

Title: Harassment and Sexual Misconduct Policy**Type:** Policy & Procedure**Purpose:** To inform students and staff on the policy and procedures in relation to allegations of harassment and sexual misconduct.**Scope:** This policy and procedure cover all members of the Solihull College community (FE and HE students, apprentices, permanent and temporary staff, and visitors).**Responsibility:** The Vice Principal HR & Student Services is responsible for this policy. The Director Student Services is responsible for the monitoring of the policy.**Legal Context:** The Equality Act 2010, Sexual Offences Act 2003, Criminal Justice and Courts Act 2015, Keeping Children Safe in Education**The College's Commitment**

The College is committed to maintaining an environment free from sexual misconduct, harassment or abuse, verbal or non-verbal and expects all students and staff to be treated with respect. Sexual harassment is unwanted behaviour of a sexual nature which violates your dignity, creates an intimidating, hostile, degrading, humiliating or offensive environment. It covers behaviour which is unsolicited, that is personally offensive, and that fails to respect the rights of others or fails to recognise the impact that such behaviour may have.

All College staff are advised to maintain an attitude of 'it could happen here'. Addressing inappropriate behaviour (even if it appears to be relatively innocuous) can be an important intervention that helps prevent problematic, abusive and/or violent behaviour in the future. 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.

Timescales

The College normally expects allegations of sexual misconduct, bullying, harassment and/or discrimination to be disclosed within 3 months of the incident taking place to allow for the most effective investigation to take place. However, the College recognises that there may be circumstances where it may take longer for a student to disclose an incident. Where a disclosure is received more than 3 months from the date the incident is alleged to have taken place, the disclosure will be taken seriously and where possible, reasonable attempts will be made to obtain relevant information to determine the appropriate response.

Where disclosures are made which fall within the scope of this policy, the College will aim to investigate the incident within 10 working days and provide a response to all parties. If for any reason it is not possible to provide a formal response within 10 working days all parties will be informed as to the reason for the delay and kept informed of the progress of the investigation.

Where it may be necessary for matters to be referred to the Student Disciplinary Procedure, the timescales set out therein will apply as far as it is reasonable and possible to do so.

Definitions

“Bullying” may be characterised as offensive, intimidating, persistent malicious or insulting behaviour, including an abuse of power to undermine, humiliate or injure the recipient. Power does not always mean being in a position of authority but can include both personal strength and the power to coerce through fear or intimidation.

“Discrimination” occurs when a person is treated less favourably for a reason related to a protected characteristic.

“Harassment” is unwanted conduct related to a relevant protected characteristic which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment as defined by the Equality Act 2010. This includes harassment by association or perception.

“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) 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.

“Victimisation” occurs when a person is treated less favourably because they have asserted their rights to raise a complaint under this policy. This also applies to those who have acted as witnesses or supporters of individuals who have complained of harassment, bullying and/or sexual misconduct.

Confidentiality and data protection

Ensuring confidentiality is a key principle in creating a culture where those affected feel safe to make a disclosure. The College will take all reasonable steps to protect the confidentiality and privacy of those who make a disclosure falling within the scope of this policy. However, there may be circumstances where the College is required to share information with other agencies in order to protect an individual at risk.

The College may be required to break confidentiality and share information internally or with external agencies if:

- the person is a child or young person under 18 who has experienced, or is at risk of, significant harm; or
- information is provided about a child or young person under 18 who has experienced, or is at risk of, significant harm; or
- that person is a vulnerable adult who has experienced, or is at risk of, significant harm; or
- information is provided about a person who may be a vulnerable adult who has experienced, or is at risk of, significant harm; or
- it is believed that there is a risk of significant harm occurring to any individual; or
- it is believed that there is a risk to the public; or

6.4. There may also be circumstances where the College needs to share certain information internally. This could include (but is not limited to):

- preventing or detecting criminal behaviour or misconduct;
- ensuring appropriate information about support services is passed on;
- data collection;
- managing conflicts of interest;
- seeking advice from other College departments;
- protecting others.
- Records of any disclosures made under this policy and any subsequent investigation and/or action will be held in accordance with the College's duties and obligations under data protection law.

Policies to deal with harassment and sexual misconduct

Allegations of harassment and/or sexual misconduct against a student will be dealt under the Student Disciplinary Policy. Allegations against members of staff will be dealt with through the Staff Disciplinary Policy. These policies outline the processes to be followed and the rights of the alleged perpetrator regarding representation and appeal. Appropriate support will also be given to the victim and alleged perpetrator throughout these processes.

Making a Disclosure

A disclosure is made when someone tells a member of staff that they have experienced sexual misconduct an/or harassment. 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 and receive support. They can access Student Services for 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 basis of their disclosure. Anonymised data will help the College to understand patterns in behaviour and inform future policy.

Responding to reports of sexual misconduct and harassment

The initial response to a report from a person is important. It is essential that all victims are reassured that they are being taken seriously and that they will be supported and kept safe. A victim should never be given the impression that they are creating a problem by reporting harassment or sexual misconduct. Nor should a victim ever be made to feel ashamed for making a report.

