Bullying, Harassment and Sexual Misconduct Policy – Staff Procedure

This will be updated each time the policy is reviewed or amended.

Policy Owners: Jayne May

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1. **Scope and Purpose**

1.1. This policy relates to all staff of Lancaster University, regardless of the type of contract they are employed under. For avoidance of doubt this includes staff employed on indefinite, fixed term, engagement and other temporary contracts. Lancaster is committed to providing a progressive, collaborative and healthy environment for working, learning and visiting. It values and promotes personal dignity for all members of its community and will promote a zero tolerance approach to bullying, harassment or sexual misconduct. A separate version of this policy is also communicated to students of the University to ensure consistent understanding of the scope and processes involved.

1.2. The purpose of this policy is to assist in the promotion of an inclusive and constructive environment on campus, as well as in external relationships connected with the University, in which bullying, harassment and sexual misconduct are recognised as unacceptable. It also is designed to give individuals the confidence to complain in the knowledge that their complaints will be taken seriously and due process followed in resolving the matter.

1.3. This policy fully recognises the interconnection between the University and Student Based Services and the necessary co-operation between these two for the proper support and implementation of this policy, where cases involve both staff and students.

1.4. For the purposes of this policy, the person making the complaint is the complainant and the person who is the subject of the complaint is the respondent.

1.5. This policy outlines procedures for staff and provides definitions of key terms. Flowcharts and links to support arrangements are provided alongside this policy.

2. **Commitment**

2.1. Lancaster University is committed to equality. As part of this principle, it seeks to: (a) recruit and develop staff from a diverse range of backgrounds; and (b) promote a supportive and inclusive culture in which everyone feels valued and can perform to their full potential.

2.2. All staff are expected to promote an environment where bullying, harassment and sexual misconduct does not happen. Immediate action, as described in this policy, should be taken if bullying, harassment or sexual misconduct is suspected or identified. Allegations received either formally or informally through this policy will be taken seriously and dealt with promptly and sensitively.

2.3. Lancaster University has a legal obligation to ensure that harassment on the grounds of a Protected Characteristic does not take place, as this is discrimination under the Equality Act 2010. A “Protected Characteristic” includes age, disability, gender identity and expression, marital or civil partner status, pregnancy or maternity, race, nationality, ethnic or national origin, religion or belief, sex or sexual orientation. Both the harasser as an individual and the University may be held liable for this conduct. Lancaster University is also legally obligated to provide a duty of care to staff and students which includes safeguarding those that are vulnerable.
All staff and students also have personal liability under legislation (Protection from Harassment Act 1997 and Equality Act 2010). Harassment may also be a criminal offence and give rise to a civil claim. It may also be a contravention of Health and Safety legislation. The University will engage with external investigations by the police and other enforcement bodies as appropriate and necessary.

Allegations of behaviours and actions, which meet the definitions, detailed in Appendix 2 will be taken very seriously. Anyone found to be in breach of this policy will be liable to disciplinary action, which in serious cases could result in their dismissal. No one will be disadvantaged for making complaints in good faith. However, where it is established that complaints are malicious the University is likely to take disciplinary action, under the disciplinary policy, against the complainant.

3. General Principles

3.1 To enable appropriate actions to be taken, any individual or groups witnessing or experiencing bullying, harassment or sexual misconduct has an obligation to let the University know at the earliest opportunity. To facilitate this, the University will provide different means to report, including anonymous reporting.

3.2 The University will take steps to prevent bullying, harassment and sexual misconduct, by addressing inappropriate behaviours and discussing concerns promptly to prevent issues from escalating. Awareness sessions may be used as a means of communicating appropriate behaviours under this policy and all staff are advised to seek clarification on any aspect of this policy that they do not understand.

3.3 The University will support both parties (complainant and respondent) involved in incidents of alleged bullying, harassment and sexual misconduct.

3.4 The University will handle all allegations seriously and will promptly investigate a complaint while protecting the individual rights of those involved, including those against whom an allegation has been made.

