

Sexual Misconduct Policy

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Sexual Misconduct Policy Statement:

Durham SU is committed to maintaining an inclusive, positive, and safe working environment, in which all our employees can thrive and are equally valued and respected, and in which no form of sexual misconduct is tolerated. We want to encourage healthy, collaborative working relationships based on mutual respect and clear consent; along with a culture in which bystanders are empowered to challenge unacceptable behaviour, and in which all employees feel able to speak out in the knowledge that they will be supported and taken seriously.

About this Policy

This policy sets out how Durham SU will deal with alleged incidents of Sexual Misconduct committed against employees of Durham SU.

Who this Policy applies to

This policy applies to all full and part-time employees of Durham SU, including Sabbatical Officers and student staff.

This policy does not form part of the contract of employment and may be amended at any time.

Glossary of Terms

Disclosure: When someone tells another person they have experienced Sexual Misconduct.

Reporting: When a reporting person chooses to make a formal report about an incident of Sexual Misconduct to the University and/or the police

Reporting Person: The person who has made a report of sexual misconduct.

Responding Person: The person who is alleged to have carried out the alleged act of sexual misconduct.

Sexual Misconduct: Any unwanted behaviour of a sexual nature that is committed without consent or by force, intimidation, coercion or manipulation, such as sexual assault, sexual harassment, sexual exploitation and sexual intimidation.

1. Durham SU's Commitment

- 1.1. Durham SU recognises and understands that sexual misconduct, including sexual harassment and sexual violence, is a significant public health and social problem across society and within the Higher Education sector.
- 1.2. Sexual misconduct can have a devastating impact on those who experience it and cause significant physical and psychological harm whilst violating dignity. The SU is therefore committed to ensuring the effective prevention of and response to incidents of sexual misconduct and will ensure that anyone who reports an incident of sexual misconduct is taken seriously and treated with compassion, dignity, and respect.
- 1.3. We are committed to maintaining an inclusive, positive, and safe working environment, in which all our employees and volunteers can thrive and are equally valued and respected, and in which no form of sexual misconduct is tolerated. We want to encourage healthy, collaborative working relationships based on mutual respect and clear consent; along with a culture in which bystanders are empowered to challenge unacceptable behaviour, and in which all employees feel able to speak out in the knowledge that they will be supported and taken seriously.
- 1.4. We expect that our employees and volunteers will also take responsibility for building and maintaining an inclusive, positive, and safe working environment for everyone.

2. Principles

- 2.1. We have a moral and legal duty to prevent and respond to sexual misconduct, and to learn from best practice and research to drive continuous improvement in our approach.
- 2.2. The Board of Trustees and Senior Leadership Team will actively promote a culture of zero-tolerance relating to any form of sexual misconduct and ensure that there are arrangements in place to support any employees or volunteers who experience it. This will include ensuring that all managers and volunteer leaders receive appropriate training.
- 2.3. If an employee or volunteer reports a sexual misconduct incident, our immediate priority will always be the safety and welfare of the person who has experienced it. We will respect an individual's right to choose how to proceed and we will provide clear and consistent advice on options for reporting and support. We will take a harm reduction approach regardless of how the circumstances arose.
- 2.4. In situations where there is a clear and immediate risk to the health, safety and wellbeing of the person disclosing the incident, or if there is evidence of a criminal act, we do reserve the right to report the matter to the police.

- 2.5. We are committed to ensuring supportive and fair processes and will provide training for any staff involved in:
 - investigation and disciplinary processes relating to sexual misconduct;
 - supporting both the reporting and responding parties.
- 2.6. We do not expect that any volunteer or volunteer leader will have any part on undertaking an investigation or disciplinary process, or supporting and reporting or responding party because they will not be qualified, but we do expect that they will cooperate with all parts of this policy.
- 2.7. Any employee or volunteer who, following an investigation, is found to have committed an act of sexual misconduct will be subject to disciplinary action, in line with our Disciplinary Policy & Procedure, which may result in the termination of their employment or membership of the students' union.
- 2.8. This policy applies to all employees, regardless of whether sexual misconduct takes place on Durham SU or University premises, or within working hours.

