

SEXUAL MISCONDUCT AND VIOLENCE POLICY

1. Policy Statement

- 1.1 Durham University recognises that incidents of Sexual Misconduct and Violence occur within the University community, and acknowledges that there has been a noticeable increase in the number of incidents disclosed by the student community, a trend that is encouraged and reflected across the Higher Education sector and beyond. Sexual Misconduct and Violence refers to a broad spectrum of behaviours that cannot be divorced from other types of gender-based violence including, but not limited to, intimate partner violence or domestic abuse, coercive and/or controlling behaviour, and stalking. The University acknowledges that Sexual Misconduct and Violence can be experienced by any individual, regardless of their identity. The University is committed to promoting a culture in which any incidents of Sexual Misconduct and Violence will not be tolerated, and will be thoroughly addressed to ensure the preservation of a safe work and study environment.

2. Principles

- 2.1 Durham University holds the following set of Principles to reflect the University's commitment to establishing a culture of support and respect. All members of Durham University have a responsibility for upholding the Principles that are as follows:
- 2.1.1 We will treat all members of our community with dignity and respect at all times, and it is expected that all members of our community will share in this responsibility for creating and sustaining an environment which upholds the dignity of all.
 - 2.1.2 We recognise the significant impact of all experiences of Sexual Misconduct and Violence, and acknowledge the potential detriment to studies and employment, regardless of when the experience occurred.
 - 2.1.3 We strive to maintain equality and diversity within our community, and will work to sustain an equal and safe environment in which a culture of prevention will be promoted through appropriate and consistently applied education and training.
 - 2.1.4 We will actively respond to all Reports of Sexual Misconduct and Violence and, whilst recognising that some experiences may constitute a criminal offence, we will ensure that, in all cases, Reports are carefully and thoughtfully addressed by relevant staff members through a process that is transparent and clearly communicated to the individuals involved. We will respect the right of the individual disclosing an experience to choose how to take forward a Disclosure.
 - 2.1.5 All Reports considered under the accompanying procedures will be assessed on the balance of probabilities in line with General Regulation IV: Discipline, the Non-Academic Misconduct Procedure and sector guidance.
 - 2.1.6 All University staff will have been informed of the Policy and will be trained as appropriate to their roles. All staff involved in the process will act with impartiality and discretion at all times.
 - 2.1.7 We believe that no person should suffer the effects of Sexual Misconduct and Violence alone, and will ensure that there is dedicated specialist support, including free and accessible counselling for all individuals involved.
 - 2.1.8 We will work with local partners and key groups to forge positive relationships to support all our work in this area, from prevention to enquiry and post-incident care.
 - 2.1.9 We are mindful of our civic responsibilities to the wider community.

- 2.1.10 In addressing experiences and working with both internal and external experts, we will seek to learn from experience, enabling the University to both shape and respond to national and international policy and practice, and to provide regular assurance to Council, Senate, the University Executive Committee and the wider University community, that specific incidents and broader cultural issues are appropriately captured and addressed.

3. Scope of the Policy

- 3.1 This Policy relates to all incidents of Sexual Misconduct and Violence, as well as domestic abuse and coercive or controlling behaviour, complicity, retaliation, vexatious reporting, and malicious reporting as defined in Section 4.
- 3.2 Under this Policy all students and staff members who have experienced Sexual Misconduct and Violence will have equality of access to both internal and external specialist support (e.g. Sexual Assault Referral Centre and Rape Crisis), regardless of when the experiences occurred.
- 3.3 The accompanying procedures to this Policy relate specifically to those experiences which have occurred during the course of study or work at the University, in which the Responding Party is a current student or member of staff of the University. Disclosures and Reports made under this Policy are not limited to University premises or the immediate geography of the University.
- 3.4 Sexual Misconduct and Violence includes a broad spectrum of behaviour. Examples of the types of behaviour that will constitute a violation of this Policy are set out below. Reports of such behaviour will be considered by the University under its internal disciplinary regulations. When the Responding Party is a student the Sexual Misconduct and Violence Policy: Procedure for Students and General Regulation IV: Discipline - Non-Academic Misconduct Procedure will apply. When the Responding Party is a member of staff the Procedure for managing disclosures or reports involving allegations of staff sexual violence and misconduct and the University's Disciplinary Regulations for staff will apply.
- 3.5 Some incidents of Sexual Misconduct and Violence may also constitute a criminal offence under English law. Such incidents may be addressed through criminal proceedings, internal disciplinary proceedings, or, in some cases, both criminal and internal proceedings.
- 3.6 A list of definitions is provided below to clarify the exact scope of the Policy.

