

**CATEGORY:** Higher Education

**TYPE:** Policy

**TITLE:** Sexual Harassment and Sexual Misconduct

**PERSON RESPONSIBLE:** Assistant Principal: Student Services & DSL

**PURPOSE:**

## Introduction

This policy sets out the Newcastle and Stafford Colleges Group's approach to preventing harassment and sexual misconduct. It covers behaviour by all members of the college community (further education and higher education students, apprentices, permanent and temporary staff, and visitors). We are committed to preventing and eliminating harassment and sexual misconduct.

This policy has been created in consultation with student representatives and staff. We are committed to providing a supportive and confidential environment where individuals feel confident and empowered to disclose, will be listened to, and understand the options available to them

### 1. Definitions (taken from Office for Students statement of expectations)

#### 1.1 Harassment

As defined by Section 26 of the Equality Act 2010, harassment includes unwanted behaviour or conduct which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment because of, or connected to, one or more of the following protected characteristics:

- Age
- Disability
- Gender reassignment
- Race
- Religion or belief
- Sex
- Sexual orientation

Under our definition, we understand harassment to include domestic violence and abuse (which can also involve control, coercion and threats) and stalking. We would also consider harassment to include any incidents of physical violence towards another person(s) on the basis of a protected characteristic and hate crimes, such as those criminal offenses, which are perceived by the victim or any other person to be motivated by hostility or prejudice, based on a person's disability or perceived disability; race or perceived race; or religion or perceived religion; or sexual orientation or perceived sexual orientation or transgender identity or perceived transgender identity.

## 1.2 Sexual Misconduct

Sexual misconduct relates to all unwanted conduct of a sexual nature. This includes, but is not limited to:

- Sexual harassment (as defined by Section 26 (2) of the Equality Act 2010)
- Unwanted conduct which creates an intimidating, hostile, degrading, humiliating or offensive environment (as defined by the Equality Act 2010)
- Assault (as defined by the Sexual Offences Act 2003)
- Rape (as defined by the Sexual Offences Act 2003)
- Physical unwanted sexual advances (as set out by the Equality and Human Rights Commission: Sexual harassment and the law, 2017)
- Intimidation, or promising resources or benefits in return for sexual favours (as set out by the Equality and Human Rights Commission: Sexual harassment and the law, 2017)
- Distributing private and personal explicit images or video footage of an individual without their consent (as defined by the Criminal Justice and Courts Act 2015).

Our definitions include harassment and sexual misconduct through any medium, including, for example, online platforms.

## 2.0 Consent

Consent is 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 on the basis of a previous sexual experience or previously given consent, and consent may be withdrawn at any time.

### Freedom to Consent

For consent to be present, the individual has to freely engage in a sexual act. Consent is not present when submission by an unwilling participant results from the exploitation of power, or coercion or force, regardless of whether there is verbal or physical resistance. 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 feels compelled to engage in a sexual act.

### 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.

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 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.

### 3.0 Who is Covered by this Policy

This policy covers all students of Newcastle and Stafford Colleges Group, including students with visiting student status, distance learners, and those undertaking apprenticeships. It also applies to staff, including agency, temporary, casual, and students employed by the college or through external agencies. It also applies to visitors attending the campus.

It will apply to sexual misconduct which:

- Occurs on College property and/or land;
- Occurs whilst a student is engaged in any College or Students' Union related activity (including placements and trips);
- Occurs via electronic means including, but not limited to: internet, email, social media sites, chat rooms, text messages and instant messaging;
- Results in a legal or police investigation, charge or conviction of an offence;
- Raises questions about the fitness of the student on a fitness to practice programme; or
- In the view of the College poses a serious risk or disruption to the College or members of its community.

### 4.0 College Policies to Deal with Harassment and Sexual Misconduct

Allegations of harassment and/or sexual misconduct against a student will be dealt with under the following policies/procedures:-

- Student Disciplinary Procedure.
- Student Code of Conduct and codes.
- Bullying & Harassment Procedure.
- Positive Student Behaviour Policy.
- Child on Child Abuse Policy.
- Risk Assessment/Safety Planning Guidance

- Complaints Procedure

Allegations against members of staff and visitors will be dealt with through the following policies/procedures:-

- Discipline of Staff Procedure.
- Staff Code of Conduct.
- Relationships at Work Procedure.
- Whistleblowing Policy.

These policies outline the processes to be followed and the rights of the alleged accused regarding representation and appeal. Appropriate support will also be given to the alleged victim throughout these processes.

## 5.0 Confidentiality and Data Sharing

The College recognises the importance of privacy for disclosures and formal complaints of cases of harassment and/or sexual misconduct and will only share information on a confidential, need-to-know basis. Confidentiality is not absolute secrecy. There may be circumstances where it is necessary or appropriate to share information either within the College or with external organisations/bodies, for example to:

- Allow a case to be appropriately considered and investigated;
- Ensure those who disclose an experience or are alleged to have committed misconduct receive appropriate academic and pastoral support;
- Safeguard members of the College community and fulfil the College's duty of care;
- Discharge the College's duties or as required by law.

