**Sexual Misconduct Policy**

**Document Control:**

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| Policy Name | Sexual Misconduct Policy |
| Policy Number | MSE ICB 028 |
| Version | 1.0 |
| Status | Final ICB Policy |
| Author / Lead | HR Business Partner |
| Responsible Executive Director | Executive Chief People Officer |
| Responsible Committee | Remuneration Committee |
| Date Approved by Responsible Committee | 07 February 2025 |
| Date Ratified by Board | 13 March 2025 |
| Next Review Date | February 2027 |
| Target Audience | Refer to Scope in Policy |
| Stakeholders engaged in development of Policy (internal and external)  | * Trade Unions
 |
| Impact Assessments Undertaken *(State if not applicable)* | * Equality and Health Inequalities Impact Assessment
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**Version History**

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| --- | --- | --- | --- |
| Version | Date | Author (Name and Title) | Summary of amendments made |
| 0.1 | Dec 2024 | HR Business Partner | First ICB Policy |
| 1.0 | 07/02/25 | Governance Officer | Final – Approved version |
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## Introduction

* 1. Mid and South Essex ICB are a signatory to the sexual safety in healthcare organisational charter and supporting principles. Mid and South Essex (ICB) is committed to taking a zero-tolerance approach to sexual misconduct in the workplace to create a culture at work where everybody feels safe.

The new Worker Protection Act 2023 (Amendment of Equality Act 2010) creates a duty on employers to take reasonable steps to prevent sexual harassment in the workplace. Ensuring that those who work, train, and learn within the healthcare system have the right to be safe and feel supported at work.

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.

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.

## Purpose / Policy Statement

2.1 Under this policy, the ICB commits to ensuring that:

* Outlines our approach to tackling sexual misconduct and dealing with perpetrators.
* Describe what sexual misconduct is and how to report it.
* Adopts and signposts to processes in other Mid and South Essex ICB policies such as dignity at work: grievance; disciplinary; social media policy.
* Provides a summary of support available to employers.

2.2 The ICB 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, national NHS data\* 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.

## Scope

3.1 This policy covers sexual misconduct which can take place at any time in any place. It can happen at any time, including the workplace or work place events, for example, where ICB activities are undertaken including social events, or occasion when NHS care is delivered or in spaces that may be both physical and virtual and may not always be a designated workplace. Incidents which occur within these environments fall within the scope of this policy.

3.2 The ICB has a duty of care to protect employees from, and prevent incidents of, sexual misconduct from individuals within the physical or digital workplace. The policy applies to:

* All employees and workers of the ICB
* ICB Board members
* Agency workers
* Volunteers

3.3 Employees who are seconded or deployed to another organisation will be supported by ICB to report sexual misconduct in accordance with this policy or a similar policy provided by the host organisation.

3.4 The ICB 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 4) from any individual in the workplace.

3.5 The ICB expects any third-party organisation that deploys employees or representatives to work in or with the ICB to engage with any investigation relating to sexual misconduct and take appropriate action and/or provide appropriate support because of findings in relation to the employee or representative.

3.6 If employees are subject to misconduct from individuals not employed by the ICB, this will be taken no less seriously. In these circumstances the ICB 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 ICB 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 ICB premises immediately and their return may not be appropriate until the outcome of any investigation is known.
* If the ICB 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. This includes scenarios where the victim is not an employee.

## Definitions

Detailed definitions appear as Appendix B.

## Roles and Responsibilities

5.1 The ICB 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.

### 5.2 Integrated Care Board

5.2.1 The ICB Board is accountable and responsible for ensuring that the ICB has effective processes in accordance with relevant legislation and best practice guidance.

### 5.3 Chief Executive

5.3.1 The Chief Executive is accountable for the policy and procedure being in place and support cultural development within the ICB and will take the following actions**:**

* 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.
* 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.
* A member of Mid and South Essex ICB Executive Group will have responsibility for sexual safety.

**5.4 Policy Authors**

5.4.1 Policy authors are responsible for ensuring that this document is updated when any changes are made to legislation.

**5.5 Executive Chief People Officer**

5.5.1 The Chief People Officer oversees the implementation of this policy and is responsible for ensuring that managers take action to meet the organisation’s obligations to ensure equity and consistency.

