

# **Harassment & Sexual Misconduct Policy**

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Author (name & job title):		Ruth Margrove (Student Support and Welfare Manager) & Claire Cork (Head of People)	
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## **1. Introduction**

1.1 The NIoT has a duty to make a significant and credible difference in protecting students from harassment and sexual misconduct and reducing the likelihood of it taking place. This Policy applies to all trainees registered on a course at the NIoT and to all staff at the University, including agency staff or those employed in flexible or contracted employment.

1.2 The NIoT is dedicated to creating a safe, welcoming, inclusive and diverse community which nurtures a healthy environment and culture of mutual respect and consideration, allowing all members to thrive without fear of harassment, bullying, discrimination, sexual violence, abuse, coercive behaviours or related misconduct.

1.3 The NIoT provides a range of support for trainees to access where they have experienced any form of sexual misconduct. Whether or not a trainee wants to report an incident, it is important that they have access to support in relation to their experience. Trainees should speak to Student Support for confidential guidance or advice, either in person or via email. A trainee can contact [studentsupport@niot.org.uk](mailto:studentsupport@niot.org.uk) to discuss this policy and reporting routes.

1.4 The NIoT recognises that incidents of harassment and sexual misconduct may occur within its community and will not tolerate staff or trainees engaging in behaviours which include forms of unwanted sexual contact, coercive and controlling behaviour, stalking and conduct that is likely to violate a trainee's dignity, or that creates an intimidating, hostile, degrading, humiliating or offensive environment. If you have experienced behaviour of this kind where another trainee or staff member is involved, you can make a report as set out in this Policy so that it can be thoroughly investigated and, if appropriate, action can be taken by the NIoT.

1.5 Further information about the behaviour expected of students can be found in the Non-Academic Misconduct Policy and appropriate course handbook.

## **2. General Principles & Scope**

2.1 The NIoT requires that all members of its community treat each other with respect and that all members of its community are responsible for upholding these requirements.

2.2 This policy applies to all staff members and students registered with the NIoT for the purpose of work or study to ensure that all members of the NIoT staff and student community are considered within appropriate support and reporting procedures that are in place.

2.3 The NIoT will actively respond to all formal Reports of Harassment and Sexual Misconduct and, although recognising that some incidents may also constitute a criminal offence, it will ensure that in all cases that Reports are carefully and thoroughly investigated and addressed through a process that is fair, transparent and clearly communicated to individuals involved. The NIoT will respect an individual's choice about taking a Disclosure forward.

2.4 Where a Report of Harassment or Sexual Misconduct constitutes a criminal offence, it may be addressed through criminal proceedings, internal disciplinary proceedings or, in appropriate cases, through both channels. If a criminal investigation is launched by the police, and NIoT is duly noted, then any internal investigation will usually be paused to allow criminal investigation to take place without interfering with the criminal investigation process.

2.5 All Reports of Harassment and / or Sexual Misconduct referred to The NIoT which are made against its staff or trainees will be assessed on the balance of probabilities, in line with The NIoT's 'Non-Academic Misconduct Policy' and / or 'Staff Disciplinary Procedure' (as appropriate) and the appropriate sector guidance in relation to handling incidents.

2.6 It should be noted that the NIoT does not hold powers to criminally investigate a case, and that any investigation is, therefore, subject to the limits of the powers the NIoT holds with investigation and its duty to fairly support all parties within the jurisdiction of the NIoT.

2.7 Staff at The NIoT will be briefed in relation to this Policy as appropriate to their roles. All staff involved in its implementation will act with impartiality and discretion at all times and maintain confidentiality. Staff will receive appropriate training and support in handling incidences delivered by appropriately trained and specialist staff with due regard to 'Trauma Informed' approaches to investigating and supporting any party involved in an allegation.

2.8 This Policy covers all incidents of Harassment and Sexual Misconduct as defined within Section 3. Although it specifically covers incidents of Harassment or Sexual Misconduct experienced in the course of work or study at The NIoT in which the Responding Party is a current trainee or staff member of The NIoT, Reports made under this Policy are not limited to the physical premises of The NIoT or its immediate surroundings.

2.9 Reports of Harassment and Sexual Misconduct covered by this Policy will be considered by The NIoT under its own internal disciplinary processes. Where the Responding Party is a Trainee, this will be under The NIoT's 'Non-Academic Disciplinary' Procedure and where the Responding Party is a staff member, this will be under the 'Staff Disciplinary Procedure'.

2.10 Any allegation made will be considered as such until a formal investigation is carried out into the alleged misconduct before a decision can be made on whether the allegation constitutes 'misconduct' as outlined in this policy and related procedures of the NIoT. NIoT reserves the right to suspend training or work pending investigation, and during the investigation process, depending on the circumstances and risks presented.

### **3. Definitions & Terminology**

3.1 The Equality Act (2010) section 26 defines harassment as 'unwanted conduct related to a protected characteristic that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating, or offensive environment'. See Appendix 2 for a full list of definitions regarding sexual misconduct and harassment.

