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Identifying and handling cases of sexual misconduct

This policy outlines how the University will identify and respond to allegations of incidents of sexual misconduct between student members of the University community.¹ It outlines how cases should be reviewed, directed, and managed to an appropriate conclusion. It should be read in conjunction with the Code of Discipline for Students.

Scope

This procedure applies to all alleged incidents of sexual misconduct between the University's students where it is believed that the behaviour of a student may contravene the Code of Discipline for Students.

¹ It also applies, with modifications as appropriate, where a person other than a student member makes such an allegation against a student member.

Definition

Sexual misconduct is defined in the Code of Discipline for Students as:

- Attempting to engage in sexual intercourse or engaging in a sexual act without consent, or where consent cannot be given due to incapacity
- Sexual intercourse or engaging in a sexual act without consent, or where consent cannot be given due to incapacity
- Sharing private sexual materials of another person without consent
- Kissing without consent
- Touching inappropriately without consent
- Inappropriately showing sexual organs to another person
- Making unwanted remarks, sounds and/or gestures of a sexual nature

Terminology

For the purposes of this regulation, the following terminology is used:

- The Reporting Party is the person(s) who has been the subject of the alleged incident of sexual misconduct.
- The Accused Party is the person(s) whose behaviour it is alleged amounted to sexual misconduct.

Reporting and support

Students can report sexual misconduct via harassment@nottingham.ac.uk
For more support visit nottingham.ac.uk/currentstudents/healthyu/lets-be-clear-on-consent.aspx

Process

- 1 Where the University becomes aware of an allegation of sexual misconduct, an initial review of the case shall take place and the case will be confidentially logged. This should include a meeting with the Reporting Party. This initial meeting would include an offer of support and a safeguarding assessment by appropriately qualified staff from the University. During this initial review phase, implementation of any identified safeguards should also take place. This may include measures such as setting boundaries with both parties, the movement of students within University organised accommodation, excluding temporarily as a neutral act, and reporting to the police, amongst other safeguards.
- 2 The wishes of the Reporting Party will be central to any decision as to how to take forward any disclosure of an experience 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

In exceptional cases, such as any instance in which the immediate safety of the Reporting Party or others is in issue, and whilst at all times respecting to the fullest extent possible the wishes of the Reporting Party, the University reserves a free-standing discretion to take action in accordance with paragraph 7.

- 3 Where the incident is reported to the Police and results in a criminal investigation or judicial proceedings, the University will ordinarily suspend any ongoing investigation, focusing instead on ensuring that the appropriate safeguards and support are in place for all involved parties. The investigation will resume at the conclusion of the criminal investigation or judicial proceedings.

- 4 Where a student 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 on that issue shall be required by the University. 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.
- 5 Where an incident is not reported to the Police or does not result in a criminal investigation, judicial proceedings, or a criminal conviction, the University will convene a Review Panel to assess the case in the light, where available, of the reasons for that outcome. This Review Panel will take place regardless of circumstance (i.e. Police 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).
- 6 Where a Review Panel is required, it should be convened at the earliest possible opportunity. The panel should comprise at least four people from the following list, one of whom must be either the University Assessor or their deputy, and one of whom must be the Campus Life Director or their nominee:
 - The University Assessor
 - The Deputy University Assessor
 - Campus Life Director
 - University Senior Tutor
 - Head of Security
 - Head of Student Welfare
 - Off Campus Affairs Manager
 - Senior Mental Health Advisor
- 7 On the basis of the information available, the Review Panel can take the following actions:
 - Dismiss the case and take no further action
 - Propose use of mediation or processes related to the Dignity Policy
 - Refer the case to the University Assessor
 - 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
- 8 Where the case is referred to the University Assessor, the Review Panel will recommend one of the following courses of action:
 - Refer the case to an appropriate officer with summary jurisdiction to give a judgment under the Code of Discipline
 - Refer the case to the Senate Disciplinary Committee

For clarity, 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 this Policy. Equally, this outcome should not of itself be taken to mean that the Reporting Party has made a vexatious or malicious complaint.