3.5 Where criminal investigations are involved, consideration will be given as to whether there needs to be a delay in the internal investigation, which may be the case if, there is a potential overlap. Each case will be considered on its own merits and delays avoided where at all possible.

3.6 All cases involving bullying, harassment or sexual misconduct must be treated confidentially within the confines of the investigation and handling of the case and not disclosed outside of that process. Any breaches of confidentiality may lead to disciplinary action.

4. Definitions – what is bullying, harassment and sexual misconduct?

4.1 Bullying or harassment is behaviour or actions that are unwelcome, unwarranted and causes a detrimental effect to the wellbeing of the victim. Harassment, bullying and sexual misconduct can also apply to a group of people as well as individuals.
Freedom of speech is recognized as important at the University as outlined in Statute 20, which ensures the rights of Academic Freedom to explore controversial topics in the context of teaching, or research, which may be considered offensive but would not normally constitute harassment.

Bullying

4.2 Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour and abuse or misuse of power through means that undermine, humiliate, upset, threaten, denigrate or injure the recipient and can make a person feel vulnerable. This can be either physical or psychological in nature. Further definitions of bullying can be found in Appendix 2.

Harassment

4.3 Harassment, as an element of bullying, is specifically defined under the Equality Act 2010 as unwanted conduct related to a relevant protected characteristic that has the purpose or effect, assessed from the individual’s perspective of violating dignity or creating an intimidating, hostile, degrading or humiliating environment for that individual. It can include unwelcome physical, verbal or non-verbal conduct. It can also include circulating information or images via e-mail or the internet.

4.4 Conduct can be harassment even if it was not intended to violate the recipient’s dignity if it had that effect. Conduct normally becomes harassment if it is persisted in once it has been made clear that it is regarded by the recipient as offensive, although a single incident may amount to harassment if it is sufficiently serious.

4.5 Harassment may involve conduct of a sexual nature, which we will refer to separately under the heading “sexual misconduct”, or it may be related to any of the Protected Characteristics. It may also include victimising someone because they have been willing to challenge harassment. Harassment is unacceptable even if it does not fall within any of these categories. For further definitions of Harassment, please see Appendix 2.

Sexual misconduct/harassment

4.6 Sexual misconduct is a broad term used to encompass a range of behaviours including sexual harassment, non-consensual sexual contact (sexual assault), and non-consensual sexual penetration (rape).

4.7 Sexual misconduct can occur between individuals who know each other, have an established relationship, have previously engaged in consensual sexual activity, and between individuals who do not know each other. Sexual misconduct can be committed by persons of any gender identity, and can occur between people of the same or different sex. Further detailed definitions of sexual misconduct are set out at Appendix 2.

Victimisation

4.8 Victimisation is when a person is mistreated because they have made a complaint of discrimination, harassment or bullying or have supported another person in making a complaint.

4.9 A zero tolerance approach demonstrates the University’s commitment to prevent bullying,
harassment and sexual misconduct occurring within the University. It reflects an approach in which the University will proactively work to educate and inform, as well as taking all accusations seriously and acting on them appropriately without preconception or bias.

4.10 A single incident can constitute bullying, harassment or sexual misconduct if sufficiently grave.

More detailed definitions are included in appendix 2.

5. Main Roles and Responsibilities

5.1 Managers and supervisors

- Ensure employees are aware of the Bullying, Harassment and Sexual Misconduct policy and procedure and ensure everyone has access to it.
- Apply the procedure in a fair and consistent manner.
- Develop a culture of zero tolerance to bullying, harassment or sexual misconduct.
- Aim to resolve issues promptly and informally where possible.
- Carry out an investigation where required.
- Be responsive and ensure that confidentiality is maintained.
- Set a good example by treating all staff, students and visitors with dignity and respect.
- To record details of all meetings within the procedure.
- To keep a copy of the notes of meetings emails to the employee and any communications to staff in relation to this policy.
- Ensure there is no victimisation or further problem of bullying, harassment or sexual misconduct once a complaint has been resolved.
- Ensure complainants or respondents reporting to them are supported throughout either directly or via a delegated person.