4. Definitions

- 4.1 The definitions below have been separated into explanations of the types of behaviour captured under this Policy which amount to Policy breaches and clarification of the terminology used within the Policy.

Types of Behaviour

- 4.2 **Sexual Misconduct and Violence** is defined as any unwanted conduct of a sexual nature which occurred in person or by letter, telephone, text, email or other electronic and/or social media and includes, but is not limited to, the following behaviour:
- 4.2.1 Engaging, or attempting to engage in a sexual act with another individual without consent;
- 4.2.2 Sexually touching another person without their consent;
- 4.2.3 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;
- 4.2.4 Inappropriately showing sexual organs to another person;
- 4.2.5 Repeatedly following another person without good reason;
- 4.2.6 Recording and/or sharing intimate images or recordings of another person without their consent; and

- 4.2.7 Arranging or participating in events which may reasonably be assumed to cause degradation and humiliation to those who have experienced sexual violence, for example inappropriately themed social events or initiations.
- 4.3 **Domestic abuse and coercive or controlling behaviour** is defined as any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those who are, or have been, intimate partners or family members regardless of gender or sexuality. This can include, but is not limited to, psychological, physical, sexual, financial and/or emotional abuse.
- 4.4 **Complicity** is any act that knowingly helps, promotes, or encourages any form of Sexual Misconduct and Violence by another individual.
- 4.5 **Retaliation** may constitute any words or actions, including intimidation, threats, or coercion, made in response to disclosures or reports made under the Sexual Misconduct and Violence Policy, by any individual including both the Responding Party and the Reporting Party, as well as witnesses, friends, or relatives.
- 4.6 The University recognises that there are potentially additional types of behaviour that will constitute a breach of this Policy and which will therefore need to be considered under the relevant internal disciplinary regulations, although the frequency and likelihood of such breaches are likely to be low:
- 4.6.1 **Vexatious reporting** involves the creation of persistent, unwarranted reports made under the Sexual Misconduct and Violence Policy, or a refusal to accept any reasonable decisions arising from the application of the accompanying procedures to this Policy.
- 4.6.2 **Malicious reporting** occurs when an individual shares allegations of Sexual Misconduct and Violence that the individual knows to lack a basis in fact.

Terminology

- 4.7 **Disclosure** involves an individual choosing to tell anyone who is part of the University community about their experience of Sexual Misconduct and Violence (different from Report).
- 4.8 **Report** is the sharing of information with a staff member of the University regarding an incident of Sexual Misconduct and Violence experienced by that individual for the purposes of initiating the investigation process by the University, as set out in this Policy and the accompanying procedures (different from Disclosure).
- 4.9 **Reporting Party** is the person(s) who has been the subject of the alleged incident of Sexual Misconduct and Violence or other policy breach.
- 4.10 **Responding Party** is the person(s) whose behaviour it is alleged amounted to an incident of Sexual Misconduct and Violence or other policy breach.
- 4.11 **Consent** is the agreement by choice where the individual has both the **freedom** and **capacity** to make that choice. Consent cannot be assumed on the basis of 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 before or during a sexual act.
- 4.11.1 **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 by an unwilling participant results from coercion, force, threat, intimidation or the exploitation of power. **Coercion** is when someone is pressured unreasonably for sex, which can include manipulation. **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.
- 4.11.2 **Capacity to consent:** Free consent cannot be given if the individual does not have the capacity to give consent. An individual is incapacitated when 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 occur on account of a mental or developmental disability, or as the result of alcohol or drug use.