**5.6 Line Managers**

* 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.
* ensure no colleague is subjected to inappropriate behaviours including jokes and banter.
* Provide appropriate support and/or signpost support to those who disclose sexual misconduct.
* Report an incident to HR 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.
* Encourage managers to ask about an individual employee’s working relationships and environment within their line manager/employee relationship 1:1 meetings.
* Conduct regular reviews of internal data and ensure appropriate actions are taken in areas of concern.
* Appendix C contains a detailed description of how to respond to a disclosure of sexual assault.

**5.7 All Staff**

5.7.1To 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.
* Complete all appropriate training minimum is mandatory training E Learning on Understanding Sexual misconduct in the workplace.
* 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.

## Policy Detail

**6.1 Guiding Principles**

6.1.1 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. 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.

6.1.2 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.

6.1.3 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.

Detail of the investigation process and any required adjustments, including the role of Subject matter experts and the option to conduct a screening advisory assessment meeting can be found at appendices D, H&I.

## Process

### Initial response to a disclosure of sexual misconduct

7.1.1 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.

7.1.2 In the event of a disclosure of sexual misconduct the following steps should be followed.

**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 HR.
	+ where there are any safeguarding concerns the principles as outlaid in Safeguarding Adults and Children Policy responding to Adult Safeguarding Concerns should be adhered to.
* **signpost colleagues to this policy and:**
	+ encourage them to consider reporting their concern if it has not already been reported.
	+ make a note as soon as you can of any details of the disclosure, ensuring confidentially 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 or your own line manager.
	1. **Reporting sexual misconduct**

**7.2.1 How to report sexual misconduct**

7.2.1.1 Mid and South Essex ICB 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.

7.2.1.2 There are 2 routes through which sexual misconduct may be reported to commence processes under this policy.

* HR Business Partner – a complainant or witness may contact HR directly, or they may ask the person they have disclosed to, for example their line manager, to do this for them.
* Freedom To Speak Up (FTSU) Guardian – a complainant or witness may seek the assistance of a FTSU Guardian in reporting an incident.

7.2.1.3 All reports should follow the principles and ask the questions in Appendix H.

7.2.1.4 All reports will be taken seriously (including those that are made anonymously), regardless of the route taken. A local flowchart and the NHS Framework are in Appendix F. The importance of confidentiality is further highlighted in Appendix J.

### Raising a report of sexual misconduct anonymously

7.3.1 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.

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

7.4.1 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.

**7.5 Reporting sexual misconduct as a witness**

7.5.1 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.

7.5.2 Reporting sexual misconduct is vital to ensure that Mid and South Essex ICB 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.

**7.6 Managing sexual misconduct reports**

7.6.1 Mid and South Essex ICB will ensure that any allegations of potential sexual misconduct are managed swiftly and in line with the appropriate organisational policies and procedures. An Investigating Officer will be appointed, and the investigation will be undertaken as set out in Managing Investigations Guidelines. Appendix D confirms adjustments that may be considered during the investigation. Investigations will be conducted in accordance with the relevant ICB policy which will guide the process outlined in Dignity at Work Policy which may result in informal action on minor misconduct or formal action which will consist of Disciplinary and Grievance process.

7.6.2 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. Mid and South Essex ICB will not presume the accusation is either true or false prior to a fair and thorough investigation.

7.6.3 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. Mid and South Essex ICB commits to treat all complaints seriously and fairly.

7.6.4 Support available to both managers and staff is available in Appendices F & G.

**7.7** **Victimisation, including when no further action is taken**

7.7.1 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 actions after an investigation.

7.7.2 Mid and South Essex ICB does not tolerate harassment or victimisation and allegations will be investigated in accordance with Dignity at Work policy.

**7.8 Actions after an investigation**

7.8.1 The outcomes will follow the relevant Mid and South Essex ICB policy.

7.8.2 To provide assurance the matter has been addressed appropriately, Mid and South Essex ICB 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 Mid and South Essex ICB’s information governance and is covered under the 088 ICB Decision Making Policy and Procedure.

7.8.3 Mid and South Essex ICB 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.

**7.9 Supporting the disclosure**

7.9.1 Managing and supporting disclosures and reports of sexual misconduct is challenging for all parties involved. Mid and South Essex ICB 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. This may include the person to whom it is being disclosed. A range of internal and external support services are available (see appendix D).

7.9.2 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](https://www.nhsemployers.org/system/files/2024-03/nhs-terms-and-conditions-of-service-handbook-Version53.pdf) provides more information about Injury Allowance.