5.2 Members of Staff

- Members of staff have a responsibility to promote an environment where bullying, harassment and sexual misconduct does not happen and ensure compliance with this policy.
- Members of staff should discourage harassment by making it clear that they find such behaviour unacceptable and by supporting colleagues who suffer mistreatment and are considering making a complaint. Members of staff are encouraged to alert their manager, supervisor or HR to any incident of bullying, harassment or sexual misconduct to enable the University to deal with the matter.
- To attend any meetings and hearings convened to discuss issues around bullying, harassment or sexual misconduct.
- To engage fully in any training around this policy.
5.3 Bullying, Harassment, and Sexual Misconduct Panel (BHSMP)

- A panel of three will provide an initial “triage” service so that all complaints of bullying, harassment or sexual misconduct are assessed to decide which part of the University is best placed to handle any investigation and any subsequent actions so that the correct University procedures are followed.
- Assess whether there are equality issues, including any protected characteristics.
- Make an assessment of who has expertise in subject matter to handle any investigation in the area of bullying, harassment or sexual misconduct.
- Ensure consistency of the application of the policy.
- For further clarification on the role and make-up of the panel, please refer to Panel terms of reference.

5.4 Trade Union Representatives

- To support their members at the formal stage of the process, attending meetings and advising on process.
- The same standards will apply to Trade Union Representatives as to all other employees. However, where application of formal action is being considered against a Trade Union Representative, the case must first be discussed with a Senior Trade Union Representative or full time Official.

5.5 Human Resources

- To provide advice and guidance on the application of the Policy and Procedure at both the informal and formal stage of the process to both managers and individual employees where required. Human Resources will provide advice to those conducting any investigations under this policy and will normally be present in an advisory capacity at hearings.
- To support the manager in the process of making an informed, fair and reasonable decision.
- Help to ensure that adequate resources are made available to promote respect and dignity in the workplace and to deal effectively with complaints of harassment or bullying.
- To communicate this policy to members of staff and include information on this policy as part of the induction programme.
- Organise the provision of counselling support for staff who are severely distressed because of harassment, bullying or sexual misconduct.

6. Advice for staff experiencing bullying, harassment and sexual misconduct

6.1 In the event that an individual feels that they are experiencing bullying, harassment or sexual misconduct they have a number of options open to them.

6.2 In the event that an individual does not wish to be identified, individuals can report anonymously by alerting their line manager to a concern via an unsigned letter. Where an individual reports an incident relating to them, but does not want to be identified as part of a formal complaint, the University’s ability to address the issue may be limited.
6.3 Individuals may speak directly to the individual concerned and/or write to them requesting that the actions or behaviour is unacceptable and must stop. Alternately, or subsequently if they achieve no success, they can inform a colleague to obtain another perspective and to ensure that they have support. The University provides experienced persons from whom advice can be sought through Human Resources and more general support can be obtained from the Employee Assistance Programme. Members of staff may also want to seek either informal or formal advice from their trade union representative.

6.4 Individuals or groups of staff can request a mediation meeting with the other party where a mutually agreed neutral third party intervenes to assist individuals in reaching a satisfactory outcome. This can be arranged at any stage, is confidential and is aimed at rebuilding trust and restoring positive working relationships.

University response

6.5 In situations where the University is provided with information that suggests that there may be a risk to an individual or the community at large, it may take such precautionary actions that:

- Act to safeguard the University community by conducting a discrete investigation (following the procedure as detailed below);
- Put additional compulsory training in place where it is deemed necessary;
- Take other action(s) that is deemed reasonable to protect staff and students which may include reporting concerns to the police.

6.6 Anyone reporting an incident will be provided with appropriate support, including necessary adjustments to their work. Such support will require communication of requisite information. This will be handled with sensitivity and care.

6.7 For complaints involving persons visiting the campus, contractors or other non-staff or students, the three person Bullying, Harassment and Sexual Misconduct panel will consider any report and communicate their findings to the relevant parties.