- 9 Where appropriate, the University Assessor can seek legal advice on the strength of the case before deciding on a final course of action. The view of the University Assessor as to the appropriate course of action is final.
- 10 In all cases, the University will advise the Reporting Party that it does not have the legal investigatory powers of the Police, and cannot make a determination of criminal guilt. The internal process cannot therefore be regarded as a substitute for a Police investigation or criminal prosecution. The University will highlight the limitations of a University Investigation so the Reporting Party can make an informed decision, emphasising that an internal investigation is focussed exclusively on whether a breach of the University's Code of Discipline for Students has occurred. The University will also advise the Reporting Party that if the matter is not reported to the Police then there is a risk of loss of evidence such as telephone records, forensic evidence, CCTV outside of the University Campus, etc.
- 11 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.

The Review Panel must be gender balanced. Where this is not possible due to the availability of named post-holders, an alternate University staff member with relevant and appropriate knowledge and experience can be co-opted

onto the group at the agreement of the Campus Life Director.

Defining Sexual Misconduct – a guide for the Review Panel

For the purposes of this regulation, the following would be considered as examples of sexual misconduct. This includes whether or not the activity took place within a relationship or not. The panel will also consider the issue of consent and the capacity to consent in all cases:

- sexual intercourse or engaging in a sexual act without consent;
- attempting to engage in sexual intercourse or engaging in a sexual act without consent;
- sharing private sexual materials of another person without consent (for example: images, video, voice recordings, text message, letters, emails, etc);
- kissing without consent;
- touching inappropriately without consent;

- inappropriately showing sexual organs to another person;
- making unwanted remarks of a sexual nature.

On the basis of the specific details of the case, the Review Panel will make an assessment as to whether, in their view, the misconduct was of sufficient seriousness as to require referral to a Senate Disciplinary Committee and whether special arrangements should apply to the hearing by the Senate Disciplinary Committee. This committee must be used where there is any concern that any other existing mechanism would be ill suited or inappropriate to consider the matter.

The Senate Disciplinary Committee

It is acknowledged that special arrangements may need to be applied in certain cases so that the University can appropriately take account of both the sensitive nature of the facts of such cases and the need to safeguard appropriately the interests of both the Reporting Party and Accused Party. Accordingly, on the recommendation of the University Assessor special arrangements may apply in respect of the Senate Disciplinary Committee convened to consider such a case.

The special arrangements that may be applied include the following:

- Provision is made to enable the appointment of an independent lawyer to advise the Senate Disciplinary Committee and thereby help ensure that proceedings are conducted fairly. The Legal Adviser will not be a member of the Committee but will be present during the hearing and during the Committee's deliberations before and after the hearing. The role of the Legal Adviser will include giving expert advice on legal matters to the Committee. The Legal Adviser may address parties and ask questions. In (and only in) a case where the Accused Party is legally represented,

the Legal Adviser may, at the request of the Chair, assume responsibility for presiding over the conduct of that part of the hearing that comprises the questioning of witnesses.

- Where the Accused Party is to be legally represented, the University may engage a lawyer to present the case for the University in place of the University Assessor or Deputy Assessor.
- The conduct of proceedings allows for the use of special measures where appropriate such as:
 - Reliance on video evidence;
 - Keeping the Reporting Party and the Accused Party in separate rooms with video links;
 - Ensuring that the Reporting Party cannot be cross-examined in person by the Accused Party
 - Providing for questions to the Reporting Party and the Accused Party to be put through the Chair.

Steps will be taken as appropriate to provide training for members of a Senate Disciplinary Committee.

If you have any questions about the **identifying and handling cases of sexual misconduct**, you can seek advice and guidance from Students' Union Advice: su.nottingham.ac.uk/advice