptance, so this does not bias your investigation and analysis



# Tip #4: Mitigate for rape myth acceptance, so this does not bias your investigation and analysis

## Consider the myth

*'Women provoke rape by the way they dress or act.'*

### Questions to consider

1. What are the facts that refute the myth?
2. How might these beliefs enter into your questions or behaviour toward the Reporting/Responding Parties?
3. Is any party (RP/RSP/witness/investigator) using rape myth acceptance to try and minimise / rationalise the actions of the Responding Party?



# Tip #4: Mitigate for rape myth acceptance, so this does not bias your investigation and analysis

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## Impact of Rape Myths

- Implicit and explicit bias
- Blames victims
- Absolves perpetrators
- Minimises / justifies rape

### Resource

Rape and Sexual Offences -  
Annex A: Tackling Rape Myths  
and Stereotypes

[cps.gov.uk/legal-guidance/rape-and-sexual-offences-annex-tackling-rape-myths-and-stereotypes](https://cps.gov.uk/legal-guidance/rape-and-sexual-offences-annex-tackling-rape-myths-and-stereotypes)

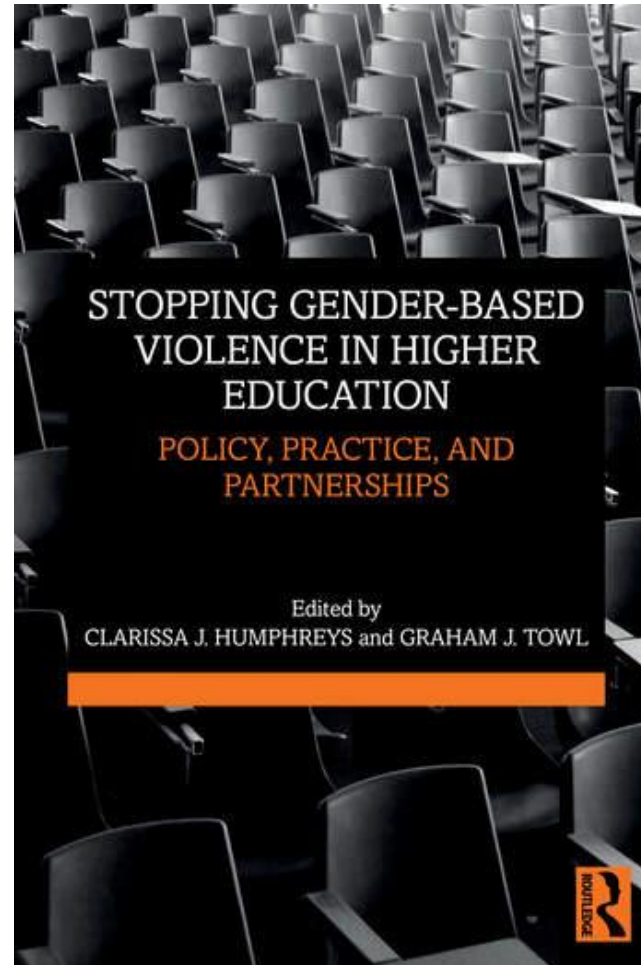
Thank you for listening.  
Interested in learning  
more?

**Clarissa J. DiSantis, MSSW**

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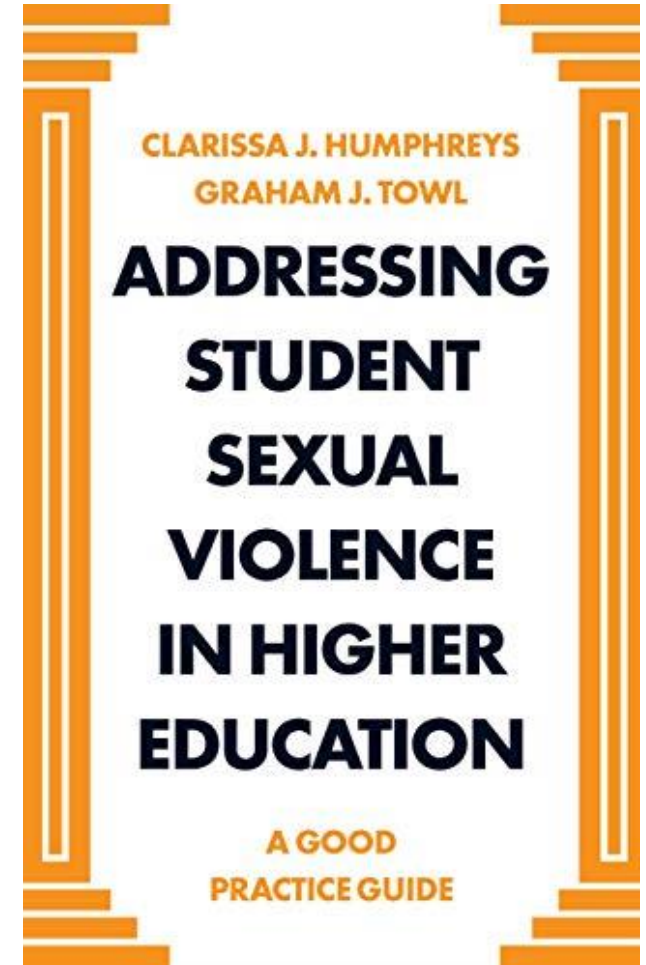
[@clarissajdh](https://twitter.com/clarissajdh)

