

# **Sexual Misconduct Policy and Procedure in relation to Learners**

*Integrity • Valuing Others*

### **Our Mission**

Raising Aspirations, Unlocking Potential, Advancing Futures

### **Our Values**

Excellence, Passion, Team Work, Integrity, Innovation,  
Sustainability, Valuing Others and Supportiveness

### **Sparsholt College Group**

The Sparsholt College Group (the College Group) includes Sparsholt College, Andover College, University Centre Sparsholt, Sparsholt College Services, Westley Enterprises and Andover Town Football Club. College Group policies apply to each part of the group unless specified otherwise.

The *Sexual Misconduct Policy & Procedure in relation to Learners* was approved by the Board of Governors in July 2021.

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## Sexual Misconduct Policy and Procedure in relation to Learners

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## **Sexual Misconduct Policy and Procedure in relation to Learners**

### **1 Policy Statement**

- 1.1 The College has a firm commitment to equality of opportunity and believes that every learner has the right to study and work in an environment free from sexual misconduct.
- 1.2 The College (including Sparsholt College, Andover College and University Centre Sparsholt) aims to provide a learning environment which will enable learners to fulfil their personal potential. This can only be achieved where learners feel safe and secure. Staff and learners both have an important role to play in creating an environment where sexual misconduct is unacceptable.
- 1.3 The College accepts that such an environment cannot be created or sustained if, individually or collectively, learners are subject to sexual misconduct. Learners who feel persecuted, vulnerable and powerless will not be able to study successfully.
- 1.4 People in positions of trust and authority, and those with a pastoral role, have a particular obligation to ensure that they do not use their power to create an unsafe environment for learners of the College. Such people should be aware that genuine authority is based on respect and commitment and that demeaning and devaluing people is not an effective leadership style. This obligation is particularly important for members of Academic staff in their relationship of trust and care of learners.
- 1.5 There is a range of options for resolving complaints involving allegations of sexual misconduct, from informal approaches through to the use of the formal complaint procedure (involving an investigation based on evidence gathered from all parties). Wherever possible the route taken should be the complainant's choice, but the College also has a duty of care as employer and service provider and will take action to fulfil this where necessary. The College is committed to investigating all allegations of sexual misconduct and take all matters relating to this seriously.
- 1.6 A learner who is found to have been a victim of sexual misconduct by a staff member, learner or third party of the College will have the support of both senior staff and the Wellbeing Team in putting a stop to the alleged offences. Acts of sexual misconduct which occur off campus may fall within this procedure.
- 1.7 Allegations of sexual misconduct will be taken very seriously and dealt with promptly and sensitively. Confidentiality, where possible, will be maintained between the complainant and the person they contact informally about any allegation and also during investigation of formal complaints, in order to respect the privacy of all parties. There may be times when this is not possible, and in these situations the College will undertake to restrict to a minimum the number of people informed, whilst complying with its statutory duties. The College will ensure that all communications are kept to a minimum and on a "need to know" basis.

It may be that the complainant alleges sexual misconduct and does not wish for the information to go any further. The College will not take further action without the consent of the individual concerned, where possible, unless the allegation is a safeguarding concern which requires immediate action.

- 1.8 The College regards sexual misconduct as a serious matter. Where serious allegations are proved by a formal investigation, disciplinary action may be taken against the perpetrator.
- 1.9 It is especially important that a person in authority who is, or has been, the subject of a complaint under these procedures does not use their legitimate authority to victimise a complainant. Such victimisation will be treated as bullying or harassment. If a person in authority initiates grievance or disciplinary proceedings against an individual who has made a complaint against them under this Code, they will be required to show that the action being taken is not victimisation. The onus of proof will be on the person in authority to show (to those considering the disciplinary or grievance case) that the action taken is reasonable in the circumstances of the case. As long as that can be established, the disciplinary or grievance proceedings may proceed in the normal manner.
- 1.10 Where a formal complaint is found on investigation to be based on allegation(s) made maliciously and/or on knowingly false information, the complainant may be subject to the relevant disciplinary procedure.
- 1.11 Nothing in this Code will prevent any member of the College community from exercising their legal rights.
- 1.12 **Scope of the Policy:**
- This Code applies to all members of the student College community, including Further Education and Higher Education.
  - Learners on placement may also be covered in the scope of the Sexual Misconduct policy of the organisation in which they are working/studying.
  - The College will consider the most appropriate course of action in cases involving individuals who are not staff or learners of the College.
  - Some employers will be members of professional bodies or organisations and learners may prefer to raise an incident with the professional body. The college will provide guidance and support to the learner to raise an incident. Sparsholt may raise an incident with a professional body if they believe it to be appropriate.
- 1.13 Assistance will be given to staff or learners who need language support or support for a disability under any part of this policy - as complainant, alleged harasser or witness.
- 1.14 Sexual misconduct can take many forms and these are listed in section 2.
- 1.15 The effects of sexual misconduct are explained in section 4.
- 1.16 The procedure to follow if you feel you have been a victim of sexual misconduct is outlined in section 6 of this document.

