

Sexual misconduct policy

Content warning:

This policy relates to sexual misconduct and may be triggering for some individuals to read. If you would prefer to discuss this policy or need support, please contact your HR & OD Business Partner or a Freedom to Speak Up Guardian.

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Sexual misconduct policy

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1. Purpose

- 1.1 NHS England is a signatory to the [sexual safety in healthcare organisational charter and supporting principles](#). NHS England is committed to taking a zero-tolerance approach to sexual misconduct in the workplace to create a culture at work where everybody feels safe.
- 1.2 [The new Worker Protection \(Amendment of Equality Act 2010\) Act 2023](#) creates a duty on employers to take reasonable steps to prevent sexual harassment in the workplace.
- 1.3 This policy:
 - outlines our approach to tackling sexual misconduct and dealing with perpetrators
 - describes what sexual misconduct is and how to report it
 - adopts and signposts to processes in other NHS England employment policies such as [respect at work](#) (including bullying and harassment); [social media](#); [grievance](#); [disciplinary](#); and [managing concerns](#)
 - provides a summary of support available to employees – see section 12 and Appendix 1
- 1.4 NHS England acknowledges that anyone can be a victim of sexual misconduct. However, it often occurs where there is a power imbalance and people in certain groups may be more vulnerable than others. For example, data¹ shows that more women experience sexual misconduct than men and that black, ethnic minority, disabled and LGBTQ+ people experience sexual harassment and abuse at a disproportionate rate. Intersectional harassment occurs when the harassment relates to one or more protected characteristic.

2. Scope

- 2.1 NHS England has a duty of care to protect employees from, and prevent incidents of, sexual misconduct from individuals within the physical or digital workplace. Our organisation expects all employees, contractors, secondees, agency staff, volunteers, students, interns, and casual and/or bank/temporary workers to comply with this policy.
- 2.2 Employees who are seconded or deployed to another organisation will be supported by NHS England to report sexual misconduct in accordance with this policy or a similar policy provided by the host organisation.
- 2.3 NHS England also has a duty of care to protect individuals employed by other organisations and third parties, such as suppliers or visitors, from sexual misconduct (as defined in section 3) from any individual in the workplace.

¹ [2020 Sexual Harassment Survey \(publishing.service.gov.uk\)](#)

- 2.4 NHS England expects any third-party organisation that deploys employees or representatives to work in or with NHS England to engage with any investigation relating to sexual misconduct and take appropriate action and/or provide appropriate support as a result of findings in relation to the employee or representative.
- 2.5 Sexual misconduct can take place at any time and any place. It can happen at any location, including the work place or work place events, for example, at learning events, while travelling with colleagues to an event or in other spaces that may be both physical and virtual including at functions and social events. Incidents might take place on NHS England premises or elsewhere, such as virtual or physical environments that may not always be a designated workplace. Incidents which occur within these environments fall within the scope of this policy.
- 2.6 If employees are subject to sexual misconduct from individuals not employed by NHS England, this will be taken no less seriously. In these circumstances NHS England will:
- not tolerate any conduct – on its premises or within any environment – that may be defined as sexual misconduct
 - report any allegation to their employer or representative organisation without delay, and appropriate steps will be taken to ensure the safety of those involved. This should be reported in the same way as if the alleged perpetrator was an NHS England employee (see section 5)
 - following the receipt of allegations of sexual misconduct, take action, which may involve taking management action and/or commencing an investigation. Individuals may be asked to leave NHS England premises immediately and their return may not be appropriate until the outcome of any investigation is known. This process will be co-ordinated by NHS England's Human Resources and Organisational Development (HR and OD) team.
- 2.7 If NHS England becomes aware that an employee is, or may be, perpetrating sexual misconduct, appropriate action will be taken. This may include an investigation under the organisation's [disciplinary](#) policy, or [managing concerns](#) policy if the allegations are against a doctor or dentist. This includes scenarios where the victim is not an employee.

3. Policy definitions

- 3.1 Definitions of people and roles that may be involved in a sexual misconduct report include:
- **complainant** – a person who has raised a concern of sexual misconduct. This could be an individual who has alleged they have experienced sexual misconduct, or a line manager/colleague who is reporting on their behalf. See section 5 on how to report a concern

- **alleged perpetrator** – an individual about whom a sexual misconduct report has been raised
- **witness** – a person who has witnessed an alleged instance of sexual misconduct and/or can give relevant evidence that may form part of an investigation, where indicated
- **investigator** – where an investigation is appropriate a suitably trained investigator will be appointed
- **subject matter expert** – in some cases it may be appropriate to take specialist or expert advice. This may be provided by an appropriate subject matter expert (see Appendix 3)

