

# HIGHER EDUCATION: SEXUAL HARASSMENT AND SEXUAL MISCONDUCT

This policy is annually reviewed to ensure compliance with current regulations

Approved/reviewed by	
<b>Approved by:</b> Executive Leadership Team	
<b>Reviewed by:</b> HE Quality Manager / Head of Safeguarding & Wellbeing	
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*This policy and procedure is subject to The Equality Act 2010 which recognises the following Protected Characteristics: Age, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion and Belief, Sex, Sexual orientation and Disability*

## 1. Document Control

### 1.1. Document Details

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## 1. INTRODUCTION

To protect Higher Education Students in a consistent way across the Higher Education sector, the Office for Students (OfS) has introduced a new condition of registration, [Condition E6: Harassment and Sexual Misconduct](#).

This condition:

- Covers subject matter relating to incidents of harassment and/or sexual misconduct which affect one or more students (including the conduct of staff towards students, and/or the conduct of students towards students).
- Applies in relation to students on higher education courses provided in any manner or form by, or on behalf of, a provider (including, but not limited to, circumstances where a provider is responsible for granting awards for students registered with another provider).

This document acts as a single, comprehensive, source of information for students and sets out Boston College's policy and procedures on subject matters relating to incidents of harassment and sexual misconduct, including intimate personal relationships between relevant staff members and Higher Education students.

Boston College is dedicated to providing a safe environment where students can study Higher Education courses without fear of sexual harassment and sexual misconduct from staff and other students. Boston College recognises the significant negative effects that experiencing sexual harassment and sexual misconduct can have on students and we are committed to supporting those who experience this.

## 2. DEFINITIONS

This policy follows the OfS' definitions of Harassment and Sexual Misconduct.

### **Harassment**

The definition of Harassment follows those set down in Section 26 of the Equality Act 2010 and Section 1 of the Protection from Harassment Act 1997.

The OfS Summarises section 26 of the Equality Act 2010 as follows:

“harassment, including sexual harassment, includes unwanted behaviour or conduct which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment because of, or connected to, one or more of the following protected characteristics: age; disability; gender reassignment; race; religion or belief; sex; and sexual orientation.”

The OfS summarises section 1 of the Protection from Harassment Act 1997 as follows:

“a course of conduct conducted on at least two occasions that harasses one other person, or a course of conduct that harasses two or more persons at least once each. References to harassing a person include alarming the person or causing the person distress.”

These definitions are extended to include harassment of one student by another student.

As a Higher Education provider Boston College will take into account:

- the perception of the person who is at the receiving end of the conduct
- the other circumstances of the case
- whether it is reasonable for the conduct to have the effect under scrutiny.

Under section 1 of the Protection from Harassment Act 1997, an offence is committed only if:

- the person knows the conduct amounts to harassment of the other, or
- a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other person.

### **Sexual Misconduct**

The OfS defines sexual misconduct as any unwanted or attempted unwanted conduct of a sexual nature. This includes, but is not limited to:

- sexual harassment
- sexual assault; and
- rape.

### **Staff and Student Relationships**

Boston College is committed to protecting students

Staff means all Boston College employees whether academic, administrative, management or support as well as substantial volunteers.

### **Intimate Personal Relationship**

An 'intimate personal relationship' is defined as a relationship that involves one or more of the following elements:

- physical intimacy including isolated or repeated sexual activity; or
- romantic or emotional intimacy.

## **Abuse of Power**

‘abuse of power’ means a situation where a relevant staff member exploits a position of power in relation to a student so as to apply pressure in a way which:

- may result in the student doing something, or refraining from doing something, that they may not have otherwise done; and
- that action or inaction could reasonably result in something that falls within the scope of an intimate personal relationship.

## **Freedom of Speech**

As a Higher Education provider Boston College has an obligation to defend free speech, and will only take steps to interfere with, or restrict, lawful free speech, where it is proportionate to do so.

In general, we will not assume that the following are like to amount to harassment:

- the content of higher education course materials, including books, videos, sound recordings, and pictures
- the statements or views expressed as part of teaching, research or discussions about the content of a higher education course.