7.9.3 It is recognised as outlined above 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 HR.

7.9.4 The approach to the investigation as well as the appointed investigator should be carefully considered.

**7.10 Reporting to statutory regulators**

7.10.1 Mid and South Essex ICB reserve 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 following appropriate advice.

**7.11 Police involvement**

7.11.1 A disclosure of sexual misconduct may allege a criminal act. In such a case, Mid and South Essex ICB’s HR will be responsible for ensuring that any allegations received that may be criminal in nature are referred to the police.

7.11.2 Mid and South Essex ICB will ensure that matters are referred to the wider authorities taking advice from Safeguarding team as set out in Safeguarding Adults and Children Policy.

7.11.3 Where an internal investigation is taking place, Mid and South Essex ICB’s HR will consult with the police at agreed intervals about concurrent investigation processes to ensure the criminal investigation/process is not prejudiced.

7.11.4 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.

**7.12 Confidentiality**

7.12.1 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.

7.12.2 Further details relating to confidentiality can be found in Appendix J.

## Monitoring Compliance

8.1 The HR Team will be responsible for monitoring that this procedure is followed and may be consulted at any stage through the process to offer advice to those involved.

8.2 Monitoring information will be published and reported as appropriate.

8.3 Should the monitoring uncover any shortfalls in the implementation of the policy, the HR team will work with the relevant management team to draw up an action plan for improvement. This action plan may include, for example:

* Training for line managers.
* A risk assessment.

It is also anticipated that any issues in respect of the implementation of the policy may be identified as a result of staff exercising their right under the [Grievance Policy](https://www.midandsouthessex.ics.nhs.uk/publications/?publications_category=icb-policies&page_no=2).

## 9. Staff Training

9.1 [E-learning on understanding sexual misconduct in the workplace](https://learninghub.nhs.uk/Resource/57103) is available for staff and line managers on ESR.

9.2 Guidance can be sought from Human Resources team.

## 10. Arrangements for Review

10.1 This policy will be reviewed no less frequently than every two years. An earlier view will be carried out in the event of any relevant changes in legislation, national or local policy/guidance, organisational change or other circumstances which mean the policy needs to be reviewed.

10.2 If only minor changes are required, the sponsoring Committee has authority to make these changes without referral to the Integrated Care Board. If more significant or substantial changes are required, the policy will need to be ratified by the relevant committee before final approval by the Integrated Care Board.

## 11. Associated Policies, Guidance and Documents

* 002 Social Media Policy
* 020 Lone Working Policy
* 033 Equality in Employment Policy
* 041 Flexible Working Policy
* 042 Grievance Policy
* 045 Disciplinary Policy
* 048 Special Leave Policy
* 056 Dignity at Work Policy
* 060 Close Personal Relationships at Work Policy
* 063 Safeguarding Adults and Children including CIC LAC Policy
* 088 Decision Making Policy and Procedure
* Managing Investigations Guidelines

## 12. References

* [Government Equalities Office 2020 Sexual Harassment Survey](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1002873/2021-07-12_Sexual_Harassment_Report_FINAL.pdf)
* [NHS England’s Sexual Safety in healthcare- organisational charter](https://www.england.nhs.uk/long-read/sexual-safety-in-healthcare-organisational-charter/)

**13. Equality Impact Assessment**

* 1. The EIA has identified no equality issues with this policy.

13.2 The EIA has been included as Appendix A.

**Appendix A - Equality Impact Assessment**

**INITIAL INFORMATION**

|  |  |
| --- | --- |
| **Name of policy and version number:**Sexual Misconduct Policy**Version:** 1.0  | **Directorate/Service**: People Services |
| **Assessor’s Job Title:** HR Business Partner | **Date:** 13/02/2025 |

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| **OUTCOMES** |
| *Briefly describe the aim of the policy and state the intended outcomes for staff*  |
| The Policy outlines ICB’s 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 Mid and South Essex ICB policies such as dignity at work: grievance; disciplinary; social media policy and provides a summary of support available to employers. |
| **EVIDENCE** |
| *What data / information have you used to assess how this policy might impact on protected groups?* |
| The ICB monitors the composition of its workforce under the nine protected equality characteristics and reports on this annually. This information helps the ICB to assess the potential impact of its policies upon staff |
| *Who have you consulted with to assess possible impact on protected groups? If you have not consulted other people, please explain why?*  |
| Relevant Trade Unions |

**ANALYSIS OF IMPACT ON EQUALITY**

The Public Sector Equality Duty requires us to **eliminate** discrimination, **advance** equality of opportunity and **foster** good relations with protected groups. Consider how this policy / service will achieve these aims.