3. Police Investigations and Criminal Proceedings

- 3.1. Where a University investigation or proceedings, or police investigation or criminal proceedings are ongoing or are likely to begin in relation to an incident of sexual misconduct, we will normally suspend any investigation until this is complete, whilst taking necessary precautions to ensure the safety and wellbeing of others. This may include suspension of participation in Durham SU activities including the suspension of any volunteer position.
- 3.2. A decision by the University, the police or other law enforcement agency to take no further action, or an acquittal at trial, will not prevent the SU from taking disciplinary action under this procedure and does not mean that the complaint is unfounded.
- 3.3. Any internal investigation will focus exclusively on whether, on the balance of probability, a breach of our policies and standards of expected conduct has occurred. The internal process is not a substitute for a police investigation or criminal prosecution.
- 3.4. If the accused person is convicted of a criminal offence or accepts a police caution in relation to behaviour that falls within the scope of this policy, this will be considered as part of the investigation.

4. Support

- 4.1. We are committed to providing support for employees affected by sexual misconduct, but recognise that specialist organisations are better trained and equipped to provide targeted support in most cases. We will signpost to external support agencies and offer appropriate wellbeing support, including reasonable adjustments to work, flexible working arrangements and access to paid time off where required, to those involved in reporting incidents of sexual misconduct, including the reporting person, responding person and any witnesses.
- 4.2. The support provided to the reporting person and the responding person will be separate: one member of staff will not provide support to both parties.
- 4.3. A number of external organisations that offer specialist support are listed in Appendix A.

5. Reported Incidents

- 5.1. We are keen to minimise the number of times that anyone has to disclose an incident of sexual misconduct and will support employees in choosing the reporting options most appropriate to their situation and needs.
- 5.2. If you are the victim of sexual violence and you need emergency support or urgent help, you should call the police or an ambulance using 999.

- 5.3. You are encouraged to speak to someone that you trust to get support, help in discussing your options and signposting to other services. You may choose to disclose a sexual misconduct incident in the following ways:
- by speaking to a member of Durham SU management (your line manager, a senior leader or the Chief Executive) or a member of the Board of Trustees;
 - by speaking to a colleague, friend or family member, who may subsequently bring the matter to the attention of the Senior Leadership Team;
 - by raising a formal complaint via Durham SU's Grievance Policy & Procedure;
 - by making a report to the police;
 - by speaking to a charity or support organisation, who may support you in disclosing the incident to us or to the police;
 - You may also wish to make a report anonymously, for example by asking a colleague or Trade Union Representative to make a report on your behalf.
- 5.4. Telling us about an incident of sexual misconduct will not automatically result in a formal process being followed. We will respect your right to choose how to take forward an initial disclosure and will not take any formal action without your consent, unless there is a clear and immediate risk to your health, safety and wellbeing or evidence of a criminal act, in which case we may need to inform the police.
- 5.5. If you tell us about a sexual misconduct incident, you will be given information on resources for specialist external support, and the option and support to do one or more of the following:
- make a report to the Police;
 - speak to a North East Sexual Assault Referral Centre (- more information can be found here. <https://sarc-support.uk/>);
 - ask us to provide support in addressing the issue informally with the accused person (for example via mediation);
 - ask us to follow a formal process to investigate the incident (via our Grievance Policy & Procedure);
 - make a formal complaint to the University (if the other person is a student or University employee);
 - take no action.
- 5.6. A member of the Senior Leadership Team will help you to understand your options and support you to take the time you need to consider your decision. You may be signposted, where appropriate, to the Sexual Assault Referral Centre (SARC), so that you can access their external services and guidance. Someone else can make a referral to the SARC on your behalf with your agreement, if required.