3.2 The Protection from Harassment Act (1997) indicates that someone's actions amount to harassment when they make the victim feel 'distressed, humiliated, threatened or fearful of further violence'. Harassment is prohibited under the Protection from

Harassment Act (1997). Examples of forms of harassment include, but are not limited, too:

- Unsolicited emails, phone calls or letters
- Unsolicited visits
- Stalking
- Verbal abuse of any kind, including on social media
- Threats
- Damage to property
- Bodily harm

3.3 In the context of section 26 of the Equality Act (2010), in deciding whether conduct has the effect of violating a person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment towards that person, it is necessary to take into account: the perception of the person who is at the receiving end of the conduct; the other circumstances of the case; and whether it is reasonable for the conduct to have that effect.

3.4 In the context of 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.

3.5 The NIoT will take due regard to both the Equality Act (2010) and the Protection from Harassment Act (1997) in making a judgement on whether an incident of harassment has occurred and will take reasonable and appropriate steps to protect any students or staff.

*3.6 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.

3.7 In making a judgement of whether an 'abuse of power' has taken place, consideration should be taken of the different forms of positive and negative treatment that can take place.

Examples of both detrimental (negative) and positive treatment:

- Not receiving a positive review or reference, or receiving a negative review or reference
- Unfavourable treatment in academic assessments, for example, less access to support or feedback, less opportunity for extensions, lower grades or marks

- Not receiving funding for research
- Restricting access to resources
- Restricting participation in aspects of a student's education
- Receiving a positive review or reference
- Favourable treatment on academic assessments, for example greater access to support or feedback, more opportunity for extensions, higher grades or marks.
- Being promised access to funding and resources.
- Being promised introductions to others who could advance their academic or professional career.

*3.8 Coercion* is defined as the action of forcefully persuading or threatening an individual to do something which includes behaviours, such as blackmail, extortion, threats or physical and sexual assaults could also be considered as a form of harassment.

*3.9 Public intimidation* is defined as "words and/or behaviour intended or likely to block, influence or deter participation in public debate or causing alarm or distress which could lead to an individual wanting to withdraw from public life". This includes actions of abuse, harassment and intimidation such as verbal abuse; physical attacks; being stalked.

3.10 Freedom of Speech as set out in Article 10 of the Human Rights Act (1998) protects the right of freedom of expression, not pertaining to hate speech or incitement. This right includes freedom to hold opinions and to receive and impart information and ideas without interference. As such, the following is unlikely to amount to harassment:

- the content of higher education course materials, including but not limited to books, videos, sound recordings, and pictures;
- statements made and views expressed by a person as part of teaching, research or discussions about any subject matter which is connected with the content of a higher education course;

3.11 The NIoT defines *Sexual Misconduct* as any unwanted conduct of a sexual nature, whether it occurred physically in person or by other means, including phone, e-mail, letter or digital or electronic means, such as social media. It includes the following (whether it is within a sexual or romantic relationship, whether any consent to sexual activity has been given previously and then withdrawn, or whether the behaviour happens physically or virtually):

- Making unwanted remarks of a sexual nature.
- Touching inappropriately without consent.
- Kissing without consent.
- Inappropriately showing sexual organs to another person.
- Sharing private sexual materials of another person without consent (images, video, voice recordings, text message, letters, emails, etc.).
- Attempting to or engaging in sexual intercourse or a sexual act without consent.
- Repeatedly following another person without good reason.

- Conduct of a sexual nature which creates (or could create) a degrading, intimidating or hostile environment for others, including making unwanted remarks of a sexual nature.
- Arranging or participating in activities or events which may reasonably be assumed to be degrading and humiliating to those who have experienced sexual violence, including inappropriately themed social and initiation events.

*3.12 Intimate personal relationship* means a relationship that involves one or more of the following elements:

- *physical intimacy, including isolated or repeated sexual activity; and/or*
- *romantic or emotional intimacy.*

*3.13 A Disclosure* involves an individual choosing to tell anyone who is part of The NIOT community, either in person or anonymously, about their experience of Sexual Misconduct (different from Report) on the understanding that such a disclosure cannot be used for the purposes of investigating any disciplinary allegation under this Policy.

*3.14 A Report* is the sharing of information with a staff member of The NIOT regarding an incident of Harassment and / or Sexual Misconduct experienced by that individual for the purposes of initiating the investigation process as set out in this Policy and the accompanying procedures (this is different from the initial Disclosure).

*3.22 Reporting Party* is the person(s) who has been the subject of the alleged incident of Sexual Misconduct or other Policy breach.

*3.23 Responding Party* is the person(s) whose behaviour it is alleged amounted to an incident of Sexual Misconduct or other Policy breach.

*3.24 Malicious reporting* occurs when an individual makes allegations of Harassment and / or Sexual Misconduct that they know to be untrue.