What sexual misconduct means

- 3.2 Sexual misconduct is uninvited, unwelcome or non-consensual behaviour of a sexual nature. It is behaviour that can reasonably be interpreted and/or perceived by an individual as sexual and which offends, embarrasses, harms, humiliates, or intimidates an individual or a group. Sexual misconduct can involve elements of harassment, violence and abuse and can be physical, verbal, or visual and via different mediums, such as through an email or a phone message.
- 3.3 Some forms of sexual misconduct may also constitute criminal offences under a range of legislation including but not limited to the Sexual Offences Act 2003 and the Protection from Harassment Act 1997. Potential criminal offences include sexual assault, rape, stalking or disclosing private sexual images to cause distress (revenge pornography). This list is not exhaustive.
- 3.4 For the purposes of this policy, commonly accepted definitions and examples of sexual misconduct are listed below (this list is not exhaustive):
- **sexual violence/sexual assault:** encompasses acts ranging from verbal harassment to forced penetration and an array of types of coercion from social pressure and intimidation to physical force or other sexual offences, such as groping and/or forced kissing, which may be criminal offences
 - **sexual harassment** is defined in the Equality Act 2010, section 26(2) and (3). It includes conduct by person A of a sexual nature that has the effect of violating person B's dignity or creating an intimidating, hostile, degrading or offensive environment for B, even if A did not intend this. Whether conduct constitutes sexual harassment will depend on both B's perception and whether it is reasonable for B to have perceived A's conduct in that way. It may also be sexual harassment by A, if A treats B less favourably because B did not submit to A's sexual advances. Some examples of sexual harassment include (this list is not exhaustive):
 - gesturing or making sexual remarks about someone's body, clothing or appearance
 - asking questions about someone's sex life

- telling sexually offensive jokes
- stalking
- voyeurism
- making sexual comments or jokes about someone's sexual orientation or gender reassignment
- displaying or sharing pornographic or sexual images, or other sexual content
- touching someone against their will

- 3.5 Sexual harassment can happen to anyone regardless of their sex or the sex of the harasser and can be carried out by individuals of any gender identity or sexual orientation. A single incident is enough to constitute sexual harassment. Someone may be sexually harassed even if the conduct was not directed at them but because of the environment it creates for them. It also includes treating someone less favourably because they have submitted to or rejected sexual harassment in the past.
- 3.6 What some people might consider as joking, 'banter' or part of their workplace culture is still sexual misconduct if:
- the behaviour is of a sexual nature
 - it is uninvited and/or it's unwanted
 - it violates someone's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them
- 3.7 If you are unsure what constitutes sexual misconduct, but you feel you have experienced or witnessed something you think may be in the scope of this policy, you are encouraged to report it as potential sexual misconduct.

4. Initial response to a disclosure of sexual misconduct

- 4.1 A person who has experienced or witnessed sexual misconduct may choose to tell anyone in the workplace about their experience – a line manager, colleague, or person in a position of trust. This is referred to as a 'disclosure'. It is important that the initial response to a disclosure is conducted appropriately and sensitively. All employees need to be aware of these requirements. Please see the information below on how to handle a disclosure sensitively. Colleagues may choose to formally report an instance of sexual misconduct without having previously disclosed it and the same steps should be followed in these cases.
- 4.2 In the event of a disclosure of sexual misconduct the following steps should be followed (see also the flowchart in Appendix 2).

The employee who receives the disclosure should:

- **Ensure the employee is safe:**
 - if they are unsafe or you cannot be assured they are safe and you believe their life may be in danger, take steps to immediately call the police (if not already informed) and seek immediate advice from your HR and OD Business Partner
 - where there are any safeguarding concerns (for example if there is a concern that someone is being co-coerced or controlled or where there are mental capacity concerns), you or an HR and OD Business Partner may contact NHS England's Safeguarding team (england.safeguarding@nhs.net) to request an urgent conversation about staff safeguarding; please do not add any further specific details to the email and put "URGENT: STAFF SAFEGUARDING" in the subject line. In these circumstances please also see NHS England's [safeguarding policy](#)
 - if they are unsafe or you believe they are unsafe, once you have taken the steps outlined above, you must inform the relevant HR and OD Business Partner or an alternative colleague within HR and OD at the earliest opportunity to ensure support is provided as soon as possible
 - consider any action that you or another appropriate person could take to help ensure the immediate safety of the complainant. For example, if the instance occurred in an NHS England office, consider and discuss with the employee if an alternative work location would be appropriate – such as an alternative office base or agree a temporary measure of full-time remote working. If the alleged perpetrator is a visitor and remains in the office, you may need to contact security (if available) and you must contact your HR and OD Business Partner for advice to co-ordinate escorting the alleged perpetrator from the building
- **signpost colleagues to this policy and:**
 - refer them to the support described in Appendix 1
 - encourage them to consider reporting their concern as set out in section 5, if it has not already been reported
 - make a note as soon as you are able to of any details of the disclosure, ensuring confidentiality is maintained. The complainant should be notified that you will make a note of the disclosure including the date and time the disclosure was made, who it was made to, what was disclosed (as much information as possible) and what immediate actions were taken
 - if the complainant does not want to take the disclosure any further, you must respect their wishes. However, if you need support or advice following the disclosure you could speak to someone in confidence, such as your HR & OD Business Partner or your own line manager

- **The employee who receives a disclosure must also follow** the guidance in Appendix 5 (this includes instances where the first disclosure is also a formal report)

