



Sexual Misconduct Involving Students and Learners: Policy and Procedures 2021/22

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1. Introduction

- 1.1 NMITE has adopted a zero-tolerance approach to sexual misconduct and is committed to providing a safe and respectful environment where our whole community is able to study, work and live free from sexual violence and sexual harassment.
- 1.2 NMITE will raise awareness of the Sexual Misconduct Policy to students by publishing the policy on the website, making it accessible on myNMITE, through Induction and ongoing training and awareness raising campaigns.
- 1.3 NMITE expects all members of the NMITE community to treat each other with respect, courtesy, and consideration.



- 1.4 All reports of sexual misconduct will be listened to and acted on. Behaviours that constitute sexual misconduct will be investigated within the time limits set out in the Student Disciplinary Policy & Procedure.
- 1.5 NMITE will regularly review this policy, engaging with students and staff, and learning from our experiences and sector guidance to ensure it remains relevant and effective.

2. Scope

- 2.1 This policy specifically refers to and deals with sexual misconduct experienced by students and learners undertaking an NMITE programme of study or short course. The phrase 'student' is used as an inclusive phrase for any individual study or learning with NMITE.
- 2.2 NMITE recognises that individuals whose social and cultural characteristics intersect across, e.g. gender, disability, LGBT, religion, and different ethnic groups, are potentially more vulnerable to sexual violence and sexual harassment and may require additional support. Further advice and support for students is available through the Student Bullying and Harassment Policy.
- 2.3 A student experiencing sexual violence or sexual harassment has legal rights and NMITE will engage with external investigations by the police and statutory and voluntary agencies as appropriate and necessary.
- 2.4 Appendix 1 provides a summary of legislation that provides protection under this policy.

3. Purpose

- 3.1 The purpose of this policy and procedure is to provide the framework to communicate NMITE's expectations and processes for dealing with all forms of sexual misconduct, to ensure all students and staff know the kinds of behaviours and actions that constitute sexual misconduct, and to advise all parties what they can do if sexual misconduct arises.
- 3.2 This policy provides support and advice in the event of sexual violence or sexual harassment in all aspects of the NMITE student journey.



4. Key Definitions

4.1 Sexual Misconduct covers a broad range of inappropriate and unwanted behaviours of a sexual nature which can be physical, emotional, and/or verbal. NMITE believes that no individual should ever have to accept or tolerate sexual harassment or sexual violence, should never be made to feel uncomfortable by another individual, and should never feel that any sexual harassment or sexual violence is their fault.

4.1.1 Sexual Harassment

Sexual harassment describes a range of words, behaviours and / or conduct of a sexual nature that are unwanted and uninvited. It is often intended to or has the effect of creating an intimidating, degrading, humiliating or offensive impact. It is often based on a person's gender rather than sexual desire.

Examples of sexual harassment include, but are not limited to:

- i. catcalling
- ii. inappropriate sexual comments
- iii. sexually based insults, jokes, songs, or taunts
- iv. uninvited kisses and/or bodily contact
- v. unwanted touching or groping
- vi. wolf whistling

Sexual harassment does not necessarily occur face-to-face and can be in the form of emails, visual images (such as sexually explicit pictures on walls in a shared environment), social media, telephone, text messages and image-based sexual abuse such as revenge porn and up-skirting.

It may be perpetrated knowingly or unknowingly by anyone, towards anyone, regardless of gender or sexual orientation. The most important consideration is the way that a person feels about the impact behaviours have on them.

A single incident and / or persistent behaviour can both amount to harassment.

For more information see detail in Appendix 2.



4.1.2 Sexual Violence

Sexual violence is any unwanted or uninvited sexual act or activity. There are many different types of sexual violence, and these can be psychological and / or physical.

Examples of sexual violence include, but are not limited to:

- i. child sexual abuse
- ii. coercion
- iii. female genital mutilation
- iv. forced marriage
- v. gaslighting
- vi. rape
- vii. sexual assault
- viii. stalking
- ix. so-called honour-based violence and ritual abuse
- x. trafficking and sexual exploitation.

