Investigation Protocol for Sexual Misconduct / Harassment / Hate Crime

In accordance with the UUK *Changing the Culture* guidance, Newcastle University implemented the NU Changing the Culture project, to address and prioritise actions in relation to allegations of sexual misconduct, harassment and hate crime.

All Newcastle University students are entitled to enjoy a safe and positive experience whilst at Newcastle University. The University has developed a *Student Charter – Rights and Responsibilities*, which sets out the standards of conduct the University expects of its students in order to ensure a fair and equitable, supportive and non-threatening environment for all members of the University community. All allegations of personal misconduct by students will be investigated in accordance with the *Student Disciplinary Procedure*.

When the University receives a report that falls within the nature of this protocol the University will follow the procedure outlined below, which commences with an investigation in accordance with Level 2 of the *Student Disciplinary Procedure*.

Acts of misconduct that are likely to be investigated under Level 2 of the University Student Disciplinary Procedure (see Appendix 1), include:

- Low level Harassment/Stalking (including via social media)
- Low level Discrimination
- Non-consensual bodily contact
- Distress
- Low level bullying/verbal/physical abuse

These cases may be concluded by the Student Progress Service and may result in the imposition of one or more of the following advice and/or sanctions:

- A caution, in writing (not a sanction, but constitutes advice on future conduct together with a record that the advice has been given)
- A warning, in writing
- A final warning, in writing
- Alternative sanctions may also be imposed after consultation with the Disciplinary Convenor

Where the Head of the Student Progress Service determines that the case is sufficiently serious, the case shall be referred to the Disciplinary Convenor who will determine the arrangements for a Disciplinary Hearing at Level 3, by a Student Disciplinary Committee.

Multiple occurrences of Level 2 acts of misconduct, or a repeat of any Level 2 act of misconduct after a sanction has already been imposed, may be considered as a Level 3 act of misconduct.

Acts of misconduct that are likely to be considered under Level 3 of the University Student Disciplinary Procedure and will be referred to a Student Disciplinary Committee (see Appendix 1), include:

- Serious Harassment/Stalking (including via social media)
- Serious Discrimination
- Non-consensual sexual contact
- Sexual Exploitation
- Non-consensual sexual intercourse/penetration

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1 It should be noted that a disclosure can be anonymous and does not initiate an investigation, where a report is submitted, it is on the understanding that the University will investigate and take appropriate action.
A Student Disciplinary Committee may recommend advice and/or the imposition of one or more of the approved sanctions:

- A caution, in writing (not a sanction, but constitutes advice on future conduct together with a record that the advice has been given)
- A warning, in writing
- A final warning, in writing
- Disciplinary Suspension
- Deferred Expulsion from the University
- Expulsion from the University with immediate effect

Detailed examples/definitions of inappropriate behaviour which the University would investigate as misconduct that fall within this protocol are identified, together with an indication of possible level of investigation are outlined in Appendix I.

Repeat offenders will receive more severe sanctions to reflect an escalation of misconduct and any student who has been continually abusive, aggressive, threatening, intimidating, etc., can expect to be referred to a Student Disciplinary Committee for the full range of sanctions of the University to be considered, including expulsion.

Case Management / Investigation Protocol:

The Student Progress Service will consider the details of every reported allegation of sexual misconduct, harassment or disrespectful behaviour in accordance with the definition of hate crime. The Student Progress Service will follow the protocol outlined below to investigate the allegation and determine whether there is sufficient evidence to indicate that misconduct has occurred. The Head of the Student Progress Service shall determine whether it is appropriate for the case to be concluded by the Student Progress Service or whether the case is sufficiently serious to be referred to a Level 3 Disciplinary Committee, in accordance with the rules of the Student Disciplinary procedure.

In addition, to any imposed sanction, most cases that fall within the nature of this protocol shall result in a ‘No Contact Instruction’, where both parties are instructed not to have any further contact with each other by any means including, but not limited to, personal contact, via third parties, telephone, email and social networking. If this instruction is breached it may be deemed, of itself, an act of misconduct and investigated in accordance with the Student Disciplinary Procedure.

Initial Report:

1. On receipt of a report of sexual misconduct/harassment/hate crime, the ‘Reporter’ will be invited to meet with members of staff from the Student Progress Service, and informed they can attend with a friend/supporter (guidance note on the role of the friend or supporter). As is their right, where the Reporter declines to attend a meeting they can submit a statement or elect to allow the initial disclosure/Police Disclosure to be investigated without their further involvement.