7. Initiating a formal complaint

7.1 If reporting procedures detailed in section 6 above do not achieve success or the incident is considered too serious by the individual to be subject to those processes, the individual or group can submit a complaint using a grievance form.

- Member(s) of staff should set out their complaint concisely in writing using the University Grievance form and send it to their Head of Department or manager with a copy to the relevant HR Partner. The member of staff may be asked to provide further information or clarification in relation to the complaint by the manager.

- Where a complaint involves the staff members’ immediate manager or Head of Department, the procedure may be invoked with the involvement of a manager in a different department, or at the next level of management in the same department.
• The grievance may be sent to the Faculty Dean or Divisional Director in the first instance if the complaint is about, or concerns, a Head of Department or other managers in the University. Where it concerns Deans, Directors, Chief Administration Officer, Deputy VC, Pro-VCs and the VC, it should be sent to the Director of HR and OD who will agree with the Vice Chancellor appropriate persons to hear the complaint, unless the complaint concerns the Vice Chancellor directly in which case the Director of HR and OD will make a decision.

7.2 Third party or active bystander submissions, for example where a member of staff has witnessed a colleague being harassed or bullied, can also be submitted via the above methods and will be considered; however, these will only be taken forward as a formal complaint with the consent of the individual against whom the alleged incident was perpetrated.

7.3 The complaint should include:

• The name(s) of the harasser or bully;
• The nature of the complaint with references to dates, times and places (where possible) in relation to specific incidences of bullying, harassment and/or sexual misconduct.
• Where any unsuccessful attempts to resolve the matter have been attempted.
• The names of any witness(es) to the incident(s). Witnesses can request anonymity and this will be granted if appropriate; however, it is not encouraged under the interests of openness and fairness.

7.4 Advice in submitting a complaint is available from Human Resources and the Employee Assistance Programme is available to staff for support and counselling.

Dealing with the complaint

7.5 The complaint will be considered initially by the BHSMP to ensure co-ordination of cases involving students, staff or third parties and to ensure an appropriate person is given the authority to handle the complaint and any investigation.

7.6 Where the complainant is a member of staff, a stage 1 grievance meeting is normally chaired by the line manager (unless the manager is the subject of the complaint and in which case another manager will be appointed). The complainant will be invited to attend a meeting and will have the right to be accompanied by a colleague or trade union representative.

7.7 The BHSMP will ensure the respondent is kept informed of the process via their line manager. The line manager will be required to ensure that respondents and complaints are supported throughout.

7.8 The Stage 1 meeting is normally convened within 5 working days of the manager being asked to handle the complaint. An investigation may be set up to assist in establishing the facts surrounding the case. HR will provide guidance on how an investigation involving staff members should be conducted.
7.9 When an investigation is undertaken this will take more time and it is expected that the chair will ensure all parties are kept informed of progress. Once completed a written response will be issued within 10 working days and where appropriate an outcome meeting held with the respondent and their representative to agree any corrective and/or support actions.

7.10 If the matter is not resolved to the satisfaction of the complainant, they can appeal the decision under the appeals policy in writing within 5 working days to the appropriate Head of Department, Dean or Divisional Director.

7.11 Should the line manager conclude that disciplinary action is required, this will be taken forward at the appropriate stage of the disciplinary procedure.

7.12 The investigation will conclude with a report which will include details of the facts of the case along with any submissions from the complainant, the respondent as well as any witnesses. This report will not make recommendations to the panel; it will only present materials.

7.13 Case records will be stored confidentially in HR for a minimum of 12 months’ according to the severity of the incident. Records will normally be destroyed within 7 years of a case being concluded.

8. Appeals under this policy (in conjunction with the Appeal policy)

8.1 Where an individual is not satisfied with the process, they may appeal the outcome. Appeals will be considered only where the individual can evidence that:

- The correct procedure was not followed.
- The decision was unfair or perverse because the correct policy was not followed.
- There is new information that was not previously available to support the case.

This list is not exhaustive.