*3.25 'Staff'* includes but is not limited to employees and contractors employed by the NIOT. There may be instances where close association with NIOT results in action regarding 'investigation', 'safeguarding' or 'reporting' depending on the circumstances and in the interests of creating a safe community.

*3.26 'Relevant' or 'appropriate' staff member* means a member of staff who has direct academic responsibilities, or other direct professional responsibilities, in relation to that student. See the NIOT 'Student-Staff Relationships Policy' for further guidance.

*3.27 'Students' or 'trainees includes',* but is not limited to, persons who are registered on a higher education course at the NIOT (such as within the ITE faculty), at any point in time within the overall duration of that higher education course. Distinction has been made within the student-staff relationships policy (see section 13) regarding the definition of 'student' or 'trainee' within the guidance set for staff-student relationships (such as for ECF or NPQ).

*3.28 An 'incident' of harassment and/or sexual misconduct* includes a wide range of circumstances. For example, it includes, but is not limited to, allegations, complaints, suspected behaviour and / or formal findings of harassment and/or sexual misconduct.

This means that it also includes instances where a formal complaint is not made, or where there is insufficient evidence to progress disciplinary proceedings within the NIoT. Therefore, the following considerations will be made in regards to defining 'incidents':

- i. allegations or complaints are made to the NIoT about harassment and/or sexual misconduct; and
- ii. the NIoT could reasonably be considered to have grounds for suspecting that harassment and/or sexual misconduct has taken place or is taking place.

*3.29 Vexatious reporting* involves the creation of persistent, unwarranted reports made under this Policy, or a refusal to accept any reasonable decisions arising from the application of the accompanying procedures to this Policy.

*3.30 Alcohol and/or Drug Use:* Incapacitation arising from alcohol or drug consumption should be evaluated on the basis of how the alcohol/drugs have affected the individual. Signs of incapacitation may include, but are not limited to, one or more of the following: slurred speech, unsteady gait, bloodshot eyes, dilated pupils, unusual behaviour, blacking out, a lack of full control over physical movements, a lack of awareness of circumstances or surroundings, and/or an inability to communicate effectively. See Appendix 2 for further guidance.

3.31 The NIoT recognises that there are potentially additional types of behaviour that will constitute a breach of this Policy and which will, therefore, need to be considered under the relevant internal disciplinary regulations. See Appendix 2 for further terminology.

#### **4. Confidentiality and Data Handling**

4.1 Confidentiality will be maintained, where possible, throughout the Disclosure, Reporting and investigative processes in recognition of the sensitive nature of Harassment and Sexual Misconduct matters. As such, information will usually only be shared with relevant individuals/entities (who may be internal or external to The NIoT), including Human Resources, Student Support, witnesses, external specialists from agencies like Rape Crisis, Sexual Assault Referral Centres or the Police with the agreement of the Reporting Party.

4.2 The NIoT reserves the right, and may be under obligation, to share information in exceptional circumstances where such disclosure is necessary to protect any individual or the University's wider community from harm or to prevent a crime from taking place. All individuals involved in any process under this Policy must keep information disclosed to them as part of the process confidential. Any unauthorised disclosure of confidential information will be considered a violation and will be addressed accordingly.

4.3 Throughout all proceedings, The NIoT will act in compliance with GDPR regulations for the UK, and your data will be handled in accordance with data protection legislation surrounding storage and data processing. Any data collected from Reports of incidences will be used for investigative processes and for data reporting purposes within the NIoT. Any data reporting will be anonymised. See Section 15 for further information on evaluation and monitoring.

4.4 Reporting parties should be aware that they cannot anonymously report an incident for formal investigation purposes and that their personal details, such as name and campus location, will need to be made aware to the Responding party as part of the investigation.

All documents, including the Reporting form, investigation notes and meeting minutes will be available to all parties involved in the investigation and to the Disciplinary Panel member and associated administrative staff. Personal contact details, such as telephone numbers and addresses will be suitably redacted to protect the Reporting Party.

## **5. Police Investigations & Criminal Proceedings**

5.1 This Policy aims to support the Reporting Party in bringing incidents of Harassment and Sexual Misconduct to the attention of The NIOT and to support them when they assess and choose the course of action that is most appropriate for them.

5.2 Where a criminal investigation or proceedings are ongoing or are likely to commence in respect of a Disclosure, The NIOT can receive a Report of Harassment or Sexual Misconduct. In the interest of not causing impediment to the criminal proceedings, The NIOT has the discretion to not commence an internal investigation or to suspend an ongoing investigation. In all instances, The NIOT will undertake any necessary precautionary action and will inform all parties of the decision.

5.3 Reports of alleged incidents of Harassment and Sexual Misconduct made under this Policy, including those where the Reporting Party chooses not to report the matter to the Police, will be reviewed by the Student Support and Welfare Manager (or nominee such as appropriate ITE Safeguarding Lead or the Director of Academic and Registry Services). A review may also be conducted after the conclusion of a criminal investigation or proceedings where there are issues outstanding and pertinent to the parties involved.