## Appendix 1

### 2 What is Sexual Misconduct?

2.1 In the context of this policy, sexual misconduct includes reference to sexual offences under the Sexual Offences Act 2003:

- **Rape** – a person commits an offence if they intentionally penetrates the vagina, anus or mouth of another person with their penis and that the other individual does not consent to the penetration
- **Assault by Penetration** – a person commits an offence if they intentionally penetrates the vagina or anus of another person with part of their body or anything else, the penetration is sexual, the other individual does not consent to the penetration and the alleged perpetrator does not reasonably believe that the other person consents
- **Sexual Assault** – a person commits an offence of sexual assault if they intentionally touch another person in a sexual manner and that they do not reasonably believe that the other individual consents.
- **Sexual Harassment** involves any unwanted conduct of a sexual nature, which violates a person's dignity, and/ or makes them feel intimidated, degraded or humiliated and/ or creates a hostile, offensive or sexualised environment. Sexual harassment may occur between members of the same sex or of the opposite sex. It may be directed at an individual or a group.

2.2 In addition to the behaviour referred to in 2.1 above, sexual harassment can include:

- a) Sexual comments, such as: telling sexual stories, making lewd comments, making sexual remarks about clothes and appearance and calling someone sexualised names;
- b) Sexual 'jokes' or taunting;
- c) Physical behaviour, such as: deliberately brushing against someone, interfering with someone's clothes and displaying pictures, photos or drawings of a sexual nature: and
- d) Online sexual harassment, which might include: non-consensual sharing of sexual images and videos and sharing sexual images and videos (sexting); inappropriate sexual comments on social media; exploitation; coercion and threats. Online sexual harassment may be standalone, or part of a wider pattern of sexual harassment and/or sexual violence.

2.3 Sexual harassment creates an atmosphere that, if not challenged, can normalise inappropriate behaviours and provide an environment that may lead to sexual violence.

2.4 It is also unlawful to treat a learner or staff member less favourably because they either submit to or reject sexual harassment.

2.5 Sexual harassment and sexual violence exist on a continuum and may overlap; all activities which are potentially criminal in nature must be challenged. Sexual violence refers to sexual offences under the Sexual Offences Act (2003), which includes rape, assault by penetration and sexual assault.

### **3 What is consent?**

- 3.1 Consent is the agreement to participate in a sexual act where the individual has both the freedom and capacity to make that decision. Consent cannot be assumed on the basis of a previous sexual experience or previously given consent, and consent may be withdrawn at any time.
- 3.2 *Freedom to consent:* For consent to be present, the individual has to freely engage in a sexual act. Consent is not present when submission by an unwilling participant results from the exploitation of power, or coercion or force, regardless of whether there is verbal or physical resistance.
- 3.3 *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
- 3.4 *Capacity to consent:* 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.
- 3.5 *Alcohol and/or Drug Use:* 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 activity.
- 3.6 Failure to obtain consent prior to sexual activity by either removing freedom to consent or when an individual lacks the capacity to consent constitutes Sexual Misconduct.

## Appendix 2

### 4 Effects of Sexual Misconduct

- 4.1 People may be afraid to report incidents of sexual misconduct because of the fear of reprisal.
- 4.2 Reporting an incident requires courage and determination. Those who have suffered who have been affected may feel:
  - a. A lack of confidence;
  - b. Unable to deal with the situation;
  - c. Isolated and stressed;
  - d. Traumatized and/or may unreasonably blame themselves;
  - e. Depressed and/or physically ill.
- 4.3 Sexual misconduct affects people's ability to undertake their studies. It can also affect their performance, health and the quality of their life. The feeling of being unable to deal with the situation may be made worse when the perpetrator is, or is perceived to be, in a position of power in relation to the victim. People may also fear that their own particular vulnerabilities, e.g. a history of mental illness, may undermine their case. All complaints of Sexual Misconduct made by learners should be taken equally seriously.
- 4.4 It is also recognised that, where allegations of sexual misconduct are made maliciously against someone, or they are made on knowingly false information, the alleged perpetrator may also be affected in the manner described above.