8.2 An intention to appeal must be submitted in writing to the appropriate Dean or Divisional Director, as specified in the outcome letter within 5 working days of receipt of the outcome.

8.3 If valid grounds have been determined for an appeal then an appropriate appeal manager will consider the appeal.

8.4 An appeal hearing will be arranged to give the individual the opportunity to explain the grounds for appeal. The appeal manager will then decide if any further investigations are required.

8.5 The decision of the nominated manager will be final and will consist of one of the following decisions:

- Confirm the outcome and decision of the original hearing.
- Uphold the appeal if there is evidence to prove the original decision was not well founded, or if the conduct of the procedure has been unfair (see Appeals policy for more detail)
- Partially uphold the original decision but withdraw in whole or part actions relating to the original decision, it should not result in an increase in sanction.
9. Monitoring of this policy

9.1 The Human Resources Division will keep the implementation of this policy under review and will monitor its use annually.

Review

9.2 This policy and procedure will be kept under regular review and may be amended or withdrawn following appropriate negotiations with campus trade unions to reflect changes in legislation or changing University requirements.
Appendix 1a: Flow Chart – employee raising a concern

Bullying, harassment and sexual misconduct procedure – for staff complaints

If informal approaches have not resolved the issue; or employee feels unable to tackle informally, then commence formal procedure

Employee has a concern/complaint

Can this be resolved informally?

Informal Approach

YES

Informal Approach

Employee to express concern/complaint & try to resolve with Manager/HOD/HR representative

Stage 1 Grievance Meeting

Employee sets out their concerns in writing, using Grievance Form, submits to Manager

BHSMP triage case and refer staff concerns to Manager & HR as appropriate

Acknowledged receipt of grievance LETTER 1 and referred to BHSMP

The Chair considers the concerns/complaint

Is the Chair able to give an outcome on the matter from the information provided by the Employee?

INVESTIGATION

Conducted by Chair or appropriately delegate within Faculty or Division

Chair issues a written response to Employee LETTER 3

Employee has the right of appeal

Employee can access Employee Assistance Programme at any time and can ask for the case to be referred for mediation at any point.

If not resolved, Employee may be asked to provide further information or clarification

Employee invited in writing LETTER 2

Stage 1 Grievance Meeting

If time/date unsuitable Employee should request another time/date

Employee can access Employee Assistance Programme at any time and can ask for the case to be referred for mediation at any point.

If concern relates to immediate Manager/HOD then raise with Dean/Divisional Director

Appeal Process

Chair considers the concerns/complaint, along with findings of Investigation

The Chair issues a written response to Employee LETTER 3

Employee has the right of appeal

Employee can access Employee Assistance Programme at any time and can ask for the case to be referred for mediation at any point.

If concern relates to immediate Manager/HOD then raise with Dean/Divisional Director

Employee can access Employee Assistance Programme at any time and can ask for the case to be referred for mediation at any point.
Appendix 1b: Flow Chart – concern raised about an employee by a third party (student, visitor, member of the public, on site contractor, etc.)

Bullying, harassment and sexual misconduct procedure – for third party complaints (e.g. students, visitors, members of the public).

Concern is raised about an employee by a third party. Can this be resolved informally?

Informal Approach

YES

BHSMP triage case and refer concerns to Line Manager of staff member and HR, as appropriate.

NO

Formal Procedure

Can this be resolved informally?

YES

Informal Approach

Outcome

Resolved

NO

Commissioning manager appointed to review case.

The Commissioning Manager considers the concern/complaint, along with findings of Investigation if required.

Is the Commissioning Manager able to give an outcome on the matter from the information provided by the third party?

Employee has the right of appeal

Appeal Process

INVESTIGATION

Conducted by Commissioning Manager or, appropriately, delegate to Investigating Officer.

Throughout, the Commissioning Manager keeps the BHSMP informed of progress.

YES

Is a formal disciplinary process required?

Formal disciplinary process enacted:
- 1st written warning
- Final written warning
- Dismissal

NO

Is a meeting required?

The appropriate action is taken.

The Commissioning Manager considers the concern/complaint, along with findings of Investigation.