2. Students will be advised of the implications of their decision and their wishes will be respected if they subsequently decide to withdraw their report, unless it is determined by the Head of the Student Progress Service that there are safeguarding issues and an investigation should go ahead. The Reporter will be instructed not to contact the subject of their allegation.

3. The Reporter shall be signposted to relevant support services e.g. REACH, Student Wellbeing Service, Police etc. In addition, to support the student, contact will be made with their School and/or Accommodation to organise appropriate safeguarding action.

4. The subject of the allegation, ‘Responder’, will be requested to attend an investigatory interview with the Student Progress Service. They will receive information on the nature of the allegation and have an opportunity to provide a statement in advance of attending the
meeting. The Responder will be instructed not to contact the Reporter at any time following this notification. The Responder will be informed that they can attend with a friend/supporter. (guidance note on the role of the friend or supporter)

5. The Responder shall be signposted to relevant support services e.g. Personal Tutor, Student Wellbeing Service, NUSU Student Advice Centre etc.

6. Both parties will be invited to disclose any disability issues, which may impact on their ability to interact with the Disciplinary investigation.

**Investigation by the Student Progress Service (Level 2 of the Student Disciplinary Procedure):**

1. Where the Reporter elects to meet with members of the Student Progress Service to clarify details of the event, they will be given an opportunity to present evidence and/or provide details of witnesses.

2. Members of the Student Progress Service will meet with the Responder, clearly articulate the allegation and give the Responder an opportunity to present their version of events and provide evidence to support their position and/or details of witnesses.

3. Each meeting will be attended by two members of the Student Progress Service. One member will act as the Investigating Officer and lead the investigation of the case. The other member will ensure accurate notes of the meeting are taken and will act as the person with whom each party is able to liaise, whilst the case is ongoing.

4. Where possible the same Investigating Officer will meet with both the Reporter and the Responder to allow for a balanced view of the case.

5. Where it is determined that it is appropriate, witnesses will be contacted and arrangements made, to either meet with members of the Student Progress Service or provide witness statements.

6. Where witnesses provide evidence, the Reporter and the Responder will be given the opportunity to respond to anonymised statements, before the Student Progress Service investigation is concluded.

7. During the investigation, the Head of the Student Progress Service will carry out a risk assessment and this may result in an interim suspension/ban from attending the Campus, for the Responder, in accordance with the University Disciplinary Procedure. This may result and/or include a relocation of accommodation or in consultation with the Head of Academic Unit a change to timetabled programme sessions.

8. Where the case is being considered under the criminal process, the Head of Student Progress Service reserves the right to place the Disciplinary Investigation on hold until the criminal investigation or judicial proceedings have come to a conclusion, in accordance with the University Student Disciplinary Procedure.

9. Where the conclusion of the criminal investigation/judicial proceedings result in an acquittal, full consideration will be given to the details of the case and the needs of both students, as to whether a University disciplinary investigation should continue.

10. Information will be provided to both parties with the aim of outlining the limitations of a University investigation to manage expectations and provide a realistic timeline for action.

11. Following consideration of the case, where the Head of the Student Progress Service or nominee determines that the case is sufficiently serious the case shall be referred to the Disciplinary Convenor, who shall determine the arrangements for a Student Disciplinary Committee, in accordance with the Student Disciplinary Procedure.
12. Where the Head of the Student Progress Service or nominee determines that the case will not be referred to a Student Disciplinary Committee, the outcome, including appropriate advice and/or sanctions, will be communicated to the Responder via email. The Reporter will be informed that the investigation has taken place and the case is closed.

**Investigation by Student Disciplinary Committee (Level 3 of the Student Disciplinary Procedure):**

1. The Responder will be informed that the case has been referred to a Student Disciplinary Committee and provided with relevant details of the hearing, including that they are able to attend with a friend/supporter. The Responder will be given the opportunity to submit a statement to the Disciplinary Committee in advance of the Hearing. They will be apprised of and permitted to respond to any new information that was obtained as part of the investigation and which may form part of the case file presented to the Student Disciplinary Committee.

2. The Reporter will be informed that the case has been referred to a Student Disciplinary Committee and given the opportunity to either attend the hearing in person (with a friend/supporter) or submit a statement, referencing what impact the misconduct has had, to the Disciplinary Committee for consideration. Where the reporter chooses to attend the Hearing the Chair of the Disciplinary Committee, will arrange to make proportionate adjustments to enable the Reporter to provide their testimony via Skype if they so wish and be provided with a separate waiting room.