More information can be found in Appendix 2.

4.2 Consent

4.2.1 Consent is the agreement to participate in any sort of sexual act where the individual has both the freedom and capacity to make that decision, with full understanding of the facts and without coercion. In cases of sexual activity, consent cannot be presumed but must be explicitly given at each encounter, verbally or non-verbally.

4.2.2 Consent cannot be deemed to have been given if it is provided under pressure such as fear of violence, 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.

4.2.3 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.



- 4.2.4 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.
- 4.2.5 Consent can be withdrawn at any time. To further explore the concept of consent, watch [A Cup of Tea and Consent](#)

5. Disclose, Report, and Support

- 5.1 No student is under any obligation to disclose any incident of sexual violence or sexual harassment. However, if a student believes that they have experienced sexual violence or sexual harassment, NMITE encourages students to act promptly and not wait until the situation is repeated or exacerbated. It is important that students don't feel that they should have to tolerate such behaviour.
- 5.2 We recognise the significant negative effects that experiencing sexual misconduct can have upon individuals and it is important that anyone affected by sexual violence or sexual harassment should seek support as soon as possible.
- 5.3 The Student Support Team provides a supportive and confidential environment where students can feel confident and empowered to disclose, where they will be listened to and supported to understand the options available to them.
- 5.4 Allegations of sexual misconduct can be distressing for both the victim and the alleged perpetrator. NMITE will ensure that all parties concerned are supported in a non-judgemental way. All reports will be handled sensitively, with information shared on a need-to-know basis. More on this can be found in paragraph 6.4.



- 5.5 The Student Support Team can make arrangements and put support in place if required, including, where possible, measures to protect the personal safety of all involved.
- 5.6 If required and requested, the Student Support Team can signpost or refer students to the police, NHS, sexual assault referral centres or hate crime reporting centres, or to local specialist services such as Rape Crisis if specialist support is needed.
- 5.7 In the event of a disclosure about an incident of harassment and/or sexual misconduct, all parties will have equitable access to appropriate support prior to any decision to launch a formal investigation, for the duration of any investigation and following its outcome.
- 5.8 NMITE recognises the potential for vexatious or malicious reporting of sexual misconduct. Staff will always listen and respond to reports in a non-judgemental way but where there is evidence of vexatious or malicious reporting disciplinary action will be considered.

6. Procedure for Reporting Sexual Misconduct

- 6.1 Students, who are in immediate danger, are advised to:
- i. get to a place of safety
 - ii. get medical help as soon as possible; there may be hidden injuries.
 - iii. avoid disturbing or destroying any potential evidence. This could be within the location that assault has taken place, clothing, or any communication that may have taken place prior to or after the assault.
 - iv. not shower, drink, eat, brush teeth, hair or change clothes.
 - v. report the incident directly to the Police and/or contact NMITE on 01432 381380.
- 6.1.1 If a student does not want to report sexual violence to the Police, the Student Support Team can assist in securing medical help. This may be immediate via an A&E department, or afterwards with a GP (if the individual has registered with one) or at the sexual health services in Hereford (available Monday-Friday 9am – 5pm).
- If NMITE considers there to be an ongoing risk to a student, staff or NMITE, it may decide to undertake an internal investigation.
- 6.1.2 If a student reports sexual violence to the Police, the Student Support Team can offer support to follow the advice given by the



Police. This may include accompanying individuals when the initial account is given, at the Police station, or specialist sexual assault centre. The Police may take statements and collect forensic evidence - students are reminded that even when they make an initial report to the Police it remains their choice whether to provide a further statement and evidence.