Resolving

Not resolved

Bullying, harassment and sexual misconduct procedure – for third party complaints (e.g. students, visitors, members of the public).
Appendix 2: Definitions

1. These definitions expand on those provided in section 4 of this policy.

**Bullying and Harassment**

2. Bullying or harassment is behaviour or actions that are unwelcome, unwarranted and causes a detrimental effect. Bullying and harassment may be verbal, nonverbal, written, or physical.

**Bullying**

3. Bullying is offensive, intimidating, malicious, or insulting behaviour that can make a person feel vulnerable, upset, humiliated, undermined or threatened. It can take the form of physical, verbal and non-verbal conduct. Bullying may include, by way of example but is not limited to:

- Shouting at, being sarcastic towards, ridiculing or demeaning others;
- Physical or psychological threats;
- Overbearing and intimidating levels of supervision;
- Inappropriate and/or derogatory remarks about someone’s performance;
- Abuse of authority or power by those in positions of seniority; or
- Deliberately excluding someone from meetings, work opportunities or communications without good reason.
- Ridiculing or demeaning behaviour including displaying inappropriate material that could offend someone in relation to a Protected Characteristic;
- Spreading malicious rumours or insulting someone particularly on grounds of protected characteristics. The University will consider acts as bullying that are outside the legal definition of harassment under equality legislation;
- Systematic belittling, intimidation or exclusion;
- Constantly criticising or removing duties and responsibilities without good reason;
- Unfair treatment that discriminates against people with Protected Characteristics for example telling racist or homophobic jokes in the office or in student accommodation;
- Misuse of power or position in, for example, line management or supervision;
- Making threats without foundation or inciting others to do so;
- Inappropriate acts towards students/staff/visitors including racist, sexist or homophobic behaviours.
- Any other action which is done which harms dignity, safety and well-being.

Such actions will not be tolerated anywhere including in, for example, the classroom, the laboratory, the office, sporting events, social events, or in cyberspace.
4. The following are not acceptable excuses for actions which may harm dignity, safety and well-being:
   - A ‘clash of personalities’;
   - It is deemed to be character building;
   - It is a manifestation of an individual’s ‘management’ or ‘leadership’ style;
   - It was provoked by the victim.

5. Bullying or harassment does not include:
   - Managers giving reasonable instructions to staff in the course of their employment;
   - Legitimate, reasonable and constructive criticism of a worker’s performance or behaviour;
   - University staff giving reasonable instructions to students.

**Harassment**

6. Harassment takes many forms, occurs on a variety of different grounds and can be directed at one person or many people. Harassment is conduct that it is unwanted by the recipient and which the recipient finds offensive or unacceptable, but needs to be considered alongside academic freedom which permits the exploration of controversial topics in the context of teaching or research and in this situation would not normally constitute harassment. It can include unwelcome physical, verbal or non-verbal conduct. It can also include circulating information or images via e-mail or the internet. Conduct can be harassment even if it was not intended to violate the recipient’s dignity if it has that effect.

7. Conduct normally becomes harassment if it is persisted in once it has been made clear that it is regarded by the recipient as offensive, although a single incident may amount to harassment if it is sufficiently serious.

8. Unlawful harassment may involve conduct of a sexual nature (sexual harassment), or it may be related to age, disability, gender reassignment, marital or civil partner status, pregnancy or maternity, race, colour, nationality, ethnic or national origin, religion or belief, sex or sexual orientation. It may also include victimising someone because they have been willing to challenge harassment. Harassment is unacceptable even if it does not fall within any of these categories. Harassment of a sexual nature will also be dealt with under the definition of sexual misconduct below.