N.B. In some cases it is legal to treat people differently (objective justification).

* ***Positive outcome*** *– the policy/service eliminates discrimination, advances equality of opportunity and fosters good relations with protected groups*
* ***Negative outcome*** *–**protected group(s) could be disadvantaged or discriminated against*
* ***Neutral outcome***  *–**there is no effect currently on protected groups*

Please tick to show if outcome is likely to be positive, negative or neutral. Consider direct and indirect discrimination, harassment and victimisation.

| ProtectedGroup | Positiveoutcome | Negativeoutcome | Neutraloutcome | Reason(s) for outcome |
| --- | --- | --- | --- | --- |
| Age | x |  |  | The language used in this policy does not discriminate against any individual regardless of their protected characteristics |
| Disability(Physical and Mental/Learning) | x |  |  | As above |
| Religion or belief | x |  |  | As above |
| Sex (Gender) | x |  |  | As above |
| Sexual Orientation | x |  |  | As above |
| Transgender / Gender Reassignment | x |  |  | As above |
| Race and ethnicity | x |  |  | As above |
| Pregnancy and maternity (including breastfeeding mothers) | x |  |  | As above |
| Marriage or Civil Partnership | x |  |  | As above |

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| **MONITORING OUTCOMES** |
| Monitoring is an ongoing process to check outcomes. It is different from a formal review which takes place at pre-agreed intervals. |
| *What methods will you use to monitor outcomes on protected groups?* |
|  It is anticipated that any issues in respect of the implementation of the policy will be identified as a result of staff exercising their right via the ICB’sGrievance Procedure. |

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| **REVIEW** |
| *How often will you review this policy / service?*  |
| Every 2 years as a minimum and earlier if there are any significant changes in legislation, policy or good practice. |
| *If a review process is not in place, what plans do you have to establish one?* |
| N/A |

**Implementing the Policy/Service**

**Appendix B – Definitions and examples of Sexual Misconduct**

(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

**Appendix C - 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.

**Questions to be asked.**

* Do they 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:**

* Name of the person making the report
* 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:**

* Was it a single incident or multiple incidents?
* Select the number of incidents
* Select the dates of the incidents
* 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
* Mid and South Essex ICB premises
* Other NHS premises
* Offsite – non-work event / work event
* Do they want to name the person whose behaviour they are reporting?
* Information to identify the person (for example email address, phone number, directorate or team).
* Information about the behaviour(s) being reported (this doesn’t need to be in lots of detail at this time).
* If anyone else saw the incident.
* Name(s) of person(s) who saw the incident
* Option to request adjustments
* Details of support available to HR, managers and staff are described in Appendix G.

**Appendix D – Considerations and adjustments**

These considerations and adjustments listed below may apply to all investigations raised under Sexual Misconduct:

* an externally sourced investigator (with the relevant skills and experience), independent of the investigating organisation (including all employees and representatives) may be appointed
* HR 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.

**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.

**The safeguarding clinical leads and regional safeguarding leads will:**

* 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

**Appendix E: Flow chart for reporting an incident of sexual misconduct**



**Appendix F – Support**

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.

**Appendix G - Internal support and External support / Partner organisations**

**Internal support**

**Employee Assistance Programme (EAP)**

A free and confidential service all staff with Mid and South Essex ICB can access support from the EAP offered by PAM Wellness Solutions.

This can be accessed on 0800 882 4102 and Organisation code: MSEICB1

**Trade Union representatives**

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

**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

**External support / Partner Organisations**

[**ACAS**:](https://www.acas.org.uk/contact) helpline for anyone experiencing workplace related issues including sexual harassment.

[**Rights of Women**:](https://www.rightsofwomen.org.uk/get-advice/call-our-advice-lines/) have free legal advice lines for women who have experienced domestic abuse, sexual violence and sexual harassment at work.

[**Surviving in scrubs:**](https://www.survivinginscrubs.co.uk/) 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:**](https://www.gmc-uk.org/professional-standards/ethical-hub/identifying-and-tackling-sexual-misconduct#victims-and-survivors)a resource for patients and colleagues.

[**Health & Care Professions Counci**l:](https://www.hcpc-uk.org/sexual-safety/) sexual safety hub provides help and guidance about making a report to that organisation.

[**Protect**:](https://protect-advice.org.uk/) free, confidential whistleblowing advice.