### 5 Legislation

- 5.1 Individuals are protected from sexual misconduct under the Equality Act 2010. Please note the Equality Act 2010 has consolidated preceding discrimination legislation into a single Act and therefore is the prevailing legislation.

## **Appendix 3**

### **6 Procedure for reporting and dealing with complaints of sexual misconduct**

#### **6.1 Introduction**

The procedure should aim to investigate such grievances to establish whether sexual misconduct has occurred and make recommendations for action where necessary. Such action could include disciplinary action, in which case the College will refer to the relevant stage of the College's Learner Conduct Policy. In some cases, the College may contact and engage with the Police in order to investigate alleged sexual misconduct.

If an allegation is made that a child has been harmed by a person in a position of trust (i.e. a member of staff), the Local Authority Designated Officer (LADO) must be contacted before any investigation starts.

#### **6.2 Confidentiality**

Confidentiality, where possible, will be maintained between the learner and the person compiling the report of the incident. In the event that allegations of sexual misconduct are raised, there may be times when this is not possible, and in these situations the College will undertake to restrict to a minimum the number of people informed, whilst complying with its statutory duties. The College will ensure that all communications are kept to a minimum and on a "need to know" basis following the requirements of the College's safeguarding policy.

It may be that the learner alleges sexual misconduct and does not wish for the information to go any further. The College will not, where possible, take further action without the consent of the individual concerned unless the allegation indicates that it involves a criminal offence or serious misconduct, or there is an unacceptable risk to the complainant, another person, or to the College itself which requires immediate action (referral will be made to either the LADO or Police as appropriate).

#### **6.3 Anonymity**

Where an allegation of sexual violence or sexual harassment is progressing through the criminal justice system, it is important to be aware of anonymity, witness support and the criminal process so that appropriate support is in place. As a College, it is important that we do all we reasonably can to protect the anonymity of any learner involved in any report.

#### **6.4 Keeping records of incidents**

Anyone who believes they have been subjected to sexual misconduct should make a record of the details of the incidents as soon afterwards as possible. For example: dates; times; places; the name of the person involved; what actually happened; how

the person felt at the time; the names of any witnesses; action taken at the time; and whether the incident was reported to a relevant member of staff.

## 6.5 Stage 1 – How to Report an Incident of Sexual Misconduct - Guidance for Learners

- a. The College does not condone or tolerate any form of sexual misconduct. The College takes any form of inappropriate behaviour toward learners very seriously. All allegations of sexual misconduct towards any learner will be fully investigated under College procedures.
- b. The College encourages learners to raise concerns using one of the following methods:
  - i. by contacting their progress coach.
  - ii. by contacting the wellbeing team.
  - iii. By contacting a residential warden (residential learners);
  - iv. by raising the issue with any member of College staff.
- c. Any issues raised regarding sexual misconduct will be taken very seriously and dealt with promptly and sensitively. The College will try a variety of procedures to ensure that the matter is reconciled and resolved and that the learner feels confident that the matter has been dealt with effectively.
- d. The College will put in place support for learners who feel they may have been a victim of sexual misconduct through the Wellbeing team and, where appropriate, external agencies.

## 6.6 Stage 2 – Responding to the report

- a) The initial response to a report from a learner is important. It is essential that all victims are reassured that they are being taken seriously and will be supported. The victim should never be under the impression that they are creating a problem by reporting an incident.
- b) Staff should follow the process outlined in the College's Safeguarding Policy. The key points include:
  - i. Not promising confidentiality at the initial stage as it is very likely the concern will be shared further with a relevant individual (DSL/DDSL) or agency. However, staff should only share the report with those people that are necessary.
  - ii. Being supportive and respectful and recognizing the learner has reported the incident to someone they trust.
  - iii. Listening carefully and being non-judgmental. Do not ask leading questions, only prompt with open questions such as where and when.
  - iv. Wait until the end of the report before writing a thorough summary so that full attention can be given to the learner.

- v. Only recording the facts as they are presented.
- vi. If an incident contains an online element, it is important staff do not view or forward illegal images of the learner.
- vii. Manage the report with two members of staff where possible although there may be times when this is not so.
- viii. Inform the DSL/DDSL as soon as is practically possible.