6. Formal Process

- 6.1. You may decide that you'd like the SU to investigate the incident formally. An investigation will be carried out in line with our Grievance Policy & Procedure.
- 6.2. If you are unwilling for the accused person to be informed of the allegation, we will not be able to investigate the incident.
- 6.3. Before carrying out a formal investigation, a risk assessment and review meeting will be held. This will usually include the Chief Executive, a member of the senior leadership team and an HR representative (internal or external). Any accused person will not be part of this risk assessment.
- 6.4. During the meeting, the participants will:

- consider the wellbeing and support needs of both the person reporting the incident and the accused person, and of any other employees or members directly involved in the incident, identifying any actions required to ensure that these needs are met.
 - carry out a risk assessment to determine whether any precautionary measures need to be put in place in order to ensure that a full and proper investigation can take place and to protect both the person reporting the incident and the accused person while the incident is investigated (either internally or by the police).
 - Precautionary measures may include, for example, temporary suspension; a change of work location, shifts, duties or reporting lines; temporary transfer to another role.
 - identify the members of staff with responsibility for supporting those involved.
 - ensure that arrangements are in place to maintain confidentiality throughout the process.
 - review the involvement of any external parties.
 - decide what next steps should be taken and how to carry forward the recommendations made.
- 6.5. The risk assessment and any precautionary measures that are put in place will be reviewed regularly and amended as appropriate. Additional review meetings may be held if necessary.
- 6.6. If the person reporting the incident has decided to make a report to the police and the police are carrying out an investigation, we may decide to suspend our investigations until any police investigation and/or criminal proceedings are complete. A responding employee may be suspended from work during this period of time, in line with our Disciplinary Policy & Procedure.
- 6.7. An investigation or decision by the police or other law enforcement agency to take no further action, or an acquittal at trial, will not prevent the SU from taking formal action.
- 6.8. Any internal investigation will focus exclusively on whether, on the balance of probability, a breach of our policies or standards of expected conduct has occurred. If an employee is convicted of a criminal offence or accepts a police caution in relation to misconduct, this will be considered as part of the investigation.
- 7. Investigation**
- 7.1. A trained investigating officer will be appointed to carry out an investigation, under Durham SU's Grievance Policy & Procedure. The investigating officer's role is to establish the essential facts, report their findings and to decide whether there is a 'case to answer' at a disciplinary hearing. The investigating officer is not responsible for reaching a conclusion about any reported misconduct or deciding on a disciplinary outcome.
- 7.2. They will act as quickly as possible, ensuring that confidentiality is maintained and will maintain a supportive and comfortable environment so that all those involved feel able to discuss the incident safely. The investigating officer may get help, support and specialist advice from external parties while maintaining confidentiality.
- 7.3. During the investigation, the reporting person as well as any potential witnesses will usually be asked to attend an investigation meeting.
- 7.4. The accused person will receive written notification of the allegations made, be informed of the procedure being followed and will also be asked to attend an informal investigation meeting.
- 7.5. After each investigation meeting, a written record will be made, and each interviewee will be asked to confirm that it is an accurate summary of the discussion.
- 7.6. An investigation is not a formal disciplinary meeting and therefore there isn't a statutory right to be accompanied to these meetings, however, in cases involving sexual misconduct, those

involved may be accompanied by a colleague, trade union representative or counsellor in a support capacity only.

- 7.7. Depending on the circumstances, it is likely that the person reporting the incident and the responding person will be informed that they must not contact each other during the investigation. The particular circumstances of work allocation and shared work will be considered at the meeting in 6.4.
- 7.8. Following these meetings, an investigation will be carried out as quickly as possible. Everyone involved will be required to maintain confidentiality, without any limitation to the right to seek appropriate sources of support. Durham SU may consider further action if discussion about the case from any party leads to unacceptable disruption to the students' union's work.
- 7.9. The investigating officer may decide either:
 - that the grievance is not upheld and no further action is required (for example, because the investigation has found that it is more likely than not that an act of sexual misconduct has not taken place). This would result in the case being dismissed and no disciplinary action being taken;
 - that the grievance is not upheld, but recommendations are made to ways of working, practices or processes to ensure that any lessons learned as part of the investigation are addressed; or
 - that the grievance is upheld, either in part or in full, and that further action is required, as it is more likely than not that sexual misconduct has taken place. This may result in disciplinary action being recommended against the responding person, a requirement to attend training, and/or changes to working patterns.
- 7.10. If the reporting person is unhappy with the outcome of the investigation, they can appeal the decision by following the Appeal process outlined in section 7 of the Grievance Policy & Procedure.