Chapter 13:  
Investigation and interviewing  
in



All royalties are donated to Refuge, home  
of the National Domestic Abuse Helpline

Chapter 8:  
Trauma-informed investigations  
in



All royalties are donated to the Rape  
and Sexual Abuse Counselling Centre  
for Darlington and County Durham



## TIP 5: A SURVIVOR MOST NEEDS...



A professional  
investigative interview  
is characterised by:

Uncertainty

Pressure

Stress

Asymmetric  
communication

# TIP 5: A SURVIVOR MOST NEEDS

**Create predictability**

Clarify  
interview  
parameters

**Meta-Contract**

DON'T KNOW  
DON'T  
UNDERSTAND  
CAN'T REMEMBER

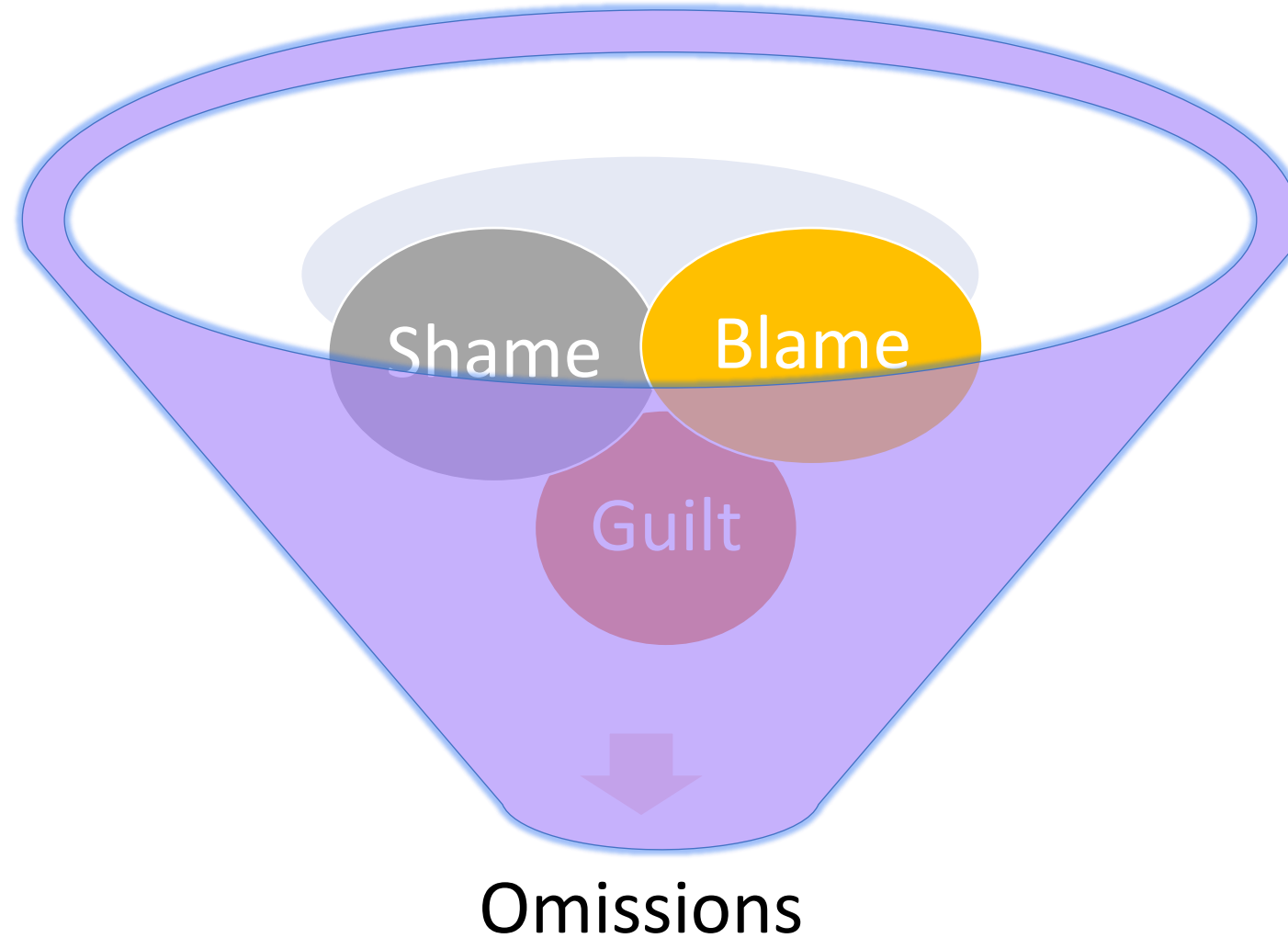
**Address immediate  
concerns first**

Reduce  
cognitive load

**Allow 2 sleep  
Cycles**

To process  
what  
happened.