## 6.7 Stage 2 – Risk Assessment

Depending on the nature of the report/incident, the DSL/DDSL will be required to undertake an immediate risk assessment. This should consider the victim the alleged perpetrator and other individuals in the college. The DSL/DDSL should engage with relevant agencies/specialist services whose detailed assessments should be used to inform the College's approach.

## 6.8 Action following a report

a) The DSL/DDSL will consider a range of factors before determining the appropriate next steps:

- The wishes of the victim in terms of how they want to proceed.
- The nature of the alleged incident(s).
- The ages of the individuals concerned.
- The developmental stages of the learners involved.
- Any power imbalance between the learners (i.e. age, does the victim have a learning disability or difficulty).
- Is the incident a one-off or a pattern of behaviour?
- Are there ongoing risks to victim or others within the College.

b) Once these factors have been considered, the College will have a range of options to consider when managing the report.

- Manage internally – it may be deemed that the incident can be managed using informal or formal (Conduct Policy) internal processes. If this is the chosen option, decisions and outcomes must be recorded on ProMonitor.
- Early Help – it may be deemed that learners involved may benefit from early help. A multi-agency approach will work best alongside relevant College policies, preventative education, and engagement with parents and carers (where appropriate).
- Referrals to Social Care – where a learner is under-18 or in receipt of an EHCP has been harmed or is at risk of harm or is in immediate danger, the College should make a referral to the local children's social care. Unless there are compelling reasons not to, parents or carers should be informed. The College will work in conjunction with the relevant agencies but will not wait for an investigation to take place before initiating its own risk assessment (see 5.6).
- Referral to the nominated next of kin or nominated contact in a time of crisis for Higher Education Students.

- Report to the Police – Any report to the police is often made in parallel with a referral to children’s social care. The DSL/DDSL are expected to be clear on the process for referrals and abide by that process. Where a report is referred, the College will consult with the police and agree what information can be disclosed to staff and others.

## 6.9 The Criminal Process

- a) It is important that the College continues to work with the learner’s social care (where appropriate) and the police whilst an investigation is taking place. If the alleged perpetrator returns to College on police bail with conditions, advice from the police will be sought to help the College manage its safeguarding responsibilities. An important consideration will be to ensure that the victim can continue in their normal routine including accessing their studies at College.
- b) There may be times when there is a delay in the criminal process including the investigation. The College will not wait for these outcomes before it undertakes its own risk assessment to keep the victim, the alleged perpetrator and other individuals safe. The College will ensure that any actions it takes does not jeopardise the police investigation by maintaining clear communication with them throughout the process.
- c) If the perpetrator is convicted or receives a caution for the incident, the College must update its risk assessment with appropriate processes to safeguard its community. Where appropriate, consideration should be given to the Conduct Policy and relevant sanctions. If the perpetrator remains at College, it will be made clear as to the College’s expectations including reference to actions identified in the risk assessment.

## 6.10 Supporting the Victim

Throughout the entire process, a key underlining principle must be ensuring sufficient support is in place for the victim. Depending upon the nature of the incident, this may include support from their progress coach or wellbeing team. Additionally, it may be appropriate to offer other levels of support including using outside agencies. It is important that advice is taken from the DSL/DDSL so that the needs of the victim is always being considered.

## 6.11 Supporting the alleged perpetrator

The College must consider, on a case-by-case basis, the support that is required for the alleged perpetrator. Where appropriate, the College may work with professionals to consider and understand the behaviour that may have occurred and what support may be put in place. In the case of the alleged perpetrator relocating to a different College, the DSL/DDSL must ensure the new educational institution is made aware of any ongoing support needs and, where appropriate, any potential risks to others within that setting.

## **6.12 Malicious allegations and false statements**

Unfounded allegations of sexual misconduct for malicious reasons will not be tolerated by the College. Any such cases will be investigated and dealt with under the College Conduct Policy.

Where a witness is found to have deliberately misled an investigation, the College will treat this as a serious conduct issue.

## **6.13 Victimization**

Learners are protected from victimisation because of bringing a complaint under the sexual misconduct policy. If a learner feels that they have been victimised following a complaint of sexual misconduct they should raise their concerns immediately to a member of staff. Where it is found that victimisation has occurred, this will be treated as a conduct issue and dealt with according to the policy.

## **6.14 General**

The Sexual Misconduct Policy should not be read in isolation, but cross-referenced with all relevant College policies.