3. In accordance with the Student Disciplinary Procedure, the Reporter remains a witness and as such is not usually privy to any statement submitted by the Responder. However, where a Reporter chooses to attend a Disciplinary Hearing, consideration will be given as to whether the statement provided by the Responder is made available to them.

4. Both parties will be invited to disclose any disabilities which may impact on their ability to interact with the Student Disciplinary Hearing.

5. The Disciplinary Committee will receive all documentation pertaining to the case in advance of the Disciplinary Hearing, including any witness statements which have been submitted.

6. During the Hearing the Disciplinary Committee will clearly articulate the allegation and give the Responder and Reporter (if they choose to attend) the opportunity to present their version of events and answer questions.

7. The Reporter will be given the opportunity to provide an impact statement before the deliberation by the Student Disciplinary Committee.

8. The Responder will be given the opportunity to provide any personal mitigating circumstances in advance of the Disciplinary Committee concluding the case.

9. All available sanctions must be considered by the Disciplinary Committee when reaching an outcome and articulated in their Statement of Reasons.

10. The Decision of the Disciplinary Committee will be disclosed to the Responder following the deliberation process. This will be followed up by a formal letter and Statement of Reasons from the Chair of the Disciplinary Committee.

11. The Reporter will be informed that the case has been concluded and whether evidence of misconduct has been established, whether the Responder will remain on Campus but not disclosing the details of any sanctions imposed.

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2 Where the statement of the Responder contains personal mitigation or detail not relevant to the case, a summary as it pertains to the question of misconduct, will be provided in place of the full statement.
Confidentiality

All information provided to the Academic School/Service, Student Progress Service, Academic Registrar, Pro-Vice-Chancellor, or to other officers dealing with the matter in the course of an investigation of an allegation of misconduct, shall be treated as confidential, subject to the need to divulge information to investigate a case and any requirements of the Data Protection legislation. It is equally important that the Subject of the Investigation, also respects the need for confidentiality throughout the disciplinary process. Where confidentiality is breached this may be deemed a further act of misconduct under the University’s Disciplinary procedures.

Relevant members of staff will be informed of the outcome in confidence. Senior members of staff may also receive a copy of the outcome in confidence, in order for the University to learn/act on issues identified from a disciplinary investigation.
Appendix I

Examples/definitions of inappropriate behaviour which the University would investigate as misconduct, which fall within the categories of sexual misconduct, harassment and hate crime, together with an indication of possible sanctions.

N.B. The list that follows should not be considered to be exclusive, in cases where an alleged act of misconduct does not fit within one of the prescribed categories, the Head of the Student Progress Service and/or the Disciplinary Convenor will exercise their discretion to determine under what Level of the Student Disciplinary Procedure the case will fall.

**Sexual Misconduct - Involving contact**

<table>
<thead>
<tr>
<th>Definition of Misconduct</th>
<th>Indicative Level of procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kissing without consent (covers a range of offences which vary in severity and may therefore vary in sanction – e.g. the act of forcefully kissing another on the lips is likely to be subject to a higher penalty than the act of lightly kissing another on the back of the hand).</td>
<td>Level 2</td>
</tr>
<tr>
<td>Inappropriate touching, in what may reasonably be perceived to be a sexual manner, without consent (e.g. touching a person’s clothes, hair or body; standing too close to a person; rubbing or brushing up against them).</td>
<td>Level 2</td>
</tr>
<tr>
<td>Any physical misconduct offence that is rooted in a sexist view of women, men or any gender may be considered as a sexual misconduct offence.</td>
<td>Level 2</td>
</tr>
<tr>
<td>Attempting to engage in sexual intercourse or a sexual act without consent.</td>
<td>Level 2 or 3</td>
</tr>
<tr>
<td>Sexual intercourse or engaging in sexual acts without consent³ (sexual acts are defined as including, but not limited to, cunnilingus, fellatio and masturbation).</td>
<td>Level 3</td>
</tr>
<tr>
<td>Any physical or sexual misconduct offence, where there is or was an intimate relationship between the responder and the reporter, may be considered as an incident of domestic violence and subject to an increased penalty.</td>
<td>Level 3</td>
</tr>
</tbody>
</table>