9. Harassment may include, for example:
   - unwanted physical conduct
   - continued suggestions for social activity after it has been made clear that such suggestions are unwelcome;
   - sending or displaying material that is pornographic or that some people may find offensive (including e-mails, text messages, video clips and images sent by mobile phone or posted on the internet);
   - unwelcome sexual advances or suggestive behaviour (which the harasser may perceive as harmless);
• racist, sexist, homophobic or ageist jokes, or derogatory or stereotypical remarks about a particular ethnic or religious group or gender;
• outing or threatening to out someone as lesbian, gay, bisexual or transsexual;
• offensive e-mails, text messages or social media content;
• mocking, mimicking or belittling a person’s disability or physical appearance;
• isolation or non-co-operation and exclusion; or
• Intrusion by pestering, spying and stalking.

10. A person may be harassed even if they were not the intended “target”. For example, a person may be harassed by racist jokes about a different ethnic group if the jokes create an offensive environment.

Sexual misconduct

11. Sexual misconduct can occur between individuals who know each other, have an established relationship, have previously engaged in consensual sexual activity, and between individuals who do not know each other. Sexual misconduct can be committed by persons of any gender identity, and can occur between people of the same or different sex.

12. Prohibited behaviours with regard to sexual misconduct include but are not limited to:
• Creating a hostile environment/sexually hostile environment
• Domestic/relationship violence
• Stalking
• Invasion of privacy
• Sexual misconduct including:
  • Non-consensual sexual contact (sexual assault);
  • Non-consensual sexual penetration (rape);
  • Engaging in sexual activity without obtaining effective consent;
  • Coercion;
  • Sexual exploitation.

13. The following definitions are provided for information and guidance and will be used when any investigation is being undertaken. This list is not intended to be exhaustive and all incidents will be dealt with on an individual basis.

14. Coercion
Coercion is forcing another person to act based on fear of harm to self or others. Means of coercion may include, but are not limited to, pressure, threats, emotional/psychological intimidation, or the use of physical force.

15. Domestic Violence/Relationship violence in intimate relationships
Domestic/Relationship violence is defined as actual or threatened psychological or physical violence, intimidation, or other forms of physical or sexual abuse that would cause a reasonable person to fear harm to self or others. For this policy, “intimate relationship” means marriage, domestic partnership, engagement, casual
or serious romantic involvement, and dating, whether in a current or former relationship.

16. **Effective consent**
When engaging in sexual behaviour of any kind it is important to obtain the informed and effective consent of each partner. Effective consent must be obtained for each instance and each escalation of sexual activity. Obtaining effective consent is the responsibility all parties involved.

Effective Consent is:
- Informed;
- freely and actively given on each occasion/activity;
- mutually understandable words or actions that indicate a willingness to participate in agreed upon sexual activity.

Consent is not effective when:
- there is only silence or passivity;
- the use of intimidation, coercion, threats, force, or violence negates any consent obtained;
- it is obtained from an individual who is incapable of giving consent due to one or more of the following or other reasons:
  - a relevant mental, intellectual, or physical disability;
  - is under the legal age to give consent;
  - is asleep, unconscious, or physically helpless;
  - is incapacitated by alcohol or other drugs;

Consent to sexual activity at one time does not imply consent to the same or other sexual activity at any other time. A person can withdraw consent at any time.

17. **Responsibility for obtaining effective consent**
For the purpose of this policy the responsibility for obtaining effective consent is held by all parties involved. Failing to obtain effective consent is a violation of this policy.

Individuals involved in sexual activity assume responsibility for their behaviour and must understand that the use of alcohol or other drugs does not reduce accountability for their actions. When involved in sexual activity the question is whether a sober and reasonable person in the same position should have known whether another person gave, or was able to give, effective consent.

Refusal, lack of consent, or non-consent may be expressed in many ways, verbally or physically. Physical resistance is not necessary to communicate a lack of consent. It is not necessary to resist physically or express verbally to indicate a lack of consent.

18. **Force**
Force may include words, conduct, or appearance. Force includes causing another’s intoxication or impairment through the use of drugs or alcohol. Coercion, intimidation, and non-physical threats can all be forms of force.
19. **Hostile environment**
   A hostile environment is created if conduct undertaken is sufficiently severe, persistent or pervasive to limit the recipient’s ability to participate in or benefit from their environment or creates a hostile or abusive environment.