5. Reporting sexual misconduct

How to report sexual misconduct

- 5.1 NHS England strongly encourages all employees to report any instances of sexual misconduct. Early reporting is encouraged. However, there may be times when a complainant does not want to or feels unable to make a report soon after an alleged incident(s) of sexual misconduct. The barriers to early reporting are understood and acknowledged and a delayed decision to make a report will be respected and not treated with suspicion. There is no time limit for reports of sexual misconduct to be received.
- 5.2 There are 3 routes through which sexual misconduct may be reported to commence processes under this policy (please see section 14 for further details of specific roles and their responsibilities):
 - [HR and OD Business Partner](#) – a complainant or witness may contact their HR and OD Business Partner directly, or they may ask the person they have disclosed to, for example their line manager, to do this for them
 - [Online sexual misconduct reporting form](#) (with option for anonymous reporting) – a complainant or witness may complete this form themselves, or they may ask the person they have disclosed to, or a supporter, such as a Trade Union supporter, line manager or domestic abuse and sexual violence ally to assist them in completing it
 - [Freedom To Speak Up \(FTSU\) Guardian](#) – a complainant or witness may seek the assistance of a FTSU Guardian in reporting an incident

All reports should follow the principles in Appendix 5 and ask the questions in Appendix 6.

Reports may also be made to a line manager or senior colleague; however, to instigate a formal report one of the three routes above will need to be completed, and a line manager and senior colleague can action these on someone's behalf.

- 5.3 All reports will be taken seriously (including those that are made anonymously), regardless of the route taken. Please see section 7 for how sexual misconduct reports are managed.

Raising a report of sexual misconduct anonymously

- 5.4 Individuals are able and encouraged to report an incident anonymously through our online reporting form if they do not feel comfortable providing a full report. However, it is preferable for individuals making a report to identify themselves, as this makes it more likely that reports can be fully and fairly investigated and/or resolved and

contributes to creating an open and trusting culture. It also means the colleague reporting the sexual misconduct can be kept informed, where appropriate, as to the progress of their report. However, it is recognised this is not always possible. If a report is made anonymously, the steps in this policy must be followed as closely as possible based on the information provided in the disclosure.

Sexual misconduct from service users, members of the public or third parties

5.5 Employees may experience sexual misconduct from service users, members of the public or third parties. Any instance of work-related sexual misconduct should be reported in line with this policy regardless of who the alleged perpetrator is.

6. Reporting sexual misconduct as a witness

- 6.1 If you witness what you think may be sexual misconduct in the workplace, you should consider the following actions:
- offer support to the individual targeted or affected by the behaviour you have witnessed, and/or let them know you feel the behaviour you witnessed is unacceptable, if it is safe to do so
 - wherever possible, report the behaviour using the mechanisms outlined above (in section 5.2)
- 6.2 Reporting sexual misconduct is vital to ensure that NHS England can protect its employees and meet its duty to prevent sexual harassment in the workplace. Before you report the behaviour, you may wish to approach the individual who has been subjected to the sexual misconduct, so they are aware of your intention to report it. Whether they consent or not, you should name the person who has subjected the individual to the behaviour. Witnesses of sexual misconduct can report it anonymously using the online form, however reporting using identifiable routes is always encouraged.

7. Managing sexual misconduct reports

- 7.1 NHS England will ensure that any allegations of potential sexual misconduct are managed swiftly and in line with the appropriate organisational policies and procedures. Experiencing sexual misconduct is extremely distressing and can be life changing. It's also distressing and a serious matter for an employee to be accused of sexual misconduct. NHS England will not presume the accusation is either true or false prior to a fair and thorough investigation.
- 7.2 Sexual misconduct cases will sometimes only be evidenced by the complainant's word against that of the alleged perpetrator. This should not prevent the complainant from speaking up. NHS England commits to treat all complaints seriously and fairly.

7.3 Investigators of allegations of sexual misconduct will take particular care about the relevance and intrusiveness of questions required to investigate these matters. This includes taking great care when asking questions of a personal nature. Greater flexibility may be applied to the complainant's right to be accompanied to meetings related to investigating the complaint, particularly by a friend or family member (in a supportive capacity), in addition to the usual right to be accompanied by a trade union representative or work colleague.

Role of a Screening Advisory Assessment Meeting (SAAM)

7.4 HR and OD will undertake an immediate screening of a report by establishing a screening advisory assessment meeting (SAAM) that may involve:

- the individual (or team) with whom the report has been raised
- an individual(s) with appropriate subject matter expertise
- a member of the HR and OD team who has undertaken specialist sexual misconduct training and/or the relevant HR and OD Business Partner for that area
- safeguarding colleagues who will advise on involving a Person in Position of Trust (PIPOT) (adult abuse) or a Local Authority Designated Officer (LADO) (child abuse). More detailed definitions on the roles of PIPOT and LADO are in section 4 of the safeguarding policy
- any other relevant individual deemed able to provide advice

See Appendix 4/4a for more details about the role and purpose of SAAMs.