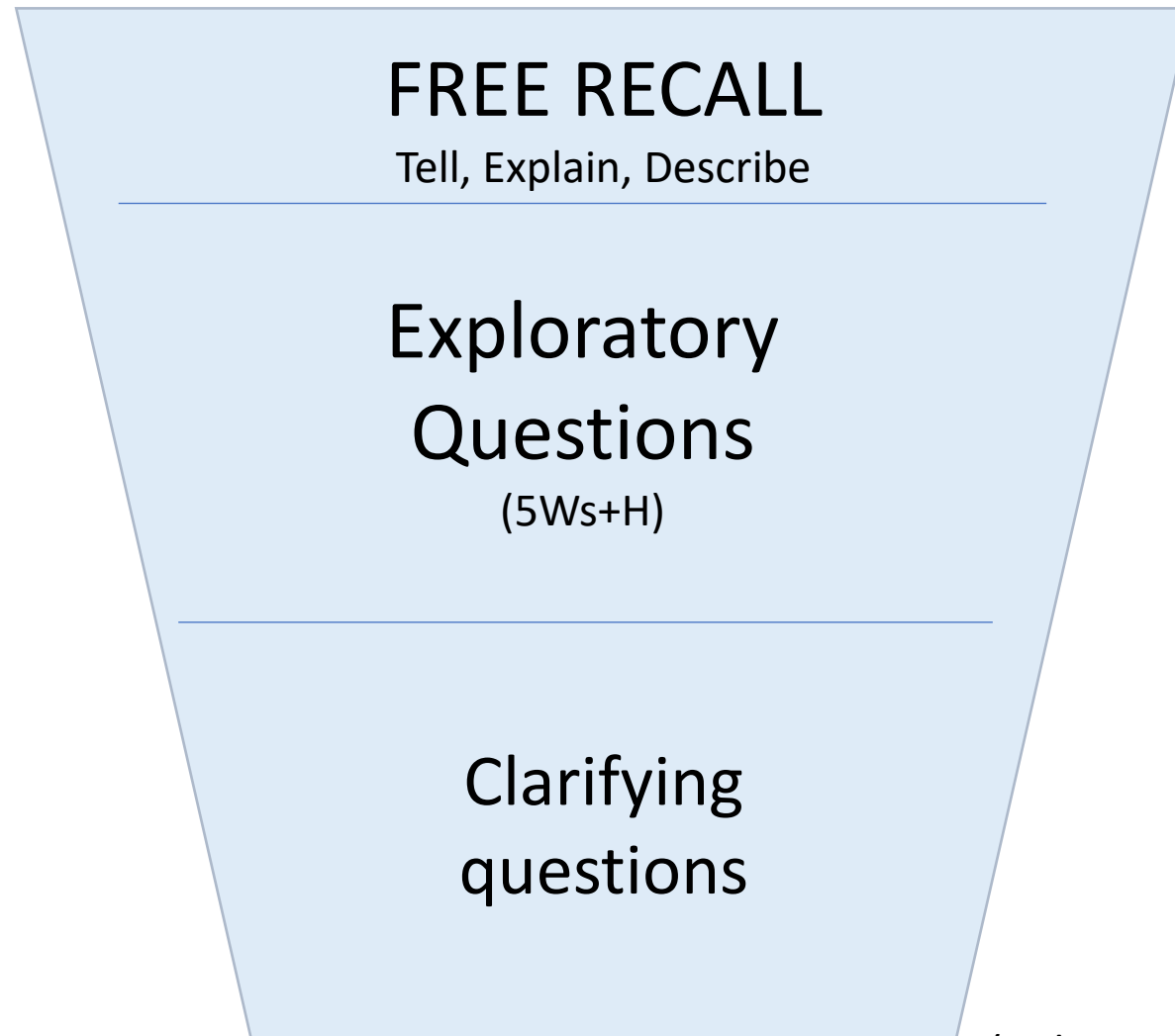
# TIP 6: COVER INCIDENT TOPIC FIRST





# TIP 6: COVER INCIDENT TOPIC FIRST

## The hierarchy of reliability



(Milne, 2006, cited in Rachlew, A. et al. (2022))

## TIP 7



*Procedural fairness for the **Reporting Party** requires an equitable approach that gives their voice parity with that of the Responding Party throughout the misconduct process.*

## INITIAL STAGES



- Assign a named Point of Contact, preferably an individual with specific training, such as a Sexual Violence Liaison Officer.
- Explain any precautionary restrictions imposed on the Responding Party. Transparency is important.

## DURING THE INVESTIGATION



- Record interviews.
- Explain how their evidence will be used and who will see it.
- The Reporting Party has a right of reply to the Responding Party's account while the case is still at the investigation stage.
- Inform the Reporting Party of the outcome of the investigation, the reasons for the decision, what will happen next and when.



## THE HEARING



- The Reporting Party is never in the same physical location as the Responding Party.
- Questions are filtered through the Panel Chair.
- Panel members must receive specific training in handling cases of sexual misconduct.
- Parity of representation.
- The Reporting Party should have right of reply to any significant new evidence introduced at the hearing stage.

## AFTER THE HEARING



- Meet with the Reporting Party to inform them of the outcome. Explain the reasons behind the Panel's decision.
- Where appropriate, seek feedback from the Reporting Party on every aspect of the University's handling of their case.

## TIP 8



*Procedural fairness for the **Responding Party** requires an impartial and transparent approach throughout the misconduct process.*

## INITIAL STAGES



- Assign a named point of contact, different to that of the Reporting Party.