5.4 A decision by the Police, Crown Prosecution Service or other law enforcement agency to take no further action in relation to a criminal matter or an acquittal at a trial does not preclude The NIOT from taking action under this Policy and related Procedures and does not indicate that the Reporting Party has made a vexatious or malicious Report.

5.5 In all cases, the NIOT will advise the Reporting Party that it does not have the legal investigatory powers of the Police and cannot make a determination on criminal guilt. An internal investigation is focused exclusively on whether a breach of this Policy has occurred. The internal process cannot, therefore, be regarded as a substitute for a Police investigation or criminal prosecution.

5.6 Where a trainee or staff member has been convicted of a criminal offence or accepts a police caution in relation to behaviour that falls within the scope of this Policy, the conviction/caution will be taken as conclusive evidence that the behaviour took place, and no further investigation shall be required by the NIOT. The case will be referred as an allegation of Level Three Misconduct via either the NIOT's Non-Academic Misconduct Policy (or for consideration under the Staff Disciplinary Procedure as appropriate).

## **6. Support**

6.1 The NIOT is committed to providing support for any members of its community affected by Harassment and / or Sexual Misconduct and will provide information on support resources and offer interim measures as appropriate to the Reporting Party, Responding Party and any witnesses involved in alleged incidents of Harassment and Sexual Misconduct.

6.2 Support resources are available to any member of The NIoT community who discloses an incident, regardless of their choice to make a Report to The NIoT or the Police, and this support remains available irrespective of the outcome of an investigation. All staff and students can access the [BUPA EAP helpline](#) for confidential support and counselling. Further information about external support options is available at the NIoT [‘Make a report’](#) webpage.

6.3 The Reporting Party and Responding Party will each have separate members of staff assigned to them to offer welfare and pastoral support and may be signposted to an appropriate external body to access free, impartial and confidential advice. There is more about accessing other external support options at the NIoT [‘Make a report’](#) webpage.

6.4 Support will be offered by the Student Support Team / or other appropriate staff to any trainee making a formal report and to any responding students who are subsequently contacted or interviewed as part of the investigation process. Trainees can opt out of support offered and, in such cases, signposting will be made to other service providers.

6.5 Support will be provided during and following any investigation and subsequent disciplinary processes that may take for both Reporting and Responding students. This support will aid trainees to navigate the policy and procedure and will help with expectation setting and in understanding the outcomes of any cases, rationale for the findings and next steps.

6.6. Academic advice and support will be provided to any trainees with regards to their academic studies, including in relation to decisions about attendance, continuation, suspension or cessation of study which may come about as a result of any disciplinary action taken.

## **7. Disclosing or Reporting Sexual Misconduct to The NIoT**

7.1 If a Trainee or staff member at the NIoT has experienced any kind of Harassment or Sexual Misconduct, they can disclose or report this to The NIoT as follows:

- Using the [Anonymous Disclosure Form](#), which helps the NIoT monitor the number and type of reports and reasons for those reports, with those reporting remaining anonymous.
- Provide an open but confidential Disclosure to the NIoT without being required to make a formal Report. This would be by discussing the case with a trusted staff member or Student Support or the HR Department if you are a staff member.
- Make a formal [Report under this Policy](#), through which a trainee or staff member can request that another trainee or staff member's behaviour is investigated.

7.2 Disclosure and Reporting are separate actions that the Reporting Party may choose to take. The NIoT recognises the importance of minimising the number of times the Reporting Party has to disclose an incident of Harassment or Sexual Misconduct.

7.3 Following receipt by the NIoT of a Disclosure of an incident of Harassment or Sexual Misconduct, the Disclosure may be received in a variety of ways and may not necessarily be brought forward by the Reporting Party.

7.4 A Disclosure may relate to a Responding Party who is or is not a member of The NIoT community, and it does not automatically result in a Report being made under this Policy. The NIoT respects the right of the Reporting Party to choose how to take forward a Disclosure.

7.5 Following a Disclosure, the Reporting Party will be given their reporting options along with information on resources for specialist support. The NIoT recognises that the Reporting Party may require time and reflection before making a decision about making a formal report. The Reporting Party will be given the option and support to do one or more of the following:

- Report to the Police.
- Report to the NIoT under this Policy.
- Make no report of the incident.
- Receive advice on the support that is available.

## **8. Before completing an Anonymous Disclosure or Formal Reporting Form**

The NIoT makes the following recommendations before submitting either an anonymous or formal reporting form regarding your experiences of harassment or sexual misconduct:

- Read this Policy and the accompanying Non-Academic Misconduct Policy in full. You may also wish to read associated policies available on the 'Reporting Harassment and Sexual Misconduct' webpage, such as the 'Staff-Student Relationships Policy'.
- Seek confidential advice or support from Student Support. If you wish to remain fully anonymous, you do not have to seek advice to complete the anonymous reporting form. However, we recommend seeking support regarding making a 'formal report' to the NIoT.
- Take a look at the support options available on the NIoT ['Make a report'](#) webpage to ensure that you are seeking the appropriate external support required.