- 6.2 Where there is no risk of immediate danger, students making a disclosure or report of sexual misconduct can contact the Student Support Team. This can be done face to face at the Student Support Office, by telephone to 01432 804544 or 01432 804673, or by e-mail on studentsupport@nmite.ac.uk
- 6.3 Where a student chooses to disclose sexual misconduct to another trusted member of staff, they are encouraged to consent to the information being shared with the Student Support Team so appropriate and effective support and guidance can be provided.
- 6.4 If receiving a disclosure of sexual misconduct, a member of staff must:
- i. respond in a calm and neutral manner
 - ii. listen to what the student is saying
 - iii. limit any questioning to the minimum necessary to seek clarification only
 - iv. avoid "leading" the student by making suggestions or asking questions that introduce their own ideas about what may have happened
 - v. cease asking questions as soon as the student has disclosed that he or she believes that sexual misconduct has happened to him or her, or to someone else
 - vi. with the knowledge and consent of the student concerned refer the matter immediately, with all relevant details, to a member of the Student Support Team. Note: information can and must be shared where there is believed to be a risk of immediate or continued harm to an individual.
- 6.5 A student may wish to make a disclosure and at that time may not wish to make a formal report. In this case a record of the disclosure will be made, and a member of the Student Support Team will be allocated to provide ongoing support to the student.



- 6.6 If a student makes a formal report of sexual misconduct on the part of another student, this will be investigated in confidence by a panel of senior staff convened by the Chief Academic to determine the facts of the case and the seriousness of the accusation. Once this initial investigation is complete, procedures will follow the Student Disciplinary Policy as appropriate. Expectations parties can have regarding confidentiality and impartiality are described in paragraph 5.4.
- 6.7. If a student makes a formal report of sexual misconduct on the part of a member of staff, this will be investigated under the Employee Disciplinary Policy. A student retains all rights and expectations described in the entirety of this policy.
- 6.8 If a police investigation commences, NMITE will consider whether an internal investigation is required or if already underway whether the internal investigation should be paused whilst the police investigation is undertaken.
- 6.9 Adjustments may be required during either Police or internal investigation to protect NMITE and the individual(s) involved. This might include a change of accommodation, suspension of studies, separating the students involved in the learning environment and/or removal of a student from campus.



Appendix 1 – Related Legislation

The Equality Act 2010 provides protection for everyone from discrimination and makes it unlawful to harass or discriminate against someone on the grounds of the nine protected characteristics of age, race, religion or belief, sex, sexual orientation, pregnancy & maternity, marriage & civil partnership, disability, gender, and gender reassignment. The legislation defines harassment as ‘unwanted conduct’ including that of a sexual nature, which has “the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment”.

Other key legislation that provides protection under this policy includes:

- i. The Protection from Harassment Act 1997 – pursue a course of conduct which amounts to harassment which includes the offence of stalking
- ii. Criminal Justice Act – harassment can be a criminal offence and give rise to a civil claim
- iii. Health and Safety Act 1974 – the provision of a safe working environment
- iv. Criminal Justice and Public Order Act 1995 – anti-social and criminal behaviour including matters such as obscene communications
- v. Human Rights Act 1998 - sets out the fundamental rights and freedoms that everyone in the UK is entitled to
- vi. Telecommunications Act 1984 – improper use of public telecommunications system, such as sending messages that are grossly offensive, indecent, menacing or knowing false
- vii. Malicious Communications Act 1998 – sending communications which conveys indecent or grossly offensive, threatening or information that is known to be false.



Appendix 2- Sexual Misconduct – further information

Sexual violence is any unwanted or uninvited sexual act or activity which can be psychological and/or physical.

Sexual Harassment describes a range of words, behaviours or conduct of a sexual nature that is unwanted and uninvited.

For a definition of these incidents, see glossary below of different types of sexual violence and sexual harassment. This is not intended as an exhaustive list of all types of sexual violence and sexual harassment incidents.

