

# University Policy on Identifying and Handling of Sexual Misconduct February 2023

## 1. Introduction

This policy provides guidance on how the University will identify and respond to allegations of sexual misconduct between students. It outlines how cases should be reviewed, assessed, and managed and should be read in conjunction with the [Code of Discipline for Students](#).

## 2. Scope

The policy supports the investigation and management of alleged incidents of sexual misconduct made against students registered at the University of Nottingham, where they are living, studying, working, visiting or on placement at UK campus where it is believed that the behaviour of a student may contravene the Code of Discipline for Students.

## 3. Terminology

For the purposes of these guidelines, the following terminology is used:

- The Reporting Party is the person(s) who is the subject of the alleged sexual misconduct.
- The Responding Party is the person(s) whose behaviour it is alleged amounts to sexual misconduct.

## 4. Defining Sexual Misconduct

Sexual misconduct encompasses any unwanted behaviour of a sexual nature to which a person has not consented or the person engaging in the behaviour does not have a reasonable belief as to that other person's consent. Sexual misconduct can happen within any kind of relationship or between people who do not know each other.

Examples of sexual misconduct include, but are not limited to, the following, and apply whether the behaviour happened on or off a University campus:

- sexual intercourse or engaging in a sexual act without consent, or a reasonable belief in consent;
- attempting to engage in sexual intercourse or engaging in a sexual act without consent, or a reasonable belief in consent;
- sharing private sexual or intimate materials of another person without consent, or a reasonable belief in consent (for example: images, video, voice recordings, text message, letters, emails, etc);
- kissing without consent, or a reasonable belief in consent;
- any sexual or inappropriate touching without consent, or a reasonable belief in consent;
- inappropriately showing sexual organs to another person;
- making unwanted remarks of a sexual nature.

## 5. Process

Where the University becomes aware of an allegation of sexual misconduct against a student, an initial review of the case shall take place and the case will be securely logged. Where the reporting party is a student at University of Nottingham, they will be offered the support of a Sexual Violence Liaison Officer (SVLO).

5. As part of the initial review, there will be, at the earliest opportunity, a meeting with the Reporting Party. In this meeting, the Reporting Party will be offered support and an assessment will be carried out to identify any protective action required.
6. If it is identified that protective action is required, any relevant safeguards will be implemented as soon as possible. Actions may include, amongst others, setting boundaries with both parties, the movement of students within University owned and leased accommodation, suspending or excluding a responding student temporarily as a neutral act, and supporting the Reporting Party to report the alleged sexual misconduct to the police.
5. The wishes of the Reporting Party will be central to any decision as to how to take forward any allegation of sexual misconduct. It is also understood that the Reporting Party may require a reasonable time for reflection and to seek guidance about their options before making a decision. To best support the Reporting Party, they will be given their reporting options along with information as to what specialist support is available. The options include the following:
  - Report the incident to the Police;
  - Receive support from The Topaz Centre (Nottinghamshire Sexual Assault Referral Centre)
  - Make a request that the University investigate the incident under the Code of Discipline for Students;
  - Make no report of the incident.
  - Postpone making a decision on what action to take.
6. The Reporting Party should be advised that the University does not have the legal investigatory powers of the police and cannot make a determination of criminal guilt. An internal investigation will be focused instead, on whether a breach of the University's Code of Discipline for Students has occurred. If the matter is not reported to the Police, there is a risk of loss of evidence such as telephone records, forensic evidence, CCTV outside of the University Campus, etc.
7. In exceptional cases, such as any instance in which the immediate safety of the Reporting Party or others is an issue, and whilst at all times respecting the wishes of the Reporting Party, the University reserves a free-standing discretion to take any and/or all of the actions listed in the bullet points in paragraph 14.
8. Where the incident is reported to the Police and results in a criminal investigation or court proceedings, the University will ordinarily suspend any ongoing internal investigation. The University's focus will be on ensuring that the appropriate safeguards and support are in place for all involved parties. This position will be reviewed at least monthly to ensure appropriate support is in place and consider if any action by the University is required, including resuming the internal investigation. In most circumstances, the investigation will resume at the conclusion of the criminal investigation or judicial proceedings.
9. Where a student has been convicted of a criminal offence or accepts a Police caution in relation to sexual misconduct, the conviction / caution will ordinarily be taken as conclusive proof that the behaviour took place and no further investigation on that issue shall normally be required by the University. The University will request information from the criminal investigation to support its internal decision making on any further action

required. The case will normally be referred by the University Assessor to a Senate Disciplinary Committee in line with the provisions laid down in the Code of Discipline for Students.