8. Breaches of Conduct

- 8.1. If the investigating officer recommends that disciplinary action should be taken, a disciplinary hearing will take place, in line with section 5 of the Disciplinary Policy & Procedure or the Volunteer and Student Group Disciplinary Policy and Procedure.
- 8.2. The disciplinary panel will need to decide:
 - a) Given all of the evidence presented by the investigation and the responding person, whether it is more likely than not that sexual misconduct has taken place; and
 - b) If so, whether the incident would constitute general or gross misconduct; and
 - c) An appropriate disciplinary outcome or sanction.
- 8.3. When making its decision, the disciplinary panel will consider the nature of the incident, the evidence available and any mitigating circumstances to decide whether:
 - No misconduct has taken place, and the case will be dismissed;
 - General Misconduct has taken place;
 - Gross Misconduct has taken place.
- 8.4. A list of the types of behaviour which may be considered General Misconduct and Gross Misconduct are set out below.

The lists are illustrative only and are not exhaustive, and the circumstances of each case, including any mitigating factors, will always be taken into consideration.

8.5. Sexual misconduct breaches that would normally constitute **General Misconduct** include:

- kissing another person on the hand or cheek without consent where there is no sexual element or other harassing behaviours involved;
- making a single 'one-off' remark of a sexual nature, using sexualised language or language that others find offensive;
- inappropriately showing sexual organs to others ('flashing') where the act is not focused upon any individual;
- personal use of pornography or looking at sexualised imagery on SU IT equipment;
- participating in any sexualised commentary about others online or in person – for example 'rating' other members of staff

8.6. Sexual misconduct breaches that would normally constitute **Gross Misconduct** include:

- engaging or attempting to engage in a sexual act without consent;
- kissing another person without consent where there is any sexual element (as determined by the reporting person);
- touching others inappropriately;
- threatening or abusive behaviour of a sexual nature;
- recording or sharing intimate images or recordings of another person without their consent;
- use of pornography or sharing of sexualised imagery to distress others;
- instances where minor sexual misconduct is frequent or repeated, even after the accused person has received a previous disciplinary sanction;
- any humiliation or participation in the humiliation of anyone (in person or online) who has reported sexual misconduct.
- any harassment, exploitation or intimidation that is intended to harm.
- Spiking or drugging of any form.

8.7. The disciplinary panel will determine the outcome of the hearing based on the balance of probability and considering the severity of the incident before deciding on an appropriate disciplinary outcome (examples of these can be found in the Disciplinary Policy & Procedure). If the panel believes that Gross Misconduct has taken place, the accused person may be dismissed with or without notice.

8.8. The accused person will have the right to appeal a disciplinary outcome by following the process outlined in section 7 of the Disciplinary Policy & Procedure.

9. Complaints against Non-Employees

9.1. If you wish to report an incident of sexual misconduct by someone who isn't a Durham SU staff member or volunteer, such as a student, University staff member or member of the public, you can disclose the incident in the same way as outlined in section 5 of this policy. Our priority will be to minimise the number of times that anyone has to disclose an incident of sexual misconduct. A member of the Senior Leadership Team will support you in choosing the reporting options most appropriate to your situation and needs.

9.2. If the accused person is not an employee of Durham SU, you may raise a grievance and it will still be investigated in line with our Grievance Policy & Procedure, however we may be limited by the witnesses we can involve and the recommendations we can make.

9.3. If the accused person is a student, and your grievance is upheld, the member disciplinary procedure may be followed. In some cases, it may be appropriate to share our findings with the University, for them to carry out their own disciplinary proceedings either instead of, or in addition to, ours. Any such sharing of information will clearly explained at the outset of any discussions.