Next steps following a Screening Advisory Assessment Meeting

7.5 Following the screening assessment, the following actions, which are not mutually exclusive, may be considered as next steps:

- further fact finding
- consideration of the alleged conduct under the terms of NHS England's [disciplinary policy](#). Alleged sexual misconduct will generally be considered as serious misconduct, however in rare cases, the conduct may be considered under the 'minor misconduct' processes outlined in that. This means referring the matter to the line manager, which may involve 'informal action' under that policy. Other policies, such as [respect at work](#) (including bullying and harassment) may also help inform next steps
- if a sexual misconduct report has been raised as a grievance, the [grievance policy](#) will be followed to consider next steps
- notifying the police and/or other relevant agencies, including the alleged perpetrator's employers if their employer is not NHS England
- if an investigation is commissioned through the [disciplinary policy](#) or [grievance policy](#) a case manager will be appointed who will ensure the process is carried out

in line with the relevant policy and process. Please see the relevant policy for details of a case manager's role

- where the alleged perpetrator is a doctor or dentist the SAAM may recommend an investigation under the Maintaining High Professional Standards framework, in which case a case manager will need to be appointed to decide whether to pursue a formal investigation under NHS England's [managing concerns](#) policy, having taken advice from Practitioner Performance Advice (PPA), the HR Director and the Medical Director

7.6 Investigations will be conducted in accordance with the relevant NHS England policy. There will be additional considerations and adjustments when the investigation is regarding sexual misconduct. These considerations and adjustments listed below apply to all investigations under the relevant NHS England policy:

- an externally sourced investigator (with the relevant skills and experience), independent of the investigating organisation (including all employees and representatives) may be appointed
- HR and OD or the commissioning manager may appoint a subject matter expert(s) to support the investigating officer and/or case manager
- greater flexibility will be applied to the complainant's right to be accompanied, particularly by a friend or family member (in a supportive capacity) in addition to the usual right to be accompanied by a trade union representative or workplace colleague
- where complainants and alleged perpetrators work together, it may be necessary to discuss temporary changes to working arrangements. It is not normal practice to move a complainant as a first step, unless they have requested this and our organisation will seek to move alleged perpetrators, wherever possible
- the complainant or individual who has reported sexual misconduct and the alleged perpetrator will be updated sensitively and independently of each other by the case manager throughout any formal process, but they will not normally be informed of the outcome or action taken where this relates to personal and/or confidential information of another employee

Other support to be given during processes

- NHS England will seek to offer a trauma informed approach (see [e-learning module](#)) to individuals who are subject to behaviour that may be sexual misconduct
- As part of our supportive approach, where concerns regarding attendance and/or capability of the complainant or an alleged perpetrator, temporary adjustments to the attendance and/or capability process will be considered by the case/ commissioning manager and/or line manager to ensure any processes can be undertaken without delay. Any adjustments should be recorded by the complainant

or the alleged perpetrator, and shared with their line manager, and their trade union representative, if appropriate, and reviewed every 2 weeks.

- 7.7 If the individual subjected to or reporting the alleged sexual misconduct does not want further action to be taken, sensitive consideration will be given. However, NHS England will determine what action it ought to take, in line with this policy, independently of the report of sexual misconduct raised. This may involve wider agencies such as local authority colleagues or police if deemed appropriate.

8. Victimisation, including when no further action is taken

- 8.1 There will be no negative consequences for individuals or teams who have made reports of sexual misconduct that are not upheld or taken forward, except in limited circumstances outlined in section 9.6.
- 8.2 NHS England does not tolerate harassment or victimisation of anyone reporting sexual misconduct and will not tolerate any attempt to persuade or force an employee to not raise their concerns. 'Victimisation' is when someone is treated less favourably as a result of being involved with a discrimination or harassment complaint and is unlawful under the Equality Act. NHS England will uphold its duty of care to ensure colleagues are fully supported when reporting sexual misconduct, whether their complaint is upheld or not.
- 8.3 Any retaliation and victimisation of an individual raising a report or acting as a witness should be reported to a line manager or HR and OD and will be addressed. This may result in action being taken under the [disciplinary policy](#).

9. Actions after an investigation

- 9.1 The outcomes will follow the relevant NHS England policy.
- 9.2 NHS England recognises that in some cases it may be appropriate to signpost perpetrators to specialist services if they genuinely want to change their behaviour – to be agreed on a case-by-case basis.
- 9.3 If a contractor or agency worker is found to be in breach of this policy and other relevant policies such as the grievance and/or disciplinary policies after an investigation, their contract may be terminated immediately.
- 9.4 If a secondee into NHS England is in breach of this policy, the secondment may be immediately terminated. NHS England will share details of the reason for termination with their employing organisation and will cooperate fully in an investigation of allegations that they may wish to conduct.

- 9.5 To provide assurance the matter has been addressed appropriately, NHS England may share some aspects of an investigation and/or their outcomes with the complainant. This will be considered on a case-by-case basis. Any sharing of information must be compliant with relevant data protection laws and align to NHS England's [information governance](#) policy.
- 9.6 NHS England employees who raise a report of sexual misconduct in good faith (whether founded or not) will always be supported. An employee who is found to have deliberately made false allegations of a vexatious nature may be subject to disciplinary action as outlined in the [disciplinary policy](#).