[**Equality Advisory & Support Service**:](https://www.equalityadvisoryservice.com/) helpline to advise on issues related to equality and human rights.

[**Citizens Advice**](https://www.citizensadvice.org.uk/)**:** provide information about your legal rights in the workplace if you are experiencing sexual harassment.

[**Samaritans:**](https://www.samaritans.org/how-we-can-help/) 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**:](https://www.nhs.uk/live-well/getting-help-for-domestic-violence/) NHS.uk provides practical advice and help to recognise the signs and where to get help.

[**Supporting a survivor of sexual violence:**](https://rapecrisis.org.uk/get-help/supporting-a-survivor/) advice from Rape Crisis about how to support a survivor of sexual violence.

[**NHS help after rape and sexual assault**:](https://www.nhs.uk/live-well/sexual-health/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:**](https://247sexualabusesupport.org.uk/) 24/7 helpline that can provide immediate support if you have experienced sexual misconduct.

[**Rape Crisis Scotland:**](https://www.rapecrisisscotland.org.uk/) 24/7 helpline that can provide immediate support if you have experienced sexual misconduct.

[**Sexual assault referral centres (SARCs):**](https://www.nhs.uk/live-well/sexual-health/help-after-rape-and-sexual-assault/) 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**:](http://www.galop.org.uk/) support LGBT+ people who have experienced abuse and violence.

[**The Survivors Trust:**](https://thesurvivorstrust.eu.rit.org.uk/) provide survivor-led resources and practical tools to help people affected by sexual violence and abuse, and their supporters navigate their journey of healing.

[**Survivors UK**:](https://www.survivorsuk.org/) provide support to male and non-binary survivors of sexual violence, providing counselling, practical help and community on your healing journey.

[**Victim Support:**](https://www.victimsupport.org.uk/) 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:**](https://sexualabusesupport.campaign.gov.uk/#support) for victims of sexual violence and abuse.

**NHS England**’s [Sexual safety in healthcare charter](https://www.england.nhs.uk/publication/sexual-safety-in-healthcare-organisational-charter/) and

[Sexual safety charter assurance framework](https://www.england.nhs.uk/publication/sexual-safety-charter-assurance-framework/)

**NHS Employers**: [NHS Terms and Conditions Handbook section 32 Dignity at Work](https://www.nhsemployers.org/publications/tchandbook)

**Equality and Human Rights Commission (EHRC)** guidance on [Preventing sexual harassment at work: a guide for employers](https://www.equalityhumanrights.com/guidance/business/preventing-sexual-harassment-work-guide-employers) [Employer 8-step guide: Preventing sexual harassment at work](https://equalityhumanrights.com/employer-8-step-guide-preventing-sexual-harassment-work)

**Guidance on managing sexual misconduct**

* [Advice about sexual harassment at work (ACAS)](https://www.acas.org.uk/contact)
* [Managing discrimination from patients and their guardians and](https://www.bma.org.uk/advice-and-support/equality-and-diversity-guidance/discrimination-guidance/managing-discrimination-from-patients-and-their-guardians-and-relatives) [relatives (BMA)](https://www.bma.org.uk/advice-and-support/equality-and-diversity-guidance/discrimination-guidance/managing-discrimination-from-patients-and-their-guardians-and-relatives)
* [Managing concerns (Nursing and Midwifery Council](https://www.nmc.org.uk/employer-resource/))
* [Practitioner Performance Advice (PPA) (NHS Resolution)](https://resolution.nhs.uk/services/practitioner-performance-advice/)

**Appendix H: 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 I: 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 H 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 I a: 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:
* how was the complaint reported.
* names of all individuals involved employment details etc.
* date of incident.
* location (if applicable).
* have statements been received/requested from the complainant/witnesses/alleged perpetrator, where appropriate?
* has the complainant identified a preferred outcome?
* does the complainant/alleged perpetrator work for NHS England? If not, do we know which organisation they work for?
* if an internal employee, are there any similar live cases on file relating to the alleged perpetrator?
* 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.
* 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 J – Confidentiality**

Mid and South Essex ICB does not use confidentiality or non-disclosure agreements to prevent reporting of sexual misconduct or whistleblowing.

Data will be collated centrally by HR 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.

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 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.

Witnesses will be identified as early as possible and be supported on a trauma informed basis by Mid and South Essex ICB’s HR to provide a confidential statement as part of any internal process being conducted.

Witnesses should not be approached by anyone other than HR if they are required to provide formal evidence or a witness statement to the police.