Child sexual abuse	Child sexual abuse is a form of child abuse in which an adult or a young person uses a child for sexual stimulation. Types of child sexual abuse include engaging in sexual activities with a child (whether by asking or pressuring, or by other means), indecent exposure), child grooming, child sexual exploitation or using a child to produce child pornography.
Coercion	The intimidation of an individual to compel them to do some act against their will by the use of psychological pressure, physical force, or threats
Doxxing	This is the internet-based practice of researching e.g. through social media websites and broadcasting private or identifying information about an individual or organisation. It can be carried out for various reasons including inflicting harm, coercion, and harassment.
Female genital mutilation	Female genital mutilation is a procedure where the female genitals are deliberately cut, injured, or changed, but there's no medical reason for this to be done. It is usually carried out on young girls between infancy and the age of 15, most commonly before puberty starts. It's illegal in the UK and is child abuse.
Forced marriage	A forced marriage is where one or both individuals do not (or in cases of people with learning disabilities or reduced capacity, cannot) consent to the marriage as they are pressurised, or abuse is used, to force them to do so. It could be physical – for example, threats, physical violence, or sexual violence, emotional and psychological – for example, making someone feel like they are bringing 'shame' on their family. It is recognised in the UK as a form of domestic or child abuse and a serious abuse of human rights.
Gaslighting	An elaborate and insidious technique of deception and psychological manipulation, usually practiced by an individual towards another over an extended period.
Honour based violence	Honour based violence is a term used to describe violence committed within the context of the extended family which are motivated by a perceived need to restore standing within



	<p>the community, which is presumed to have been lost through the behaviour of the victim. Most individuals affected are women or girls, although men may also be at risk.</p>
Indecent exposure	<p>Indecent exposure is the deliberate exposure in public or in view of the general public by a person of a portion or portions of his or her body, in circumstances where the exposure is contrary to local moral or other standards of appropriate behaviour.</p>
Rape	<p>Rape is a type of sexual assault usually involving sexual intercourse or other forms of sexual penetration carried out against an individual without their consent. It can be carried out by physical force, coercion, abuse of authority, or against a person who is incapable of giving valid consent such as an individual who is unconscious, incapacitated, has a learning disability or is below the legal age of consent.</p>
Revenge porn	<p>Revenge porn is the distribution of sexually explicit images or videos of an individual without their permission. The sexually explicit images or videos may be made by a partner of an intimate relationship with or without the knowledge and consent of the subject. The uploading or possession of the material may be used by the perpetrator to blackmail the individual into performing other sex acts, to coerce them into continuing the relationship, or to punish them for ending the relationship.</p>
Ritual abuse	<p>Any form of physical, sexual, or psychological mistreatment of an individual or group of individuals as part of a religious, cult, or secular ritual that involves the use of ritual. This type of abuse is often systematic and long-lasting.</p>
Sexual assault	<p>Sexual assault is an act in which an individual intentionally sexually touches another individual without their consent or coerces or physically forces somebody to engage in a sexual act against their will. It is a form of sexual violence which includes rape, groping, child sexual abuse or the torture of an individual in a sexual manner.</p>
Sexual exploitation	<p>Sexual exploitation means taking the advantage of sexuality and attractiveness of an individual to make a personal gain or profit. It is the abuse of a position of vulnerability, differential power, or trust for sexual purposes.</p>



Stealthing	Stealthing or non-consensual condom removal, is the practice of a man covertly removing or damaging a condom during sexual intercourse, when his sex partner has only consented to condom-protected sex. Such behaviour may be regarded as sexual assault or rape and is a form of reproductive coercion.
Trafficking	Human trafficking is the trade in humans for various purposes including sexual slavery and commercial sexual exploitation for the trafficker or other. It can include the provision of a spouse in the context of a forced marriage, 13 and often targets women and children although not always.
Upskirting	Upskirting is the practice of taking photographs without permission under a woman's skirt or man's kilt capturing an image of the crotch area, underwear, and sometimes genitalia. It could comprise a photograph, a video, or an illustration.