10. Support

- 10.1 Managing and supporting disclosures and reports of sexual misconduct is challenging for all parties involved. NHS England will offer trauma informed support to the complainant, alleged perpetrator and any witnesses as well as line managers and anyone else affected by the disclosure. A range of internal and external support services are available (see Appendix 1).
- 10.2 Incidents of sexual misconduct can have long-term impacts on those who directly experience them as well as their friends and family. A complainant may need adjustments to support them to fulfil their role and workload, especially while any investigation is ongoing. The complainant should have a conversation with their line manager (or nominated person, which may include an occupational health professional) to review matters such as their current working arrangements and consider whether any additional support is needed, for example, by using the flexible working or special leave policies.
- 10.3 Where concerns regarding attendance and/or capability of the complainant may be connected to a sexual misconduct incident, adjustments to the attendance and/or capability process will be considered by the individual's line manager and with their HR and OD Business Partner. Any adjustments should be recorded and reviewed every 2 weeks, documented and shared with the relevant parties such as the individual and/or their line manager and their trade union representative.
- 10.4 If sickness absence is caused by sexual misconduct at work, and where occupational sick pay reduces to half or nil pay, colleagues may be entitled to receive Injury Allowance. This tops up your income (including certain welfare benefits) to 85% of your usual pay during the absence for up to 12 months. Section 22 of [the NHS Terms and Conditions Handbook](#) provides more information about Injury Allowance.
- 10.5 It is recognised that when receiving a disclosure or complaint of sexual misconduct, it may be distressing or triggering for the individual who receives it. If this is the case, contact your HR & OD Business Partner.

11. Reporting to statutory regulators

- 11.1 NHS England reserves the right and may be obliged to report an employee holding a professional registration of any description to their relevant statutory regulator (for example, Nursing and Midwifery Council, General Medical Council, The Health and Care Professions Council, the Law Society) in accordance with their relevant professional codes of conduct.
- 11.2 The designated staff for ensuring that NHS England makes an appropriate referral will be HR and OD Business Partners. HR and OD may take advice from a range of individuals including the most senior professional of the profession within NHS England, for example, Chief Nursing Officer and/or Chief Medical Officer before making a formal referral.
- 11.3 When making a referral HR and OD will do this in accordance with NHS England's [professional registration policy](#).

12. Police involvement

- 12.1 A disclosure of sexual misconduct may allege a criminal act. In such a case, NHS England's HR and OD team will be responsible for ensuring that any allegations received that may be criminal in nature are referred to the police. Where possible a conversation with the complainant on their wish for police involvement should precede any referral. If you believe there is a danger to life, you should call the police.
- 12.2 The HR and OD team routinely works with the Safeguarding team using our [safeguarding policy](#) to review each case on a case-by-case basis and consider the need of escalation to relevant authorities, including the police and referrals are made where there is concern that the allegations may constitute a criminal act. NHS England will ensure that matters are referred to the wider authorities such as the relevant Local Authority Designated Officer and/or the relevant local authority Safeguarding team where appropriate.
- 12.3 Where an internal investigation is taking place, NHS England's HR & OD will consult with the police at agreed intervals about concurrent investigation processes to ensure the criminal investigation/process is not prejudiced.
- 12.4 Complainants can report sexual misconduct to the police directly. They may express a wish that they do not want to prosecute, or they wish to report and think about prosecution later. These are matters that must be discussed with the police directly.

13. Confidentiality

- 13.1 Confidentiality covered by this policy will be maintained wherever possible, subject to legal and statutory safeguarding obligations and duties to protect other people. Details

of investigations and complaints must only be disclosed on a 'need to know' basis. Unauthorised disclosure of confidential information may result in disciplinary action, as may any concerns about attempts to influence or intimidate a witness.

- 13.2 NHS England does not use confidentiality or non-disclosure agreements to prevent reporting of sexual misconduct or whistleblowing.
- 13.3 Data will be collated centrally by the HR Employee Relations team and only shared on a need-to-know basis to inform the investigations and preventative actions. Some anonymised data will be shared with the Executive Group to facilitate oversight of this policy such as the number of cases, outcomes and overall summary data. This will not include personally identifiable data and will provide assurance to the Executive Group that allegations relating to sexual misconduct are being managed accordingly.
- 13.4 Confidentiality obligations apply to anyone who is involved including the alleged perpetrator, the complainant, witnesses and line managers. The matter should not be discussed with anyone else other than the investigating officer, HR and OD colleagues directly involved, and where represented, trade union representatives. This does not mean that support should not or could not be sought, acknowledging that talking about the event may help some people. However, this must be done adhering to confidentiality obligations.
- 13.5 Witnesses will be identified as early as possible and be supported on a trauma informed basis by NHS England's HR and OD team to provide a confidential statement as part of any internal process being conducted.
- 13.6 Witnesses should not be approached by anyone other than the HR and OD colleagues if they are required to provide formal evidence or a witness statement to the police and colleagues will be provided with support from a suitably trained advocate as part of the witness statement making process.