## **3. SCOPE OF THE POLICY**

This policy applies to all Higher Education students at Boston College, including Higher Apprentices. It applies to sexual harassment and sexual misconduct that occurs when the responding party is a registered students and meets any of the following criteria:

- occurs on Boston College property
- occurs away from Boston College property
- occurs when a student is engaged in any Boston College related activity (including educational visits)
- occurs via electronic means including, but not limited to: internet, social media sites, chat rooms, text messages and instant messaging
- results in a legal or Police investigation, charge or conviction of an offence
- poses a risk to Boston College or members of its community and/or reputational damage

Some incidents of sexual harassment and/or sexual misconduct may also constitute a criminal offence under English law. Such incidents may be addressed through criminal proceedings, internal disciplinary proceedings, or, in some cases, both criminal and internal proceedings. In the case of criminal proceedings, if these occur at the same time as Boston College internal proceedings, the College will normally pause its internal proceedings so as not to prejudice the criminal proceedings.

Students should be aware that in the case of criminal proceedings, any evidence obtained as part of a Boston College investigation may become disclosable to the police.

Boston College's **Staff Related Policy: Code of Professional Conduct Policy** has guidance on Staff/Student relationships which is included here for clarity.

### **3.1 Professional Distance**

Staff must not make comments to or about students which could be taken to have sexual overtones. It is equally unacceptable for staff to encourage debate and discussion between groups of students which could be interpreted as having sexual overtones, which are not justified in the context of the teaching programme. Schemes of Work, lesson plans and group profiles should highlight particular areas of risk and sensitivity. Specific guidance may be needed from managers to assist newly qualified or staff new to this area of work. Staff must use professional judgement to ensure they are not drawn into areas inappropriate to their duties or their relationship with the students concerned.

Staff should be mindful that infatuations and crushes do develop and can involve students and teachers of both sexes on both a heterosexual and homosexual basis. Careless and insensitive reactions may potentially worsen the situation. It is therefore in the interests of all parties to deal with any such situation with due care and professionalism. Staff must avoid adding to the student's problems by making jokes about the situation.

Staff should take care that their relationships with students are appropriate to the age, gender and maturity of the students. It will be particularly important to ensure that all aspects of demeanour, language and attitudes — however conveyed — do not give rise to misunderstandings, especially when dealing with young people. Ambiguous or ambivalent comment and conduct, in particular, must not be used.

### **3.2 Relationships and Behaviour / Conduct and Communications**

Always work with students and young people in an open and transparent way. Staff actions should be warranted, safe and applied equitably. The focus of any relationship with a student must always be the student's education the aim must never be to develop a relationship of any other kind.

Extra care should be taken when supervising students in the less formal atmosphere of a residential setting or out of college activity. The more relaxed interactions that may promote successful activities may be misinterpreted by students. The standards of professional conduct and behaviour expected of staff in these circumstances should be no different to that which applies within college.

Private meetings, by their very nature, provide opportunities for malicious allegations staff must therefore recognise this possibility and plan meetings accordingly. Under no circumstances should lone meetings be arranged off college premises, and especially at students' homes, without the prior approval of a senior member of management with authority to approve such meetings.

Staff should not arrange meetings with students outside of the College setting unless on authorised visits or with the knowledge and approval of their manager. This includes social events such as attending pubs, clubs, restaurants, cinemas or any meeting place where normal staff / student contact would take place. For the purpose of clarity Halls of Residence are classed as student's homes and staff should not enter the Halls without taking advice if it does not form part of their normal duties. Never invite a student you have met through work into your own home.

If a member of staff is involved in a personal relationship with anyone who becomes a student at the College this must be brought to the attention of their line manager and Human Resources. It is wholly unacceptable for staff to commence a relationship with a student or a member of staff over who they are in a position of authority. Any relationship with a student, student's family or member of staff might compromise a member of staff's ability to carry out the duties associated with his / her employment and can be treated as a disciplinary matter.