20. **Incapacitation**
   Incapacitation is the physical and/or mental inability to make informed, rational judgments and decisions. States of incapacitation include sleep and blackouts. Where alcohol or other substances are involved, incapacitation is determined by how the substance impacts a person’s decision-making capacity, awareness of consequences, and ability to make informed judgments.

   In evaluating whether a person(s) was incapacitated for purposes of evaluating effective consent, the following will be considered:

   i. Did the person(s) initiating sexual activity know that their partner(s) was/were incapacitated?

   If not,

   ii. Would a sober, reasonable person in the same situation have been able to recognise that the partner(s) was/were incapacitated?

   If the answer to either of these questions is “yes,” effective consent was absent.

   For purposes of this policy, incapacitation is a state beyond drunkenness or intoxication. A person is not incapacitated merely because they have been drinking or using drugs.

   The standard for incapacitation does not turn on technical or medical definitions, but instead focuses on whether a person has the physical and/or mental ability to make informed, rational judgments and decisions. A person must look for the common and obvious warning signs that show that a partner may be incapacitated or approaching incapacitation. Although every individual may manifest signs of incapacitation differently, typical signs include slurred or incomprehensible speech, unsteady gait, combativeness, emotional volatility, vomiting, or incontinence. A person who is incapacitated may not be able to understand some or all of the following questions: “Do you know where you are?,” “Do you know how you got here?,” “Do you know what is happening?,” “Do you know who else is here?”.

   Because the impact of alcohol and other drugs varies from person to person, one should be cautious before engaging in sexual contact or intercourse when either party has been drinking alcohol or using other drugs. The introduction of alcohol or other drugs may create ambiguity for either party as to whether effective consent has been sought or given. If one has doubt about either party’s level of intoxication, the safe thing to do is to forgo all sexual activity.

21. **Invasion of privacy**
   This includes, but is not limited to, recording, photographing, or transmitting images or other personal aspects, including those of private sexual activity and/or the intimate parts of another person without effective consent; allowing third parties to observe images, including private sexual acts without effective consent; engaging in
voyeurism without effective consent.

22. **Retaliation**
Retaliation includes threats, intimidation, reprisals, and/or adverse employment or educational actions against a person based on their report of prohibited conduct or participation in the investigation, report, remedial, or disciplinary processes provided for in this Policy.

23. **Non-consensual sexual penetration (rape)**
This is defined as the sexual penetration of any orifice with a body part or other object without effective consent. This could be committed by force, threat, intimidation, coercion, or through exploitation of another’s mental or physical condition (such as lack of consciousness, incapacitation due to drugs or alcohol, age, or disability) of which the respondent was actually aware or which a reasonable person in the respondent’s position should have been aware.

24. **Malicious complaints**
Where, after investigation, it is found that a complaint was made with intent to harm their/its reputation or standing was without basis in fact, the complainant may be referred for disciplinary action.

25. **Sexual assault**
Non-consensual sexual contact (sexual assault) is defined as any physical contact with another person of a sexual nature without that person’s effective consent. The touching of a person’s intimate parts (such as genitalia, groin, breast, buttocks, mouth, or clothing covering same); touching a person with one’s own intimate parts; or forcing a person to touch another’s intimate parts would be violations of this policy if they occur without effective consent.

Sexual assault is also defined as the sharing of private, sexual materials, either photos or videos, including digital, of another person without their consent and with the purpose of causing embarrassment or distress.

26. **Sexual exploitation**
Sexual exploitation is taking sexual advantage of another person and includes, without limitation: indecent exposure; causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over him or her; causing the prostitution of another person; and knowingly or recklessly exposing another person to a significant risk of sexually transmitted infection.

27. **Stalking**
Stalking is a course of conduct involving more than one instance of unwanted attention, harassment, unwanted physical or verbal contact, use of threatening words and/or conduct, or any other course of conduct directed at an individual that could be reasonably regarded as alarming or likely to place that individual in fear of harm or injury, including physical, emotional, or psychological harm. Stalking can be undertaken by any means, including social media etc.