14. NHS England roles and responsibilities

Organisational responsibilities

- 14.1 NHS England is committed to improving organisational culture at every level to prevent workplace misconduct. We will do this by creating a culture that encourages and supports colleagues to openly discuss and report sexual misconduct without fear of retaliation or victimisation and protect employees from sexual misconduct and take steps to prevent it.
- 14.2 To support cultural development NHS England will take the following actions:
- ensure the Executive Group regularly reviews data relating to sexual misconduct and that lessons are learnt and changes in practice are made to improve sexual safety in the workplace

- ensure all colleagues are aware of issues relating to sexual misconduct, the sexual misconduct policy and how to deal with disclosures appropriately
- actively work to prevent sexual misconduct in the workplace
- encourage managers to ask about an individual employee's working relationships and environment within their line manager/employee relationship 1:1 meetings
- a member of NHS England's Executive Group has responsibility for sexual safety. At the time of publication this is the Chief Delivery Officer
- appoint a Domestic Abuse and Sexual Violence Lead in NHS England

To support our commitment to a safe workplace and culture all colleagues should:

- challenge inappropriate behaviour, if appropriate and it can be done safely, and report it
- promote a culture that fosters openness and transparency and does not tolerate unwanted, harmful and/or inappropriate sexual behaviours
- maintain confidentiality as far as possible unless there is a safeguarding concern that needs to be reported
- familiarise themselves with and adhere to the principles in the Sexual Safety Charter

Line managers will:

- provide appropriate support and/or signpost support to those who disclose sexual misconduct
- report an incident to HR and OD colleagues where relevant and in line with this policy
- be proactive in putting into place any reasonable adjustments including a Workplace Safety Plan if necessary
- be available to support the investigation if appropriate
- be responsible for creating a culture where employees feel safe to work and raise concerns and feel listened to
- maintain confidentiality as far as possible unless there is a safeguarding concern that needs to be reported
- provide support to an alleged perpetrator and/or signpost them to support
- be a role model for promoting equal and professional behaviours in the workplace
- be aware there may be a need to report an instance of sexual misconduct, bearing in mind confidentiality and the wishes of the complainant should it need to be discussed anonymously with HR and OD and/or Safeguarding teams.

HR and OD colleagues will:

- provide specialist advice at all stages of a complaint being raised for the complainant, line manager, alleged perpetrator and in the event of a formal

investigation, the case/ commissioning manager, the investigating officer and disciplinary panel hearing

- maintain confidentiality as far as possible unless there is a safeguarding concern that needs to be reported
- signpost colleagues to the appropriate support
- manage all information in line with the requirements of the records management policy

Freedom to Speak Up Guardians will:

- provide appropriate support and/or signpost support to those who have experienced sexual misconduct
- assist with the reporting process where appropriate
- be available to support the investigation if appropriate
- be responsible for creating a culture where employees feel safe to work and raise concerns and feel listened to

Trade Unions will:

- signpost to this policy, explain the procedures for reporting and the potential routes and outcomes, and assist with the reporting process where appropriate
- explain the options for support both internally and externally during and after the process
- provide support to their members through informal and formal processes

Individuals in a leadership position (often noted as ‘position of power’) should:

- be aware of the potential power imbalance that can increase the vulnerability of some employees
- never take advantage of their position to leverage staff for sexual favours
- ensure no colleague is subjected to inappropriate behaviours including jokes and banter
- be aware of the vulnerabilities of women and minority groups who may be at greater risk of sexual harassment. This includes individuals with protected characteristics such as but not limited to gender, race, sexuality, trans status, religion and disability which may increase the risk of experiencing sexual harassment

Executive Group members will:

- conduct regular reviews of internal data and ensure appropriate actions are taken in areas of concern
- influence organisational culture and set organisational priorities relating to sexual safety
- support the development of the leadership community to support the operation of this policy

The national safeguarding clinical leads and regional safeguarding leads will: (contact details: england.safeguarding@nhs.net)

- consider which circumstances warrant a referral in confidence to a Person in Position of Trust (PIPOT) or Local Authority Designated Officer (LADO) following any referral

A domestic abuse and sexual violence ally will:

- provide trauma informed support to employees in relation to complaints of sexual misconduct
- signpost to this policy, explain the procedures for reporting and the potential routes and outcomes, and assist with the reporting process where appropriate
- explain the options for support both internally and externally during and after the process
- maintain confidentiality as far as possible unless there is a safeguarding concern that would need to be reported

Appendices

Appendix 1 – Support

Internal support and partner organisations

Employee Assistance Programme (EAP)

A confidential service that operates 24 hours a day 7 days a week and can support you with a range of issues. For colleagues who are impacted by sexual misconduct, NHS England offers up to 8 structured counselling sessions through our employee assistance programme. You can self-refer to this service by contacting the 24/7 telephone line on 0800 028 0199 or via the Wisdom [online portal](#).

Trade Union representatives

Provide advice and support to their members when they have issues at work.

Domestic abuse and sexual violence allies (DASVAs)

These are employees who have had additional training on DASV to provide peer support to employees who are impacted by workplace sexual misconduct and/or domestic abuse. They can support colleagues to navigate internal and external support services, and advise on how to access organisational HR and OD processes and how to report an incident.

Freedom to Speak up Guardians (FTSU)

You can speak up to FTSU Guardians about anything that gets in the way of patient care or affects your working life.

Mental Health First Aiders (MHFAs)

You can access MHFAs who are able to listen and signpost to available support via The hub or via email: Nhsei.mhfas@nhs.net

Further information and services are on the [Health and Wellbeing](#) section of The hub.

External support

[ACAS](#): helpline for anyone experiencing workplace related issues including sexual harassment.

[Rights of Women](#): have free legal advice lines for women who have experienced domestic abuse, sexual violence and sexual harassment at work.

[Surviving in scrubs](#): provide support, share survivor stories and campaign to end sexism, harassment, and sexual assault in the healthcare workforce.

[General Medical Council](#): What to do if you think you have been subject to sexual misconduct by a doctor: a resource for patients and colleagues.