## **9. Anonymously Disclosing Harassment or Sexual Misconduct**

9.1 A Trainee can anonymously disclose any allegation of Harassment or Sexual Misconduct to the NIoT using the anonymous reporting tool. This process is completely anonymous and enables the NIoT to understand the prevalence and type of misconduct happening, as well as the reasons why those disclosing wish to remain anonymous. However, its purpose is to collect statistical information, and it will not result in any action being taken in relation to the disclosed incident unless we are able to identify a safeguarding issue that requires attention.

## **10. Reporting Sexual Misconduct and the Student and Staff Disciplinary Procedures**

10.1 The Reporting Party may choose to make a formal Report to the NIoT under this Policy with the intention of initiating an investigation process under the Non-Academic Misconduct Policy or Staff Disciplinary Procedure, as set out below. To make a formal Report to the NIoT, the Reporting Party should complete and submit the Formal Reporting

form, setting out the allegation of Sexual Misconduct and indicating the Responding Party and any witnesses. *A Formal Report cannot be investigated if the Reporting Party does not wish the substance of the allegation to be made known to the Responding Party.*

10.2 If a case is reported by a Trainee in respect of the conduct of another Trainee, it will be referred for consideration under the Non-Academic Misconduct Policy; if it relates to the conduct of a staff member, it will be referred under the Staff Disciplinary Procedure:

- The NIoT will acknowledge the Report and offer to meet with the Reporting Party to discuss it in more detail. The Reporting Party will be given a point of contact in the Support Team who will deal with the ongoing case.
- The NIoT will then decide pursuant to the Non-Academic Misconduct Policy or Staff Disciplinary Procedure whether there is enough evidence to consider pursuing a trainee or staff member for a breach of either of these Policies.
- The NIoT will then follow the process in the Non-Academic Misconduct Policy or Staff Disciplinary Procedure.
- Investigations undertaken and decisions made in respect of incidents of harassment and/or sexual misconduct will reflect established principles of natural justice.
- If, on the balance of probabilities, there is sufficient evidence that the terms of this Policy and the appropriate disciplinary policy have been breached, then sanctions up to and including temporary or permanent exclusion from The NIoT can be imposed.

10.3 Retaliation of any kind, including any words or actions, intimidation, threats or coercion, against a trainee for instigating or engaging with an investigation will be dealt with as Misconduct under the appropriate policy and will be considered an 'aggravating factor' in the case when a decision is reached regarding appropriate sanction or penalties imposed.

## **11. Investigation process**

11.1 If the NIoT decides that there is enough evidence (such as an individual's testimony or witness statement, photographic or other evidence) to launch a formal investigation into an incident of harassment or sexual misconduct then a formal investigation will be launched; the responding party and reporting party will be duly noted of this decision (see 11.3).

11.2 There is an expectation that Formal Reports will be investigated, therefore, any decision and rationale for not investigating an incident should be clearly explained to the reporting party in writing within 4 weeks of receiving the report. The exclusion criteria for not initiating a formal investigation, includes, but is not limited too:

- the Reporting Party not being a registered student (OR not having been registered in the prior 12 months),
- the Responding Party not being a registered student or staff member at NIoT (within the past 12 months).
- There being a criminal investigation in process which may halt the progress of the formal investigation process.
- Clear evidence pertaining to the report being vexatious in nature.

11.3 If an investigation is launched then an Investigating Officer (IO) will be appointed and the NIoT will notify relevant parties about the initiation of the investigation, the

nature of the allegation that has been made and how this will be investigated. This communication can be expected within 2-4 weeks of the Formal Report being made.

11.4 The IO will write to involved parties and an interview/s will be held. This interview will be conducted sensitively and fairly by an appropriately trained member of staff with understanding of the trauma informed approach. One additional member of staff will be present to take notes alongside the IO.

11.5 The IO may also wish to interview other staff or students who may have been witness to the alleged incident and / or take witness statements as appropriate. The IO will determine what other evidence needs to be gathered, such as CCTV footage, emails or text messages.

11.6 Following completion of the investigation process the IO will write a report which will be submitted to the Academic Registry Team and / or Human Resources which will outline their findings and a recommendation will be made as to whether to progress the case to a Non-Misconduct Panel or to the Staff Disciplinary Procedure to make a decision on whether the misconduct meets the grounds for Harassment and / or Sexual Misconduct.

## **12. Levels of Misconduct**

12.1 In reference to misconduct that is alleged to occur in relation to a registered trainee at the NIOT, the following levels of misconduct will be considered for the purposes of 'Non-Academic Misconduct'. For staff alleged of harassment or sexual misconduct, the Staff Disciplinary Procedure should be consulted. However, the guidance written here still applies to staff for determining misconduct for the purpose of the Staff Disciplinary procedure and will be dealt with accordingly.