10. A decision by the Police or 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 the University from taking action under the Code of Discipline for Students and these guidelines. An acquittal or police decision to take no further action should not be automatically taken to mean automatically that the Reporting Party has made a vexatious or malicious complaint.
11. Where an incident is not reported to the Police or does not result in a criminal conviction or caution, the University will consider how to progress the internal investigation. Generally, an investigation of the allegation will be undertaken, including gathering information and statements from the Reporting and Responding Parties and any witnesses, as well as gathering any available evidence. The University will normally convene a Sexual Misconduct Review Panel to consider the case. This panel can take place regardless of circumstance (i.e. Police do or do not progress the case; Reporting Party does not report the incident; Reporting Party requests that the University investigate the incident under the Code of Discipline, etc).
12. Where a Sexual Misconduct Review Panel is required, it should be convened at the earliest possible opportunity following completion of the investigation. The panel should comprise at least four of the following people, one of whom must be either the University Assessor or their deputy, and one of whom must be the Student and Campus Life Director or their nominee:
  - The University Assessor
  - The Deputy University Assessor
  - Student & Campus Life Director
  - University Senior Tutor
  - Head of Security
  - Associate Director (Student Wellbeing)
  - Community Engagement Manager
  - Head of Wellbeing (Mental Health) Any other identified member of staff who has attended the agreed level training for panel members.
13. The Sexual Misconduct Review Panel must be gender balanced and free from any reasonable perception of bias. The panel should also, where possible, be diverse in other aspects such as race and disability, particularly where this is appropriate to reflect the characteristics and identities of reporting and responding students. If required, alternate University staff members with relevant and appropriate knowledge, experience, and training can be co-opted onto the group at the agreement of the Director of Student & Campus Life to achieve this or provide expertise in a specific area.
14. On the basis of the information available, the Sexual Misconduct Review Panel can take the following actions, based on the evidence that is available to it:
  - Dismiss the case and take no further action
  - Propose use of mediation or processes related to the Dignity at Nottingham Policy
  - Refer the case to the University Assessor (see below)

- Refer the case to the appropriate staff member to enact Fitness to Practise proceedings
  - Refer the case to the Police
  - Request a further investigation to gather additional evidence
15. Where the case is referred to the University Assessor, the Review Panel will recommend one of the following courses of action under the Code of Discipline:
- Refer the case to an appropriate officer with summary jurisdiction
  - Refer the case to the Senate Disciplinary Committee
16. If the Sexual Misconduct Review Panel decides to refer the case to a Senate Disciplinary Committee, it will also recommend whether special arrangements should apply to the hearing by the Senate Disciplinary Committee.
17. If the matter is reported to the Police, the sharing of information will be conducted in line with the University's data sharing agreements with the Police and data protection policies and legislation.

### **The Senate Disciplinary Committee**

18. The Senate Disciplinary Committee has Terms of Reference and rules of procedure that it will always work within, including process, penalties available, etc. It is acknowledged, however, that special arrangements may need to be applied in relation to alleged sexual misconduct. The aim is to ensure that the Senate Disciplinary Committee can appropriately take account of the sensitive nature of the facts of such cases (including considering a trauma informed approach) and the need to safeguard the interests of both the Reporting and Responding Parties.
19. The special arrangements that may be applied include the following:
- Engaging with an independent lawyer for particularly complex cases or where a lawyer is representing any student at the committee
  - Use of video evidence;
  - Where requested or agreed, keeping the Reporting & Responding Parties separate, using video links where appropriate;
  - Ensuring that the Reporting Party cannot be questioned directly by the Responding Party, with provision being made for this to take place through an SU Education Adviser; and
  - Providing for questions to the Reporting & Responding parties, or witnesses to be put through the Chair.