[Health & Care Professions Council](#): Sexual safety hub provides help and guidance about making a report to that organisation.

[Protect](#): Free, confidential whistleblowing advice.

[Equality Advisory & Support Service](#): Helpline to advise on issues related to equality and human rights.

[Citizens Advice](#): provide information about your legal rights in the workplace if you are experiencing sexual harassment.

[Samaritans](#): support for anyone who's struggling to cope, and who needs someone to listen without judgement or pressure

[Getting help for domestic violence and abuse](#): NHS.uk provides practical advice and help to recognise the signs and where to get help.

[Supporting a survivor of sexual violence](#): advice from Rape Crisis about how to support a survivor of sexual violence.

[NHS help after rape and sexual assault](#): information on the NHS website about where to find support if you have been sexually assaulted, raped or abused.

[Rape Crisis England and Wales](#): 24/7 helpline that can provide immediate support if you have experienced sexual misconduct.

[Rape Crisis Scotland](#): 24/7 helpline that can provide immediate support if you have experienced sexual misconduct.

[Sexual assault referral centres \(SARCs\)](#): offer medical, practical and emotional support to anyone who has been raped, sexually assaulted or abused. SARCs have specially trained doctors, nurses and support workers.

[Galop](#): support LGBT+ people who have experienced abuse and violence.

[The Survivors Trust](#): provide survivor-led resources and practical tools to help people affected by sexual violence and abuse, and their supporters navigate their journey of healing.

[SurvivorsUK](#): provide support to male and non-binary survivors of sexual violence, providing counselling, practical help and community on your healing journey.

[Victim Support](#): provide specialist help to support victims of crime to cope and move on to the point where they feel they are back on track with their lives.

[A list of support services on the Government's website](#): for victims of sexual violence and abuse.

NHS England

[Sexual safety in healthcare charter](#)

[Sexual safety charter assurance framework](#)

[E-learning on understanding sexual misconduct in the workplace](#)

[Guidance on the role of domestic abuse and sexual violence allies](#) (on FutureNHS, registration required)

NHS Employers

[NHS Terms and Conditions Handbook section 32 Dignity at Work](#)

Equality and Human Rights Commission (EHRC) guidance

[Preventing sexual harassment at work: a guide for employers Employer 8-step guide: Preventing sexual harassment at work](#)

Guidance on managing sexual misconduct

[Advice about sexual harassment at work \(ACAS\)](#)

[Managing discrimination from patients and their guardians and relatives \(BMA\)](#)

[Managing concerns \(Nursing and Midwifery Council\)](#)

[Practitioner Performance Advice \(PPA\) \(NHS Resolution\)](#)

Appendix 2 – Flow chart

[Sexual Misconduct policy flow chart](#)

Appendix 3 – Subject matter experts

Subject matter experts (SMEs) may be asked to support the assessment and investigation of allegations of sexual misconduct.

NHS England maintains a panel of internal and external SMEs that can be accessed by those with defined roles in the screening and investigation process. Complaints and cases will differ in their detail, so a range of expertise and experience will be required. Knowledge and expertise may include some of the areas covered below, that can be accessed to provide specialist advice in sexual misconduct cases:

Knowledge

- trauma informed interviewing/investigation techniques
- research led/informed case reporting
- risk management
- understanding of issues impacting particularly vulnerable groups

Skills

- ability to identify types of sexual misconduct
- ability to understand impacts on vulnerable groups
- ability to undertake extensive personal interviews to elicit better information and to reduce the potential for retraumatising
- ability to overcome barriers to disclosure while supporting employee wellbeing

Experience of

- undertaking or advising on trauma informed employment led investigations
- supporting individuals and/or teams on a trauma-informed basis
- equality, diversity and inclusion implications within sexual misconduct investigations/cases and understanding vulnerabilities of particular groups
- using subject matter expertise to aid investigations and improve decision making.

Appendix 4 – Screening Advisory Assessment Meeting (SAAM)

A screening advisory assessment meeting will be convened for all cases of sexual misconduct. It will consider:

- the issue raised including any potential harm experienced by the individual raising the concern or complaint (if known)
- the requirement for any third-party referrals who may need to provide expertise, advice and support, for example, safeguarding and other subject matter experts (see Appendix 3 for more details on SMEs)
- the immediate support available for the individual who has been subject to the behaviour, the complainant (and/or individual raising the concern) and the alleged perpetrator
- whether a risk assessment is required to consider any potential further harm from the alleged perpetrator to the individual or others
- whether the support required needs to be sourced from outside NHS England
- which policy and/or procedure(s) apply to help manage the concern or complaint within the immediately defined next steps
- whether there is any other intelligence about the alleged perpetrator that may be relevant
- ensure a record is kept of the screening assessment (anonymously where appropriate) and ensure the case management approach is set out clearly
- agreement of any communications that may be necessary to protect individuals or others involved, or to notify other parties who may need to be aware
- whether the police need to be contacted