12.2 Breaches of this Policy that are likely to constitute matters of Level Two Misconduct for Disciplinary Action under the NIOT's 'Non-Academic Misconduct Policy' may include, but not limited too:

- Kissing another person without consent where the evidence indicates that an element of force or other harassment behaviours were not involved.
- A single incident of following another person without good reason.
- Making a single remark of a sexual nature with no pattern of behaviour.
- One off incident of harassment including email, phone or in person communication which breaches the NIOT expected code of conduct for students.

12.3 If it is determined that a breach of this Policy constitutes Level Two Misconduct under the NIOT Non-Academic Misconduct Policy the NIOT will apply sanctions following the Level Two Misconduct procedure as set out therein. See also 12.5 for examples of possible sanctions.

12.4 Breaches of this Policy which are likely to constitute matters of Level Three Misconduct referred to Student Disciplinary Hearing under the NIoT's Non-Academic Misconduct Policy may include, but are not limited too:

- Engaging or attempting to engage in a sexual act without consent.
- Sexually touching an individual without consent.
- Pattern of threatening or abusive behaviour of a harassing or sexual nature.
- A pattern of coercive or controlling behaviour, stalking or threats.
- Recording, sharing and/or distributing intimate images or recordings of another person without their consent.
- Acts of nudity involving inappropriate display of sexual organs to others.
- Repeated incidents of harassment including email, phone or in person communication which breaches the NIoT expected code of conduct for staff and students.
- Vexatious reporting under this policy with the intent to cause distress or harm.
- Repeated breaches of the Harassment or Sexual Misconduct Policy or where Responding Party fails to comply with disciplinary sanctions.
- A conviction of a criminal offence or a Police caution in relation to behaviour that falls within the scope of this Policy & Procedure.
- Serious example of public intimidation, over an extended period or in a serious one-off incident, with the impact of extreme distress and / or harm to the individual.
- Actual bodily harm or incitement of violence which can lead to harm.

12.5 If it is determined that a breach of this Policy constitutes Misconduct under the NIoT's Non-Academic Misconduct Policy, the NIoT will apply sanctions following the Non-Academic Misconduct procedure as set out therein.

Examples of possible sanctions are as follows:

- Referral to the police or appropriate authority
- A requirement to undertake additional training and/or a recommendation to attend an appointment for counselling or other types of support
- A permanent restriction on contact with a named person or persons (a 'No Contact Order')
- Referral to the Fitness to Practice or Fitness to Study procedure (as appropriate)
- Suspension or permanent expulsion (where appropriate)

12.6 In the case of findings of Harassment and / or Sexual Misconduct under the NIoT's Staff Disciplinary Procedure, the NIoT will follow the procedure as set out therein.

### **13. Student-Staff relationships**

13.1 The NIoT has a duty to protect students and staff within its community from incidences of harassment and sexual misconduct and to reduce the likelihood of incidences occurring, including any potential harm within intimate personal relationships.

13.2 As such, the NIoT *strongly discourages*, and in *some instances places a ban on*, any personal intimate relationships between staff and students at the institute that

meets the definitions outlined in this policy and the '*Student-Staff Relationships Policy*'. This is to ensure that the NIoT remains a safe and inclusive space for all trainees and staff.

13.3 As such, NIoT has deemed that certain staff should *not* enter into personal intimate relationships with trainees as outlined in the '*Student-Staff Relationships Policy*'. For example, relationships are banned between 'appropriate ITE Staff members' and 'trainees,' where there is an 'imbalance of power' or if a staff member has decision making capacity over a trainee. Please see the '*Student-Staff Relationships Policy*' for further details on which types of relationships are subject to the ban or exempt (such as pre-existing relationships prior to joining the NIoT community) and how to report a relationship.

13.3 The NIoT is committed to highlighting why student staff relationships can be problematic and we encourage students to come forward to discuss any behaviours which may amount to abuse of power, coercion, or sexual and/or romantic advances in the context of intimate personal relationships. See the 'Student-Staff' relationship policy.

13.4 The '*Student-Staff Relationships Policy*' outlines how reports will be dealt with and the appropriate safeguarding arrangements and / or consequences of disclosure. See the Student-Staff relationships policy for further details on this policy and how to disclose a relationship that has taken place between a staff member and a student.

## **14. Non-disclosure agreements**

14.1 The NIoT prohibits restricting the ability of a student to disclose information about an allegation of harassment and/or sexual misconduct. Such restrictions include 'non-disclosure agreements' or 'NDAs'. The NIoT cannot impose any provision that would prevent or restrict any student or trainee from disclosing information about an allegation of harassment and/or sexual misconduct which involves or affects one or more students.