4.11.3 **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 Misconduct and Violence, 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 not to engage in a sexual act.

4.11.4 Under this policy, "No" always means "No," but "Yes" may not always mean, "Yes." Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a "No" at any point during a sexual encounter.

4.12 **Confidentiality** will be maintained, where possible, throughout the Disclosure, Reporting and investigative processes in recognition of the sensitive nature of Sexual Misconduct and Violence matters. As such, information will usually only be shared with relevant individuals/entities (who may be internal or external to the University, e.g. internal counsellors, witnesses, external experts from specialist agencies like Rape Crisis, Sexual Assault Referral Centres or the Police) with the agreement of the Reporting Party. The University reserves the right, and may be under an obligation, to share information in exceptional circumstances where such disclosure is necessary to protect any individual or the wider University community from harm or to prevent a crime from taking place. All individuals involved in any process under this Policy must keep information that is disclosed to them as part of the process confidential. Any unauthorised disclosure of confidential information will be considered a Policy violation and will be addressed accordingly. Throughout all proceedings, the University will act in compliance with the General Data Protection Regulation (GDPR) and Data Protection Act 2018.

5. Equality and Diversity

5.1 Sexual Misconduct and Violence can be experienced by any individual, regardless of sex, gender, sexual orientation, relationship status, age, disability, faith, ethnicity, nationality and economic status. Women, members of the LGBT+ community, and individuals with disabilities are disproportionately affected by experiences of sexual violence. Experiences of sexual misconduct and violence may intersect with other forms of harassment and discrimination. The University has a Respect at Study Policy and Respect at Work Policy which addresses other forms of harassment, bullying and discrimination.

6. Responsibilities

6.1 The Pro-Vice-Chancellor (Colleges and Student Experience) is the Lead Sexual Misconduct and Violence Officer (LSMVO) and is responsible for the application of the procedures associated with this Policy. The Director of Student Support and Wellbeing is the Deputy Lead Sexual Misconduct and Violence Officer (DLSMVO). The day-to-day management of the *Sexual Misconduct and Violence Policy Procedure for Students* will be overseen by the Student Conduct Office. The key staff contacts are the Sexual Misconduct Prevention and Response Manager and the Head of Student Conduct Office. The Director of HR has key responsibilities for the application of the *Procedure for managing disclosures or reports involving allegations of staff sexual violence and misconduct*.

7. Related Information

7.1 This Policy should be read in conjunction with the following Regulations, Policies and Procedures:

7.1.1 Sexual Violence and Misconduct Policy: Procedure for Students (see below)

- 7.1.2 Procedure for managing disclosures or reports involving allegations of staff sexual violence and misconduct¹
- 7.1.3 General Regulation IV – Discipline²
- 7.1.4 Non-Academic Misconduct Procedure
- 7.1.5 General Regulation VI – Suspension³
- 7.1.6 Respect at Study Policy and Code of Practice and Procedures for Students to make a Complaint about Harassment⁴
- 7.1.7 Respect at Work: Harassment and Bullying Policy and Procedures for Staff⁵
- 7.1.8 Student Behaviour in Appeals and Complaints: A Code of Practice⁶
- 7.1.9 Durham University Safeguarding Children Policy⁷
- 7.1.10 Safeguarding 'at risk' adults policy⁸

7.2 Further information can be found at <https://www.dur.ac.uk/sexualviolence/>.

8. Version Control:

Approval date: 01/03/2022

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¹ <https://www.dur.ac.uk/hr/policies/svmprocedure/>

² https://www.dur.ac.uk/university.calendar/volumei/general_regulations/

³ https://www.dur.ac.uk/university.calendar/volumei/general_regulations/

⁴ https://www.dur.ac.uk/university.calendar/volumei/codes_of_practice/

⁵ <https://www.dur.ac.uk/hr/policies/respectatwork/>

⁶ https://www.dur.ac.uk/university.calendar/volumei/codes_of_practice/

⁷ <https://www.dur.ac.uk/safeguarding/policy/>

⁸ <https://www.dur.ac.uk/safeguarding/adults/>