

STAFF SEXUAL HARASSMENT, MISCONDUCT AND VIOLENCE POLICY

1 INTRODUCTION

- 1.1 Whilst the University expects its employees and staff to comply with this policy, it does not confer contractual rights or form part of any contract of employment and may be amended by the University or replaced at any time following appropriate consultation and negotiation with recognised trade unions. Breach of this policy may be addressed via the University's Disciplinary Policy and Procedure and Code of Conduct.
- 1.2 This policy will be reviewed by the Human Resources department on a 3-year basis or amended in response to changes in future legislation and/or case law.

2 OWNERSHIP

- 2.1 The Human Resources department owns and manages this policy on behalf of The University of Northampton.

3 ORGANISATIONAL SCOPE

- 3.1 This Staff Sexual Harassment, Misconduct and Violence policy is a corporate policy and applies to all employees (and workers, as applicable) of The University of Northampton including any wholly owned subsidiaries, unless an alternative policy exists, subject to any qualifying conditions.

4 POLICY STATEMENT

- 4.1 The University is committed to ensuring an environment which values and respects the rights and dignity of all members of the University community. The University is committed to achieving an environment that is free from sexual harassment, misconduct and violence and in which unacceptable behaviours are actively challenged and addressed. The University does not tolerate incidents of sexual harassment, misconduct or violence.

- 4.2 The University acknowledges that sexual harassment, misconduct and violence can be experienced by any individual, regardless of gender, race/ethnicity, disability, age, sexual orientation, religion or belief or lack of, pregnancy/maternity, marriage/ civil partnership or gender reassignment.
- 4.3 Sexual harassment, misconduct and violence can have an extremely negative and lasting impact on individuals and on the broader university community. It can jeopardise the mental, physical and emotional wellbeing of those affected.
- 4.4 The University expects all relationships and interactions of its staff and workers, to be grounded upon mutual respect, open communication and clear consent. The University will strive to develop policies and practices that ensure this expectation is delivered.
- 4.5 The University will strive to ensure that those implementing this policy approach cases of alleged sexual harassment, misconduct or violence sensitively, impartially and with discretion. It will also seek to work with external partners to enhance the implementation and effectiveness of its approach to instances of sexual harassment, misconduct and violence.
- 4.6 The University will ensure employees and workers are aware of this policy and procedure and how to access the contents.

5 DEFINITIONS

- 5.1 **Sexual Harassment, misconduct and violence** – any unwanted conduct of a sexual nature which occurs in person or by letter, telephone, text message, email or other electronic and/or social media and includes, but is not limited to:
- Engaging or attempting to engage in a sexual act with another individual without consent;
 - Sexually touching another person without their consent;
 - Conduct of a sexual nature which creates (or could create) an intimidating, hostile, degrading, humiliating or offensive environment for others including making unwanted remarks of a sexual nature;

- Inappropriately showing sexual organs to another person;
- Repeatedly following another person without good reason;
- Recording and/or sharing images or recordings of another person without their consent;
- Arranging or participating in inappropriately themed social events or initiations which may degrade or humiliate anyone participating.

5.2 **Consent** – the agreement to participate in a sexual act where the individual has both the freedom and capacity to make that decision. Consent cannot be assumed based on 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.

5.3 **Freedom to consent** - For consent to be present, the individual has to freely engage in a sexual act. Consent cannot be inferred from a lack of verbal or physical resistance. Consent is not present when submission results from the exploitation of power, or **coercion or force**.

5.4 **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. Coercion may also include a promise or implied promise of reward in return for engagement in a sexual act.

5.5 **Capacity to consent** - Free consent cannot be given if the individual does not have the capacity to give consent. Incapacitation may occur when an individual is 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 also occur on account of a mental or developmental disability, or as the result of alcohol or drug use.

5.6 **Alcohol and/or Drug and Substance Use** - Incapacitation arising from alcohol or drug/substance consumption should be evaluated on the basis of how the alcohol/drugs or substance 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 Violence and 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 to not engage in a sexual act.

- 5.7 **Disclosing Party** – the individual who has been the subject to or witnessed the alleged incident of sexual harassment, misconduct or violence.
- 5.8 **Accused Party** – the person whose behaviour is alleged to have amounted to an incident of sexual harassment, misconduct or violence.
- 5.9 **Disclosure** – the act of an individual sharing information about an alleged incident of sexual harassment, misconduct or violence in relation to an employee or worker of the University.

6 KEY PRINCIPLES

- 6.1 The purpose of this policy is to set out how matters of alleged sexual harassment, misconduct or violence by a member of staff towards a colleague, student or visitor are managed. Disclosures and reports made under this policy are not limited to University premises or the immediate geography of the University.
- 6.2 The University is committed to supporting anyone who has been the victim of sexual harassment, misconduct or violence from a student or a member of staff.
- 6.3 The following principles will be followed throughout this Policy:
- The principles of natural justice will be applied.
 - The standard of proof used for any matters will be 'on the balance of probabilities'.