When responding to a report staff should:

- not promise confidentiality at this initial stage as it is very likely a concern will have to be shared further.
- only share the report with those people who are necessary in order to progress it. It is important that the victim understands what the next steps will be and who the report will be passed to;
- listen carefully to the person, being non-judgmental, being clear about boundaries and how the report will be progressed, not asking leading questions and only prompting the child where necessary with open questions – where, when, what, etc;
- consider the best way to make a record of the report. Best practice is to wait until the end of the report and immediately write up a thorough summary. This allows the staff member to devote their full attention to the young person and to listen to what they are saying.
- only record the facts as the person presents them. The notes should not reflect the personal opinion of the note taker.
- where the report includes an online element, be aware of UKCCIS sexting advice (for schools and colleges). The key consideration is for staff **not to** view or forward illegal images.

Risk Assessment

When there has been a report of sexual violence, the designated safeguarding lead (or a deputy) will make an immediate risk and needs assessment. Where there has been a report of sexual harassment, the need for a risk assessment will be considered on a case-by-case basis.

The risk and needs assessment will consider:

- the victim, especially their protection and support;
- the alleged perpetrator; and
- all the other people (and, if appropriate, staff) at the college, especially any actions that are appropriate to protect them.

Risk assessments will be recorded and kept under review. At all times, the college will actively considering the risks posed to all students and put adequate measures in place to protect them and keep them safe.

The designated safeguarding lead (or a deputy) will engage with children's social care and specialist services as required.

Action following a report of sexual misconduct and/or harassment

The College will carefully consider any report of harassment or sexual misconduct. Important considerations will include:

- the wishes of the victim in terms of how they want to proceed. This is especially important in the context of sexual violence and sexual harassment. Victims should be given as much control as is reasonably possible over decisions regarding how any investigation will be progressed and any support that they will be offered.
- the nature of the alleged incident(s), including whether a crime may have been committed and consideration of harmful sexual behaviour.
- the ages of the people involved.
- the developmental stages of the people involved.
- any power imbalance. For example, is the alleged perpetrator significantly older, a member of staff or third party, e.g. placement provider, more mature or more confident? Does the victim have a disability?
- if the alleged incident is a one-off or a sustained pattern of abuse
- are there ongoing risks to the victim, other young people, adult students or college staff.

Options to manage the report

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 officer, the person who has disclosed may choose to:

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.

1. Manage internally – Make a Formal Complaint

In some cases of harassment or sexual misconduct, for example, one-off incidents, the person concerned may wish to 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. Allegations of harassment and/or sexual misconduct against a student will be dealt under the Student Disciplinary Policy. Allegations against members of staff will be dealt with through the Staff Disciplinary Policy. These policies outline the processes to be followed and the rights of the alleged perpetrator regarding representation and appeal. Appropriate support will also be given to the victim and alleged perpetrator throughout these processes.

Allegations of harassment and/or sexual misconduct against a student will be dealt under the Student Disciplinary Policy. Allegations against members of staff will be dealt with through the Staff Disciplinary Policy. These policies outline the processes to be followed and the rights of the alleged perpetrator regarding representation and appeal. Appropriate support will also be given to the victim and alleged perpetrator throughout these processes.

4. Reporting 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 Caring Services Team.

However, there may be delays in any case that is being progressed through the criminal justice system and in these cases, the college will not wait for the outcome of a police investigation before protecting the victim, alleged perpetrator and other people in college.

The end of the criminal process

If a person is convicted or receives a caution for a sexual offence, the college will update its risk assessment, ensure relevant protections are in place for all the people at the college and consider any suitable action in light of the student disciplinary policy.

If the perpetrator remains in college along with the victim, the college will set out clear expectations regarding the perpetrator now they have been convicted or cautioned. This could include expectations regarding behaviour and certain reasonable and proportionate restrictions.

Any conviction (even with legal anonymity reporting restrictions) is potentially going to generate interest among other students. The college will support and protect both the victim and alleged perpetrator, especially from any bullying or harassment (including online).

Where cases are classified as “no further action” (NFA’d) by the police or Crown Prosecution Service, or where there is a not guilty verdict, the college will continue to offer support to the victim and the alleged perpetrator for as long as is necessary.

A not guilty verdict or a decision not to progress with their case will likely be traumatic for the victim. The fact that an allegation cannot be substantiated does not necessarily mean that it was unfounded. The college will discuss any decisions with the victim in this light and continue to offer support. The alleged perpetrator is also likely to require ongoing support for what will have likely been a difficult experience.

Ongoing response and supporting the victim

The college recognises that victims may not disclose the whole picture immediately. They may be more comfortable providing information on a piecemeal basis. Dialogue will be kept open and encouraged.

A victim of sexual misconduct, in some cases, may struggle in a normal classroom environment. The college will work with the victim and recognise that there may be times when the victim finds it difficult to maintain a full-time timetable and may express a wish to withdraw from lessons and activities.

The college will do everything reasonably it can to protect the victim from bullying and harassment as a result of any report they have made.

Supporting the alleged perpetrator

The following principles are based on effective safeguarding practice and will be used to help shape any decisions regarding safeguarding and supporting the alleged perpetrator.

The college recognises that it may be a difficult balancing act to consider. On one hand, the college has a duty to safeguard the victim (and the wider student body) and on the

other hand provide the alleged perpetrator with an education, safeguarding support as appropriate and implement any disciplinary sanctions.

The college will consider the age and the developmental stage of the alleged perpetrator and nature of the allegations. Any young person will likely experience stress as a result of being the subject of allegations and/or negative reactions by their peers to the allegations against them.

Appeals

Allegations of harassment and/or sexual misconduct against a student will be dealt under the Student Disciplinary Policy. Allegations against members of staff will be dealt with through the Staff Disciplinary Policy. These policies outline the processes to be followed and the rights of the alleged perpetrator regarding representation and appeal.