14.2 The NIoT must not, therefore, include such restriction in any contract that applies to students and is formed or varied from the date this policy comes into effect. This provision does not apply to other people, such as staff, and is not intended to inhibit discussion of these issues that might support those who have experienced harassment or sexual misconduct or allow issues to be aired and properly addressed.

## **15. Protecting trainees from harassment and sexual misconduct**

15.1 The NIoT will make a significant and credible difference with regards to protecting trainees from and reducing incidences of harassment and sexual misconduct. With regards to this duty, the NIoT will take the following steps in its compliance activities:

- Consider the needs of different groups of students, including those with protected characteristics, with regards to shaping the NIoT policy and procedures for tackling Harassment and Sexual Misconduct and in the operation of those procedures.
- Collect, monitor and publish data to inform effective action to protect students

from behaviour that may amount to harassment and/or sexual misconduct. This will include data relating to the prevalence of harassment and/or sexual misconduct affecting students. This will involve reporting on the number of incidences, investigations and outcomes at SEQA, gathering student feedback and understanding the full picture at NIoT and where additional resources need to be placed to protect students.

- Undertake credible and evidence-based evaluation of the effectiveness of the steps it is taking to make a significant and credible difference in protecting students from behaviour that may amount to harassment and/or sexual misconduct and reviewing and adjusting the NIoT approach as appropriate. This will include gathering feedback on training and support services which will be reported at SEQA.
- Make due regards to protect trainees on placement and work with placement providers in the implementation of policy and procedure, including consideration for student-staff relationships for trainees that are on placement. For example, discouraging trainee-staff relationships with regards to trainees and staff within placement schools and banning non-disclosure agreements with placement providers if an incident occurs.
- Ensuring a commitment to appropriate training and support of trainees and staff both in understanding and tackling harassment and sexual misconduct including, but not limited too: consent workshops for trainees, bystander training, training for staff in handling incidences of sexual misconduct from a 'Trauma Informed Perspective' by suitably qualified professionals, reporting and supporting students and in due compliance for the Executive Leadership Team who have overall responsibility for discharge of this duty and in ensuring compliance with this Policy.

## Harassment and Sexual Misconduct Formal Reporting Form

### Guidance on completing the Sexual Misconduct and Harassment Reporting Form

#### ***When to use this form:***

You may use this form to make a report of sexual misconduct and/or harassment to the NIOT for the purposes of investigating an incident. Please only use this paper form if you cannot access the online form at [this page](#). This form can be submitted to request that the NIOT take action in response to an incident of sexual misconduct and/or harassment where the Responding Party is a member of the University community, e.g. student or staff.

#### ***How to complete this form:***

Please complete this form to the best of your knowledge. You may choose to leave some sections blank. After submitting this form, if you choose to continue with the formal process, an investigation into the allegations will be conducted. This form will be used to represent your experience to the investigator, but you will also have the opportunity to speak to the investigator. This form will also be shared with the Responding Party(s) in order to inform him/her/them of the report. You will also be offered support from the Student Support Team if you are a student or Human Resources if you are a staff member. We will also look to signpost you to external support, where appropriate.

#### **1. Reporting Party:**

The Reporting Party is the individual who was the subject of the sexual misconduct and/or harassment and has chosen to formally report this to the NIOT. After the form is submitted, your contact email and telephone number will be redacted so that the Responding Party does not receive this information.

#### **2. Responding Party:**

The Responding Party is the individual who is alleged by the Reporting Party to have committed the sexual misconduct and/or harassment. If there is more than one Responding Party for the same incident, please note that in the Incident Information section.

#### **3. Incident Information:**

Use this section to describe what happened. The more detail you provide in this section the fewer questions the investigators may need to ask you about those details during the investigation. If there is more than one incident related to the same Responding Party, please indicate this in the description of the incident. If there were witnesses who have knowledge of the incident/s, you may wish to include them in the investigation. In order for the witnesses to be included, they have to consent to participate in the investigation.

#### **4. Supporting Documentation:**

Supporting documentation may include, but is not limited to:

- photos,
- videos,
- e-mails,
- text messages and/or
- screenshots of online material.

If you submit supporting documentation, this will be shared with the Responding Party at

the time he/she/they are informed of the report and receives a redacted copy of this form.

## 5. Outcome:

In this section, please describe what actions you desire to be taken from this process. This may include requests for information on specialist support, a disciplinary response, and/or no contact arrangements/orders. If you are not sure what outcome you want, you can leave this blank.

### *How to submit this form:*

Please submit this to the Student Support and Welfare Manager using the contact details at the end of the form. This will be triaged and shared with the Director of Academic Registry and / or Head of People as appropriate. You can also use the online reporting system on the [NIoT website](#). Please refer to the guidance on pages 1-2 of this policy before submitting.