- If possible, meet the Responding Party in person to explain any precautionary restrictions that have been implemented. Allow them to make initial representations and provide a right of appeal. Maintain a good level of communication.
- Explain the nature of the allegations and who has made the report. Provide enough information for them to truly understand what they are accused of and how this breaches University regulations/rules.

## DURING THE INVESTIGATION



- Outline the structure of the investigation, the potential timeframes and the rationale.
- Reiterate support options, especially the option of being accompanied during the interview.
- Explain how their evidence will be used and who will see it.



## THE HEARING



- Be clear that the Responding Party can call witnesses to the hearing, including the Reporting Party.
- Legal representation is a contentious issue. It is permissible at Surrey, but with the expectation that the Responding Party will answer for themselves any questions from the Panel.
- At the start of the hearing, the Responding Party should be informed of when and how the outcome will be delivered. Think about timings and delivery.

## S U M M A R Y



*Procedural fairness can be upheld for both parties by being transparent about processes and sharing information and evidence wherever possible, in an appropriate and structured way.*

# Upcoming webinar: Addressing Sexual Misconduct in Healthcare Education



## Date & time

15 November 2023 |  
13.00–14.30



## Event format

Virtual online delivery



# Contact Us



## University of Surrey Sexual Misconduct Case Toolkit

Website: <https://www.surrey.ac.uk/sexual-misconduct-case-toolkit>

Email: [toolkit@surrey.ac.uk](mailto:toolkit@surrey.ac.uk)



Questions and  
Discussion



Feedback

THANK YOU!

<https://forms.office.com/e/cMRqh2x9pW>