- In determining whether a member of staff is culpable of a breach of this policy, the investigator shall have due regard to the member of staff's actions, their understanding of the importance of these actions and any steps they have subsequently taken to seek to make recompense for the situation.
 - Anyone who raises a complaint that, due to its nature, is subsequently considered through this Policy may be entitled to know the final outcome.
 - The University reserves the right not to proceed with any investigation into an alleged breach if it is considered that there are insufficient grounds or evidence to do so.
 - During the application of this Policy the University reserves the right to adjourn any investigation or meeting and reconvene at a later date, when it is necessary to do so to ensure the appropriate application of this Policy.
- 6.4 The University will support a member of staff who discloses an alleged incident of sexual harassment, misconduct or violence has occurred using the following steps:
- Making an informed decision about reporting the incident(s) to the police in agreement with the member of staff disclosing, for the police to consider whether a criminal act has occurred.
 - Where the accused party is a student, this will be referred to the Director of Student and Academic Services (or a nominee) to ensure appropriate action is taken in relation to a potential breach of the Student Code of Conduct.
- 6.5 The University will respect the wishes and decisions of the disclosing party, however any situations where there is a safeguarding issue the University will take the necessary action.
- 6.6 For matters relating to bullying and harassment, please refer to the University's Equality and Inclusion policy.
- 6.9 Unauthorised audio recording of conversations is prohibited. Anyone in breach of this may be subject to disciplinary action.

7 PROCEDURE

- 7.1 All alleged incidents that relate to sexual harassment, misconduct or violence will be investigated in line with section 7 of the University Disciplinary Policy and Procedure.
- 7.2 Regardless of any formal reports made to the police, in any case where a member of staff has come forward to disclose an alleged incident of sexual harassment, misconduct or violence the Director of Human Resources (or a nominee) will determine any actions that should be taken to reduce risk for the individual, others or the broader University. This decision will take account of the University's duty of care to the disclosing party, the accused party, the broader University community and the organisation. Any internal investigation carried out will be treated separately to any police investigation.
- 7.3 Possible actions taken following any decision made by the Director of Human Resources (or a nominee) may include, for example (this is not an exhaustive list):
- That the accused party comply with specific conditions, for example agreeing not to contact another member of staff or student. The consequence of any breach of these conditions may result in escalation in line with the staff Disciplinary Policy and Procedure.
 - That the accused party may be suspended until such a time as any criminal proceedings and/or University investigations have concluded.
 - That a mediation between the disclosing party and the accused party be offered.
 - That a report of an alleged incident be made to the police even without the permission of the disclosing party.
 - That external agencies be contacted to be involved in providing support for the disclosing party and/or the accused party.

- 7.4 It should be noted that any precautionary suspension does not indicate that the accused party is presumed guilty of any breach. Due regard will also be given to the University's duty of care towards the accused party during the course of any suspension, with access to support offered as relevant.
- 7.5 Where a report of sexual harassment, misconduct or violence is made by a member of staff to the police, the University may continue any investigation of its own into the allegations regardless of the criminal investigation and legal proceedings not being concluded. However, the fact that the police are unable, unwilling or not yet able to proceed does not automatically preclude the University from progressing its own investigation. The University may also continue its own investigations alongside police investigations where it is determined that it can do so without prejudicing those investigations.
- 7.6 Where the University has suspended its investigations as a result of a criminal investigation, the accused party should be reminded that, whilst criminal investigations are underway, they will be obliged to keep the University informed of any progress and/or change in status regarding his/her case. The Human Resources Department will review the case on a monthly basis and will make recommendations to the Director of Human Resources (or a nominee) if any action is required during this review period.
- 7.7 Where the University has suspended its investigations as a result of a criminal investigation and once those proceedings have concluded the Director of Human Resources (or a nominee) will review the case and determine next steps:
- Where a member of staff has been convicted of a criminal offence, the conviction shall be taken as conclusive evidence that the offence for which the individual was convicted has occurred; no further investigation into that offence shall be required by the University. The University will then use the Disciplinary Policy to determine the impact of that conviction on the convicted member of staff (or worker). The full range of penalties as set out in the Disciplinary Policy will be available.

- Notwithstanding this, the University may also still wish to investigate other matters if there are outstanding matters of concern to the University that have not been addressed through criminal proceedings. This investigation will proceed as per the Disciplinary Policy and Procedure.
- Where the member of staff has been acquitted the University will take into account the decision of the court. This does not prevent the University from undertaking its own investigation as per the Disciplinary Policy and Procedure if there are grounds to do so.

7.8 The University treats reports of sexual harassment, misconduct and violence seriously. However, the possibility of malicious or spurious complaints is recognised. Any complaints identified as such will be dealt with under the University's Disciplinary Policy and Procedure.

7.9 The University recognises the importance of privacy in cases where sexual harassment, misconduct or violence is alleged. At the same time, anonymous complaints of sexual harassment, misconduct or violence against named individuals cannot normally be investigated. Moreover, whilst confidentiality will be maintained on a 'need to know' basis and in accordance with General Data Protection legislation, the University does reserve the right to share information in exceptional circumstances where disclosure is necessary to protect an individual or the wider University community from harm or to prevent a crime from taking place.

8 ASSOCIATED DOCUMENTS

- 8.1 Student Sexual Harassment, Misconduct and Violence Policy and Procedure
- 8.2 Disciplinary Policy and Procedure
- 8.3 Grievance Policy and Procedure
- 8.4 Equality and Inclusion Policy and Procedure
- 8.5 Code of Conduct Policy

9 EQUALITY IMPACT ASSESSMENT

9.1 An Equality Assessment has been completed and accompanied this policy and procedure.

10 VERSION CONTROL

Version Control		Approval record	
Author:	Kam Shergill (HR Business Partner)	Approval:	TU Liaison - 18 Dec 2018 UMT - 18 Jan 2019 JCNC – Chair’s Action 24 Jan 2019 Board of Governors- 23 Jan 2019
Date written:	October 2018	Updates:	
Current status:	Draft	Approval of revision	
Record of Amendments			
Date	Version number	Details of Change	Approval