In order to avoid any conflict of interest in line with the JCQ General Regulations for Approved Centres the College must maintain clear records of all instances where staff have members of their family (which includes step-family, foster family and similar close relationships), or close friends and their immediate family (e.g. son/daughter), being entered for examinations and assessments. Therefore, staff must bring to the attention of their Senior Learning Lead/line manager, HR, Students Services and the Examination team if a member of their family (as highlighted above) enrolls at the College.

## 4. REPORTING

Where there is a concern about sexual harassment and/or sexual misconduct:

- staff who are concerned must report this to the College's Safeguarding Team via the MyConcern application.
- students who believe they have experienced sexual harassment and/or sexual misconduct should report to the College's Safeguarding Team by email to [safeguarding@boston.ac.uk](mailto:safeguarding@boston.ac.uk).
- students who believe they have seen other students subject to sexual harassments and/or sexual misconduct should report to the College's Safeguarding Team by email to [safeguarding@boston.ac.uk](mailto:safeguarding@boston.ac.uk).

## 5. INVESTIGATION

Where a report of sexual harassment and/or sexual misconduct has been made no action will be taken against any party involved until the case has been considered by an independent investigation lead by a member of the College's Leadership Team who has no relation to the parties involved in the case.

At every stage in the procedure the student will be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case before a decision is made. This may lead to a student disciplinary Committee being held.

At a hearing of the Disciplinary Committee or an Appeal the student will have the right to bring a Student Union representative or colleague to the Disciplinary Committee hearing.

Immediate suspension may be used in situations of suspected sexual harassment and/or sexual misconduct particularly where safety is deemed to be a concern. Suspension in this case is a neutral action and does not imply that the student is guilty of the offence.

The student will have the right of appeal against any formal disciplinary action taken.

## **6. DISCIPLINARY PROCEDURES: STUDENTS**

Minor infringements of College rules will be dealt with informally but in the case of other breaches, or where the student is deemed to have brought the College into disrepute, the following procedure will apply and may be commenced at any stage.

If a student has a recognised and documented disability or illness and the disciplinary matter clearly is indicated as a symptom of that disability / condition, then the matter will be dealt with in the first instance as a support issue. Only if the investigation then shows then the support measures in place are adequate and the student continues to breach the code of discipline expected by the College will this matter be taken further through the disciplinary process.

However, in cases of gross misconduct or where the student is a risk to self or others the disciplinary procedures will apply immediately.

### **Stage 1 Verbal Warning**

A student whose conduct is unsatisfactory will be seen by his / her tutor and given a verbal warning. The warning will be recorded in writing and a copy placed on the student's personal file. If no improvement is seen after this time it will result in the student being referred to Stage 2.

The student will be advised why they have been given the warning and that this forms the first stage of our formal procedures and that a repetition will result in further disciplinary action

### **Stage 2 Written Warning**

In more serious cases or where a verbal warning has not produced a positive improvement, the student will be interviewed by the Director of Learning. If it is found that action needs to be taken the Director of Learning will: -

- i) make clear to the student the matter of the complaint;
- ii) lay down specific objectives for the student to attain;
- iii) record the warning in writing
- iv) the warning will state that failure to improve performance or further incidents of misconduct during the period of warning will result in action under Stage 3.



### **Stage 3- Final Written Warning**

If the student's conduct continues to be unsatisfactory, or where the offence is very serious, the student will be interviewed by the Assistant Principal: Quality, Performance & Standards. In the absence of the Assistant Principal: Quality, Performance & Standards this step may also be carried out by another Assistant Principal or member of the Executive Leadership Team.