The outcome of an investigation, Discipline hearing or Appeal will be shared with both parties and this will include setting out the rationale for the decision. All personal data is recorded and held in accordance with the Data Protection Act 2018 and cases of sexual misconduct will be retained in line with the College's Record Retention Schedule. The College will retain anonymised data to understand patterns of behaviour and to inform future policy.

## 6.0 Making a Disclosure

A disclosure is made when someone tells a member of College staff that they have experienced sexual misconduct. A disclosure can be made in person, online or via other means such as phone or email. The person who has chosen to disclose does not need to provide the full details of their experience if they do not wish to. Although they will be advised of the options open to them, and supported to make a formal complaint if they choose to, they will not be pressured to make a formal complaint. If the incident is historical, the person

who has experienced it can still disclose it to the College and receive support. They can access Safeguarding & Wellbeing Officer support and advice.

Disclosure does not create a formal complaint, and is not an instruction for the College to take action. The person who has disclosed will have the opportunity to be heard and to consider their options before proceeding with any further steps. No action will be taken immediately by the College unless there is a concern about immediate safety or if the College has a duty under safeguarding. Where a person chooses to disclose anonymously no action will usually be taken on the basis of their disclosure. Anonymised data will help the College to understand patterns in behaviour and inform future policy.

## 7.0 Next Steps After Disclosure

After disclosure there are several options available to the person who has disclosed their experience. They can choose the level and types of support that are right for them. After discussion with a Safeguarding and Wellbeing Officer, the person who has disclosed may choose to:

### 7.1 Take no further action at this time:

In this case, advice will be provided regarding the preservation of evidence which may be needed if they subsequently decide to make a report to the Police or to submit a formal complaint to the College. They will also be informed of the ongoing support available to them via the Wellbeing service. Where appropriate and with the permission of the reporting party as Safety Plan (Appendix 1) will be completed by the Safeguarding and Wellbeing Officer

### 7.2 Make a formal complaint to the College:

If the person who has disclosed chooses this option, they will be asked to confirm that they wish the College to proceed with a formal investigation. Support will be available from the Wellbeing service. A Safety Plan (Appendix 1) will be completed by the Safeguarding and Wellbeing Officer

### 7.3 Make a report to the Police:

In this case no disciplinary action will normally be taken by the College whilst a Police investigation and legal proceedings are taking place. Support will however still be available from the Safeguarding and Wellbeing Officer. A Safety Plan (Appendix 1) will be completed by the Safeguarding and Wellbeing Officer

## 8.0 Police Investigation and Legal Proceedings

If the person who has disclosed has made an independent report to the police they may still make a formal complaint to the College. The College does not have the legal investigatory powers of the Police, and is not able to make a determination of criminal guilt. Any disciplinary action is undertaken as a breach of the College's Sexual Harassment and Sexual Misconduct Policy and is not a substitute for a Police investigation or a criminal prosecution. The fact that criminal proceedings have been instituted or have concluded does not preclude the College from taking its own disciplinary action, if it is thought fitting or necessary to do so. The fact that the Police are unable or unwilling to proceed does not preclude the College from taking its own disciplinary action. A case which does not progress through legal channels, where a decision to take no further action has been made, and/or a 'not guilty' verdict has been returned, does not mean that the person has made a malicious or vexatious report. The fact that criminal proceedings have returned a 'not guilty' verdict does not preclude the College from taking its own disciplinary action. Where appropriate and with the permission of the reporting party as Safety Plan (Appendix 1) will be completed by the Safeguarding and Wellbeing Officer

If a student or member of staff has been convicted of a criminal offence or accepts a Police caution in relation to behaviour that falls within the scope of the College's Sexual Harassment and Sexual Misconduct Policy, then the College will accept this as conclusive evidence that the behaviour took place. It may not be necessary for a further full investigation to take place and the complaint will be deemed proven and proceed directly to a disciplinary hearing. A Safety Plan (Appendix 1) will be completed by the Safeguarding and Wellbeing Officer

## 9.0 Immediate Threats to Safety

If after reviewing a disclosure, the Designated Safeguarding Lead or Deputy Designated Safeguarding Lead thinks that there may be an immediate threat to safety, they will refer the case for immediate action to the Vice Principal: Communications, Staff & Student Services.. If the Vice Principal: Communications, Staff & Student Services decides that it is necessary to take precautionary action, they will use the Student Disciplinary Procedure and/or the Discipline of Staff Procedure to restrict access to campus facilities or suspend the accused student or staff member, pending a disciplinary hearing.