10. Further Information

10.1. This policy should be read and implemented in conjunction with the following policies:

- Disciplinary Policy & Procedure
- Grievance Policy & Procedure
- Dignity at Durham Policy
- Staff Code of Conduct
- Safeguarding Policy
- Volunteer and Student Group Disciplinary Policy and Procedure

Appendix A: External Support

Police

If you would like to report a sexual assault ring 999 in an emergency, or 101 in a non-emergency. The Police have specially trained officers, who are very experienced in helping victims of sexual assault. These officers will come out and meet you wherever and whenever you would like to speak about what has happened to you.

If you want to read more about what might happen if you make a police report, you can have a look at this [‘report to court’ guide](#).

Sexual Assault Referral Centres

Most areas now have a Sexual Assault Referral Centre (SARC), for men and women. You can contact them yourself or ask a friend or colleague to contact them on your behalf. You can approach them in confidence, whether or not you wish to report the assault. They offer advice, support, sexual health screening and a forensic medical examination if requested. They can collect and store forensic evidence, and support you if you later choose to report the incident to the police. It is also possible to pass on anonymous information about the assault, which may help agencies identify offending patterns/behaviour or serial offenders.

In Durham, the SARC is The Meadows, 0191 3729202, www.themeadowsdurham.org.uk

Rape & Sexual Abuse Counselling Centre, 01325 369933, www.rsacc-thecentre.org.uk

The Rape and Sexual Abuse Counselling Centre is a charity that offers counselling and support to women who have experienced sexual violence in County Durham and Darlington. It is the local affiliated member of the national Rape Crisis network. It offers a helpline service and ongoing face-to-face and telephone-based counselling and support. Please check their website for current helpline opening times.

Rape Crisis Helpline, 0808 802 9999, www.rapecrisis.org.uk

The national Rape Crisis helpline is based in London but takes calls from all over the country and is open from 12.00 - 2.30pm and 7.00 - 9.30pm daily. It can provide confidential support and information about local services.

Survivors UK, www.survivorsuk.org

Survivors UK are a charity offering helpline support to men who have experienced sexual violence, and their families and carers. Web and SMS chat can be accessed through their website.

[Gay Advice Darlington and Durham \(GADD\)](#), 01325 252522

Gay Advice provides a local service to all LGBT people including support for those who have experienced sexual violence. They offer one-to-one advice in person or by telephone, as well as more informal group support.

Your GP

If you need medical attention and do not wish to approach specialist services, you can approach your GP for an appointment.

HSF Assist Employee Assistance Programme

This is a paid-for service that is provided to all employees of Durham SU. They provide free, confidential advice and support as well as Counselling.

Appendix B: Reporting Sexual Misconduct

Reporting Sexual Misconduct

Support is
available
from...

My line manager or the Senior Leadership Team

HSF Assist (Employee Assistance Programme)

details

The Meadows Sexual Assault Referral Centre

themeadowsdurham.org.uk 03333 448283

Rape & Sexual Abuse Counselling Centre

rsacc-thecentre.org.uk 01325 369933

Informally

**I want to report
informally and get
advice and support
with my concerns.**

Speak to a trusted manager or member of the Senior Leadership Team who will have a conversation with you about what you would like to do next and signpost you to the right support.

Formally

**I can raise a formal
grievance.**

In order for your concerns to be considered formally, you will need to submit a complaint in line with the SU's Grievance Policy and Procedure, to the Chief Executive.



The Chief Executive will consider the complaint and appoint someone to investigate it.



The investigating officer may:

- Decide to uphold the grievance and proceed with disciplinary action;
- Decide that the complaint is not upheld, which includes the right to appeal;
- Proceed under the relevant member disciplinary procedure, or refer to the University.

Anonymously

**I want to report but
don't want to reveal
my identity.**

The SU (or University) will not be able to act on the information or respond to you in person, but the information you provide will help inform their understanding of incidents at Durham.

- We may need to share information with other parties when required, and will, other than in exceptional circumstances, ask for your permission to do this. You will be kept informed throughout.
- Your conversations with any external support organisations, including the Employee Assistance Programme will be confidential.
- Internal support and signposting to external services will also be available to the accused person.