At this stage the Assistant Principal: Quality, Performance & Standards will consider all or some of the following: -

- i) make clear to the student the matter of the complaint;
- ii) lay down the specific objectives for the student to attain;
- iii) record the final warning in writing. It is acknowledged that when a student reaches the final warning that the next stage is for them to be referred to a disciplinary hearing, however, it is understood that occasionally a student may make a minor misdemeanour that does not warrant being taken to disciplinary hearing. In this instance it will be down to the Assistant Principal: Quality, Performance & Standards, or appropriate Senior Manager in their absence, to meet with the student and agree an action plan. This may include one or more targets and needs to be agreed and signed by both parties. Again a copy of this will be placed on the student's file, and copy given to the student.
- iv) if behaviour does not improve the next stage is to be referred to a disciplinary hearing by the Disciplinary Committee

The Assistant Principal: Quality, Performance & Standards may suspend the student until the Disciplinary Committee meets if the nature of the alleged offence is deemed of a very serious nature or where safety is a concern. The Assistant Principal: Quality, Performance & Standards will inform the student, verbally (where possible), that they are being taken to a disciplinary hearing. The Assistant Principal: Quality, Performance & Standards must at the same time inform the Management Office and supply them with any evidence which they intend to provide at the hearing.

### **Stage 4**

The Student Disciplinary Committee will be convened as soon as possible by the Management Office and normally within ten working days of the initial verbal notification to the student. The Management Office will write to the student within 5 working days of notification from the Assistant Principal: Quality, Performance & Standards, with the date of the hearing and a description of the alleged offences. The student should be clear about the reasons for the hearing. The evidence to be presented should be described and where appropriate included,

e.g.: -

- summary of the evidence to be presented
- attendance records
- statements by witnesses
- progress reports

- video material
- records of interviews.

The Committee will consist of three members of staff: -

- i) a member of the College Management Team or the Executive Leadership Team (except the Principal or Deputy Principal). This member will be the chair of the panel;
- ii) the remaining two members will be College Managers from different area than the student is currently studying in;
- iii) the student may be accompanied by a friend, or member of the Student Union (if a student has a learning difficulty / disability or mental ill health issue then we recognise that their parent / carer may wish to accompany them).

The Learner Services department may advise and support the student if necessary to ensure that the student is clear on the procedures and what is taking place.

### **Format of Hearings**

The chair will: -

- a) introduce those present and explain their roles;
- b) explain the purpose of the hearing and how it will be conducted;
- c) explain the powers of the panel;
- d) ensure that the student knows and understands the allegations;
- e) ensure the student has received the Boston College Misconduct Disciplinary Policy and Procedure for HE Students and copies of the evidence to be presented at the hearing.

### **Conduct of the hearing: -**

- a) the Director of Learning from the student's area of study, will present the case and evidence and call any witnesses;
- b) the student may question the Director of Learning and any witnesses;
- c) the panel may question the Director of Learning and any witnesses;
- d) the student should present their case and evidence and call any witnesses;
- e) the Director of Learning may question the student and any witnesses;
- f) the panel may question the student and any witnesses;
- g) the Chair should offer the Director of Learning and the student the opportunity to withdraw to prepare summing up if they wish;
- h) invite the Director of Learning to sum up;
- i) invite the student to sum up;
- j) ask the student: -
  - i) if they wish to make any further points;
  - ii) if there are any other factors they would like to be taken into account.
- k) the Director of Learning and the student will be asked to withdraw to agreed places

**The Decision: -**

- a) the Director of Learning and the student will be invited to return when the decision is announced;
- b) the student will be informed of the requirements and procedures for an appeal;
- c) the student will be informed of the decision in writing within five working days. The letter will be checked by the panel chair prior to it being sent to ensure that it is consistent with the hearing decision.
- d) the Chair will complete the form 'Record of Decisions and Recommendations' which will be sent to the Management Office who in turn will notify the Assistant Principal: Student Experience and the Head of Information Services of the decision. A copy should be kept on the student's file.

The Student Disciplinary Procedure is not prescriptive about possible actions or penalties which may be imposed. Where a student is found to have committed an offence action may include

- i) a written final warning, detailing issues to be addressed. If the student does not meet these requirements they may be excluded. In this instance the student will not have to go back to a disciplinary committee and the decision can be made by the Director of Learning;
- ii) suspension for a stated period;
- iii) exclusion;
- iv) the requirement for a letter or statement of apology;
- v) other, including support from internal and external agencies.