If a student or staff member is suspended, the person alleged to have committed the misconduct will be informed in writing and, wherever possible, in person. They will be told what they need to do in order to comply with the suspension. If no suspension is required, the person alleged to have committed the misconduct will not be informed of the disclosure unless the person who has disclosed chooses to make the person aware of the allegation or submits a formal complaint to the College. A Safety Plan (Appendix 1) will be completed by the Safeguarding and Wellbeing Officer

## 10.0 Making a Formal Complaint to the College

The person who has experienced sexual misconduct may choose to make a formal complaint to the College under the College's Sexual Harassment and Sexual Misconduct Policy, and thereby seek a resolution via the College Disciplinary Procedure. A formal complaint is different to disclosure; it is a document informing the College that something has happened and that the person who has made the complaint wishes the College to take action. From this stage onwards, the person who has submitted the complaint is referred to as the Reporting Party, and the person who is alleged to have committed the misconduct is referred to as the Responding Party.

The complaint must be submitted in writing, by using the following link <https://nscg.ac.uk/complaints-procedure>. The form may be completed by the Reporting Party, or if they prefer, someone can complete it on their behalf, with their consent. Any member of NSCG staff can provide help in completing the form. The complaints form does not need to include in-depth detail about the experience. There does however need to be enough information so that the College can take the complaint forward and understand what has happened. The complaints form will be referred to the Designated Safeguarding Lead or Deputy Designated Safeguarding Lead. The College will not take any action without the involvement of the Reporting Party unless there is an immediate threat to safety. The Reporting Party has the right to withdraw their complaint and to stop the formal Disciplinary Process at any time. Where appropriate and with the permission of the reporting party as Safety Plan (Appendix 1) will be completed by the Safeguarding and Wellbeing Officer

## 11.0 Process for Dealing with Accusations of Harassment and Sexual Misconduct Against Visitors

Short term visitors to site should always be accompanied by a member of staff. Visitors who engage with Newcastle and Stafford Colleges Group students online should similarly always do so in the presence of a member of staff. If a visitor is likely to access Newcastle and Stafford Colleges Group over several occasions, or needs unaccompanied access, then they should be subject to the same checks as a staff member (e.g. DBS) as indicated in the safeguarding policy. In this case they may be allowed unaccompanied access to site.

- 11.1 Accusations should be made in the same way as detailed above.
- 11.2 . As far as practicable, an investigation will be undertaken as above (if the complainant wishes).
- 11.3 Outcomes can include the visitor being banned from Newcastle and Stafford Colleges Group's site, either temporarily or permanently, and reports being made to the visitor's employer, if relevant. Newcastle and Stafford Colleges Group will support police investigations of visitor conduct on site.

## Appendix A

### **Safety Plan**

Private and Confidential

<b>Personal Information</b>	
To protect the child's privacy when sharing the plan, this front page can be detached and their first initials used after this section.	
Name of young person	
Student ID	
DOB	
Other young people involved	
Date of completion	
Present at the meeting	
Who needs to know about this plan	
Date of review	

Action	YES/NO	Specific Detail	Date
Parents informed			
Curriculum team informed			
Security team informed			
Police informed			
Referral to external support services (specify)			
Referral to internal support services (specify)			

**What are the concerns about behaviour in college home and in the community:**

**Are there any other behaviour concerns in college:**

**Other relevant factors:**

**What intervention/consequences are already in place? What has been the outcome:**

### Actions taken

## Outcomes

### Young person's views about their behaviour:

**Parent's/carer's views about the behaviour concerns:**

Are they angry, rejecting, supportive, minimising, concerned?

**Describe the young person's positive relationships:**

Include professionals, family, peers etc

**Identify areas/locations within the college that are not assessed as requiring additional planning/supervision at this time:** Please note areas where there has been no history of incidents or concerns or where existing supervision manages risk.

**Which activities/lessons does the young person enjoy and engage positively in:** Describe how these will be promoted and maintained. Consider any additional activities that could be encouraged to promote pro social behaviour and self-esteem

**Identify particular lessons, activities, peers, staff, moods, events outside college which may trigger behaviour?**

**What support is available to help the young person during these trigger situations? Can the young person identify what helps to reduce triggers?**

**Are there locations at college where concerns are increased? (e.g. toilets, corridors etc?)**

<b>How can these locations be managed?</b>
<b>Are there others who are particularly vulnerable? Staff, visitors, other students?</b>
<b>How can concerns involving others be reduced?</b>
<b>Are there others who are particularly influential? Adults, peers, gangs/ groups?</b>
<b>How can negative influences be reduced?</b>
<b>Are there any concerns relating to online access? If so how can the young person be supported to access the internet safely?</b>
<b>How does the young person travel to and from school? Are there any concerns? If so how can these concerns be managed?</b>