Appendix 4a – Screening Advisory Assessment Meeting checklist

Sexual Misconduct Screening Checklist

- has immediate support been offered to the complainant/alleged perpetrator/witness(es)?
- is the complainant safe, for example, has consideration been given to alternative working arrangements if the complainant and perpetrator are co-located/work in the same team?
- identify the facts known at the point that a report of sexual misconduct has been raised:
 - o how was the complaint reported
 - o names of all individuals involved, employment details etc
 - o date of incident
 - o location (if applicable)
 - o have statements been received/requested from the complainant/witnesses/alleged perpetrator, where appropriate?
 - o has the complainant identified a preferred outcome?
 - o does the complainant/alleged perpetrator work for NHS England? If not, do we know which organisation they work for?
 - o if an internal employee, are there any similar live cases on file relating to the alleged perpetrator?
 - o are there any aggravating factors, such as the abuse of power over a more junior colleague that need to be taken into account?
- identify those who 'need to know', for example, relevant line managers, HR and OD, SMEs, external employer (in the scenario where one of the parties works for a different organisation). If the allegation is against a doctor or dentist a representative of the [HR & OD Medical staffing team](#) should be consulted.
- have the relevant parties' line managers been notified?
- is there a requirement to consult an SME, for example, safeguarding, legal etc? If so, record their advice
- following advice, is there a requirement to refer on to a third-party for their input, for example, police, LADO referral?
- identify who will undertake a risk assessment to ensure no further harm from alleged perpetrator
- if further facts are required, consider requesting a pre-investigation to gather this information
- identify the policy that the case will be managed under, for example, [grievance](#), [disciplinary](#) or [managing concerns](#) if known at this time

- identify whether informal action will be pursued or if a formal investigation will be undertaken, if known at this time
- where it is agreed that a formal HR and OD investigation is required (agree the relevant HR policy to be used):
- identify the case/ commissioning manager, investigating officer and appropriately trained HR and OD support for both, and agree who will be the lead HR and OD and senior manager responsible for the case
- the arrangements for where both parties will work if co-located/same team (including consideration of suspension or temporary alternative working arrangements of the alleged perpetrator if required), line management arrangements etc
- where the alleged perpetrator is a doctor or dentist the SAAM may recommend an MHPS process, in which case a case manager will need to be appointed to decide whether to pursue a formal investigation, having taken advice from PPA, the HR Director and the Medical Director
- terms of reference to be completed
- where it is agreed that a police or local authority LADO referral is required, identify when it is appropriate to commence an internal HR and OD investigation
- agree who will be the key point of contact for the complainant and alleged perpetrator and advise them of this
- keep a record of the date and time of the SAAM, the screening outcomes and names of all the Screening Advisory Assessment Meeting members, including SMEs who have been consulted including noting their relevant advice.

Appendix 5 – How to respond to a disclosure

It is important that everyone working in the NHS knows how to respond when someone makes a disclosure or report about sexual misconduct.

Each person will have different needs so you must ask how they want you or others to support them. Do not assume what they might need and do not dictate the process.

Many people feel a loss of control, so empowering them and validating their experience is vital to minimise trauma.

It is crucial to handle the conversation respectfully and supportively. Your role is to listen to the person sharing their experience and agree on the next steps to take. Your role is **not** to provide counselling, clinical advice or offer retribution against the perpetrator.

You should:

- ensure they are safe
- actively listen (without having any distractions such as your phone)
- believe and validate them
- respect confidentiality but ensure they understand you may need to share information or example if a safeguarding concern is outlined
- safely signpost them to support (and reporting options if they haven't reported already)

You should not:

- push for details
- make assumptions
- ask why they did not say anything sooner
- be judgemental or criticise their choices
- express criticism or disbelief
- look disinterested (think about your body language)
- tell them what to do
- talk about your own experiences
- provide counselling yourself
- share their information with others unless they explicitly give you permission to do so, or there are safeguarding concerns
- ask why they did not run away or fight back
- play down or minimise their experience and the significance of what they are sharing.

Appendix 6 – Questions included in the online reporting form:

- they do wish to make a report
- if they need/want anyone to support them during the conversion
- they are clear of confidentiality and safeguarding processes, that mean you may need to share e.g. if a safeguarding concern is outlined

Personal details:

1. Name of the person making the report
2. Contact email address

I am reporting this as:

- ☐ Someone who has experienced sexual misconduct
- ☐ A witness to sexual misconduct:
- ☐ Someone who has been disclosed to about sexual misconduct
- ☐ A Freedom to Speak Up Guardian
- ☐ A Human Resources Business Partner
- ☐ Does the person you are reporting for, consent to have their name included or do they want to remain anonymous?
- ☐ If yes, who did it happen to?
- ☐ If no, do not ask or record information about the person affected.

About the incident:

1. Was it a single incident or multiple incidents?
 2. Select the number of incidents
 3. Select the dates of the incidents
 4. Where did the incident(s) happen?
- ☐ Virtually – using either work/non-work equipment, and through any virtual platform including, social media, email, and messaging services
 - ☐ NHS England premises
 - ☐ Other NHS premises

☐ Offsite - non-work event / work event

5. Do they want to name the person whose behaviour they are reporting?

6. Information to identify the person (for example email address, phone number, directorate or team).

7. Information about the behaviour(s) being reported (this doesn't need to be in lots of detail at this time).

8. If anyone else saw the incident.

9. Name(s) of person(s) who saw the incident.

10. Option to request adjustments from the Employee Relations Team.