**Sexual Misconduct - Involving no contact**

<table>
<thead>
<tr>
<th>Definition of Misconduct</th>
<th>Indicative Level of procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Making unwanted remarks that may reasonably be perceived to be of a sexual nature (e.g. asking personal questions about sexual matters; making sexual comments about a person's body; telling sexual jokes or stories; making sexual comments or innuendo).</td>
<td>Level 2</td>
</tr>
<tr>
<td>Making unwarranted and unsolicited sex-based noises to another person (e.g. catcalling, wolf-whistling, sexual grunting or moaning).</td>
<td>Level 2</td>
</tr>
<tr>
<td>Repeated unwanted and unsolicited contact of a sexual nature with another person, in person or by telephone</td>
<td>Level 2 or 3</td>
</tr>
<tr>
<td>Any abusive behaviour misconduct offence where there is, or was, an intimate relationship between the perpetrator and the victim may be considered as an incident of domestic abuse and subject to an increased penalty</td>
<td>Level 2 or 3</td>
</tr>
<tr>
<td>Sharing or creating private sexual materials (e.g. those made of an individual with the understanding that such material would not be shared) such as videos and photographs in physical spaces.</td>
<td>Level 3</td>
</tr>
<tr>
<td>Sharing or creating public sexual materials (i.e. those pornographic materials that are widely available via media outlets) in physical spaces with the intention to sexually harass and/or incite gender-based violence.</td>
<td>Level 3</td>
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³ The University adopts the legal definition of sexual consent: a person consents, if they agree by choice and has the freedom and capacity to make that choice.
### Sexual Misconduct – Online or digital offences

<table>
<thead>
<tr>
<th>Definition of Misconduct</th>
<th>Indicative Level of procedure</th>
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</thead>
<tbody>
<tr>
<td>Storing or viewing inappropriate material on University IT equipment, as covered by the University Policy on the Use of IT Facilities (<a href="https://www.ncl.ac.uk/itservice/rules/">https://www.ncl.ac.uk/itservice/rules/</a>)</td>
<td>Level 2</td>
</tr>
<tr>
<td>Repeated, unwanted and unsolicited contact of a sexual nature with another person by email, text message, social media or in any online or digital space (n.b. &quot;repeated contact&quot; in an online space constitutes repeated unsolicited contact in one digital platform, or multiple unwanted contacts in numerous digital platforms).</td>
<td>Level 2</td>
</tr>
<tr>
<td>Sharing or creating private sexual materials (i.e. those made of an individual with the understanding that such material would not be shared) online or in digital spaces.</td>
<td>Level 3</td>
</tr>
<tr>
<td>Sharing or creating public sexual materials (i.e. those pornographic materials that are widely available via media outlets) online or in digital spaces with the intention to sexually harass and/or incite gender-based violence.</td>
<td>Level 3</td>
</tr>
<tr>
<td>Inappropriately showing sexual organs to another person or inappropriately allowing sexual organs to be seen, online or in digital spaces.</td>
<td>Level 3</td>
</tr>
<tr>
<td>Active complicity in any of the above online or digital offences (n.b. active complicity implies active promotion of the offence and does not cover inaction or failing to prevent an offence).</td>
<td>Level 2 or 3</td>
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### Abusive Behaviour

<table>
<thead>
<tr>
<th>Definition of Misconduct</th>
<th>Indicative Level of procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Use of inappropriate language</td>
<td>Level 2</td>
</tr>
<tr>
<td>Use of inappropriate verbal or non-verbal behaviour (e.g. shouting gesturing) in a way that intimidates others</td>
<td>Level 2</td>
</tr>
<tr>
<td>Repeated unwanted and unsolicited contact with another person in person or by telephone</td>
<td>Level 2</td>
</tr>
<tr>
<td>Repeated unwanted and unsolicited contact with another person by email, text message, social media or in any online or digital space (n.b. “repeated contact” in an online space constitutes repeated unsolicited contact in one digital platform, or multiple unwanted contacts in numerous digital platforms).</td>
<td>Level 2</td>
</tr>
<tr>
<td>Following another person unwantedly in physical spaces such as on campus, to their home, or other physical locations.</td>
<td>Level 2 or 3</td>
</tr>
<tr>
<td>Abusive comments relating to an individual’s gender, sexual orientation, religion or belief, race, pregnancy/maternity, marriage/civil partnership, gender reassignment, disability or age.</td>
<td>Level 2 or 3</td>
</tr>
<tr>
<td>Threats to cause harm (physical, emotional, reputational) to another person</td>
<td>Level 2 or 3</td>
</tr>
<tr>
<td>Acting in an intimidating or hostile manner.</td>
<td>Level 3</td>
</tr>
<tr>
<td>Intentionally causing another person to perceive a physical threat (e.g. brandishing a knife or other weapon)</td>
<td>Level 3</td>
</tr>
</tbody>
</table>