1. Reporting Party	
<b>Name</b>	
<b>Email Address</b>	
<b>Phone</b>	
<b>Gender</b>	
<b>Study location</b>	
2. Responding Party	
<b>Name</b>	
<b>Gender</b>	
<b>Relationship to Reporting Party</b>	(e.g. friend, peer, partner, stranger, lecturer, colleague, etc.)
<b>Affiliation with the NIoT</b>	(e.g. student, staff, other) if known
<b>Study location</b>	
3. Incident Information	
<b>Date and Time of Incident</b>	

<b>Please provide a description of the incident.</b>	(add more pages if necessary)
<b>Please provide the details of any witnesses to the incident.</b>	
<b>Have you told anyone about this incident?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No   If yes, who:
<b>Have you notified the police?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I would like more information on this option.
<b>4. Supporting Documentation</b>	
<b>Are you submitting supporting documentation?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No   If yes, please describe (where possible, please submit this with your report):
<b>5. Outcome</b>	
<b>What actions do you desire from this process?</b>	

**Signature:**
**Date:**

Please submit any supporting documentation with this form. Please forward this completed form to the Student Support Team: By email: [studentsupport@niot.org.uk](mailto:studentsupport@niot.org.uk). If you are making a report regarding a staff member then the Student Support and Welfare Manager will raise this directly with HR on your behalf. Your form will be shared on a 'need to know basis only with appropriate staff involved in the investigation.

## **Appendix Two**

### **Further definitions in relation to Harassment and Sexual Misconduct**

*Coercive or Controlling Behaviour* is defined as any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between parties regardless of gender or sexuality. This can include, but is not limited to, psychological, physical, sexual, financial and/or emotional abuse.

*Complicity* is any act that knowingly helps, promotes, or encourages any form of Sexual Misconduct by another individual.

*Retaliation* may constitute any words or actions, including intimidation, threats, or coercion, made in response to Disclosures or Reports made under this Policy & Procedure by any individual, including both the Responding Party and the Reporting Party, as well as witnesses, friends or relatives.

*Force* includes any physical harm or threat of physical or emotional harm which would reasonably place an individual in fear of immediate or future harm, with the result that the individual is compelled to engage in a sexual act.

*Consent* is the agreement by choice where the individual has both the freedom and capacity to make that choice. Consent cannot be assumed on the basis of a previous sexual experience or previously given consent, or from the absence of complaint, and each new sexual act requires a re-confirmation of consent as the foundation of a healthy and respectful sexual relationship. Consent may be withdrawn at any time before or during a sexual act.

*Capacity to Consent* Free consent cannot be given if the individual does not have the capacity to give consent. An individual is incapacitated when asleep, unconscious, semi-conscious, or in a state of intermittent consciousness, or any other state of unawareness that a sexual act may be occurring. Incapacitation may occur on account of a mental or developmental disability, or as the result of alcohol or drug use.

*Freedom to Consent:* For consent to be present, the individual must freely engage in a sexual act. Consent cannot be inferred from a lack of verbal or physical resistance. Consent is not present when submission by an unwilling participant results from coercion, force, threat, intimidation or the exploitation of power.

Cyberstalking repeated and deliberate use of the internet and other electronic communication tools to engage in persistent, unwanted communication intending to frighten, intimidate or harass someone, or to spy on someone.

*Honour-based* abuse an incident involving violence, threats of violence or harm, intimidation, coercion, or abuse (including psychological, physical, sexual, financial, or emotional abuse) which has or may have been committed to protect or defend the honour of an individual, family and/or community for alleged or perceived breaches of the family and/or community's code of behaviour.

Group sexual misconduct planning or attending inappropriately themed events aimed at degrading individuals subjected to sexual misconduct or initiations that involve non-

consensual (often coerced) sexual acts.

*Image-based* sexual abuse recording or sharing sexual or intimate photos or videos, without the consent of the person pictured. Also known as revenge pornography.

*Non-consensual* sexual act engaging or attempting to engage in a sexual act with another person without their consent.

*Non-consensual* sexual contact sexually touching another person without consent.

*Relationship abuse* any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those who are, or have been, intimate partners; this may include psychological, physical, sexual, financial and/or emotional abuse.

*Retaliation* any adverse actions against another person, including, but not limited to, harassment, threats, intimidation or coercion, made in response to someone disclosing or reporting any form of sexual misconduct.

*Sextortion* threatening to publish sexual information, photos or videos about someone. Photos or recordings are often made without the person realising or consenting.

*Sexual assault* any sexual touching that a person does not consent to. It involves all unwanted sexual contact including kissing, groping, sex without consent and enforced sexual acts.

*Sexual violence* any act of a sexual nature that a person did not consent to. Stalking persistent, unwanted communication or behaviour intending to frighten, intimidate or harass someone such as repeatedly following them.

Upskirting filming, or photographing under a person's clothes without their consent to capture images of their body or underwear.

*Intoxication* is never a defence for committing an act of Sexual Misconduct or for failing to obtain consent. If there is any doubt as to the level or extent of one's own or the other individual's incapacitation, the safest approach is not to engage in a sexual act.