**Appeals**

A student who wishes to appeal against the decision of the Disciplinary Committee should inform the Deputy Principal in writing within ten working days of the letter being sent. The College will send these letters first class to ensure prompt delivery. If the student's place is terminated the letter needs to be sent out by recorded delivery.

A student has the right of appeal if they can demonstrate that either: -

- a) the original hearing was conducted improperly, or
- b) they have new evidence to present.

The Deputy Principal will decide whether there are grounds for an Appeal. All appeals will be heard by the Student Appeals Committee and any decision of the Committee is final.

The Student Appeals Committee will consist of: -

- a) the Principal or a member of the Executive Leadership Team (Chair);
- b) a member of the Executive Leadership Team not previously involved in the case or other nominee of the Principal.

The student may be accompanied a Student Union representative or colleague to the Student Appeals Committee. (If a Student has a learning difficulty / disability or mental ill health issue then we recognise that their parent / carer may wish to accompany them).

The Appeals Committee may support, overturn or vary the decision of the Student Disciplinary Committee. This will not include the imposition of a more severe penalty. The decisions and any recommendations should be recorded on the Disciplinary Hearings Record Form and a copy sent to the Assistant Principal: Student Experience and Head of Information Services by the Management Office. A copy should also be kept on the student's file. The student should be informed of the decision of the appeals panel.

Note: This policy applies to students undertaking HE qualifications at Boston College except where the regulations of the awarding body or validating Institution take precedence.

## **7. DISCIPLINARY PROCEDURES: STAFF**

For more information regarding the disciplinary procedure for Boston College staff please refer to EMPLOYMENT POLICY: DISCIPLINARY PROCEDURES AND CODE OF CONDUCT available on the staff intranet. According to this policy Sexual Harassment and Sexual Misconduct constitutes a form of Gross Misconduct.

This section of this policy summarises the key points contained in EMPLOYMENT POLICY: DISCIPLINARY PROCEDURES AND CODE OF CONDUCT referring to action taken in cases of allegations of sexual harassment and sexual misconduct.

This will include an investigation and a determination of whether suspension is appropriate.

If the investigation indicates a case to answer, a disciplinary hearing will be arranged.

For gross misconduct cases, the hearing can result in summary dismissal without notice or payment in lieu. Employees have the right of appeal.

Following substantiated cases resulting in dismissal, referrals to DBS and professional bodies (including NCTL for teaching staff) will be considered in line with statutory guidance.

## **8. NON-DISCLOSURE AGREEMENTS**

From 1 September 2024 the OfS banned Higher Education providers from using to non-disclosure agreements (NDAs) where they relate to allegations about harassment or sexual misconduct.

The OfS considers that NDAs used for instances of harassment or sexual misconduct are unacceptable as they prevent students from speaking about their experiences and may protect the reputation of perpetrators and can allow them to continue inappropriate behaviour at the same or a different provider.

From 1 September 2024 the OfS explicitly banned the use of NDAs by Higher Education providers in cases where students make allegations of harassment or sexual misconduct.

This prohibition covers all agreements that compel or seek to stop students from disclosing information about their experiences to a third party.

## **9. CONFIDENTIALITY**

In recognition of the sensitive nature of sexual misconduct, privacy will be maintained, wherever possible, throughout the disclosure, reporting and investigative processes.

Throughout all proceedings, the College will act in compliance with the General Data Protection Regulation (GDPR) and Data Protection Act 2018.

The College will only share information internally or externally to the College with the reporting party's express permission or in exceptional circumstances to –

- Safeguard members of the College community
- Fulfil the College's duty of care to protect College Community members from harm or to prevent a crime from taking place
- Discharge the College's duties or as required by law

Any disclosure of information will be restricted to relevant information and conveyed only to those entitled to it for justifiable reasons.

The College will retain anonymized data to understand patterns of behaviour and to inform future support services, policy and operating procedures.

## **LINKS TO OTHER POLICIES**

Student Related Policy: Safeguarding Students

Staff Related Policy: Code of Professional Conduct Policy

Student Code of Conduct Policy