

Sexual Consent Strategy

1. Introduction & Objectives

Given the reported data concerning the experience of too many students, and of women in particular, sexual harassment and sexual assault is a concern across the higher education system in Ireland. International evidence shows that, unless there is a sectoral response, the institutional self-reflection required for sustainable improvement is unlikely to take place. In Ireland, simply exhorting institutions to respond has resulted in varying degrees of engagement to-date.

Evidence-informed and well-organised initiatives are of limited value without addressing systemic and institutional factors associated with sexual harassment and sexual violence in higher education. Further, in the UK, experience had shown that institutional provision of direct initiatives for students can ‘tick a box’ required for promotional student recruitment messages, for funders or regulators. In Ireland, leading initiatives for students are unlikely on their own to challenge institutional culture and practices for students to be safe, empowered, confident, and capable in their relationships with fellow students, and with the wider university community.

To do this, initiatives must be accompanied by supporting **structures and processes**, which in turn are produced by and are embedded in a **positive institutional culture**. When all three dimensions are aligned, students are not the only beneficiaries. Those HEIs that work on all three dimensions become better and fairer workplaces.

USI are committed to challenging and changing the culture in wider society that allows sexual misconduct. We are dedicated to working towards a culture which promotes positive sexual consent and communication.

2. Definitions

2.1 Sexual Consent

The most commonly accepted definition of sexual consent at present in the research literature is: “The freely given verbal or non-verbal communication of a feeling of willingness to engage in sexual activity” (Hickman & Muehlenhard, 1999, p. 259). This entails an ongoing, mutual and preferably verbal communication.

The legal definition of consent in Ireland has been introduced in 2017, wherein “a person consents to a sexual act if he or she freely and voluntarily agrees to engage in that act” (Section 48, Criminal Law (Sexual Offences) Act 2017). There is no consent if the victim is asleep or unconscious; force or the threat of force is used; s/he* cannot consent because of the effect of alcohol/other drug; s/he* cannot communicate consent because of a physical disability; s/he* is mistaken about the act or about the identity of the other person; the only

indication of consent came from a third person, or s/he* is being unlawfully detained at the time of the act. The law is also clear that failure to resist is not consent, and that consent once given may be withdrawn at any time before or during the act. Finally, the list of situations in which there is no consent is an open one.

*Although the Irish law only alludes to binary genders in most cases, it is understood that gendered descriptors, such as “s/he”, does not preclude people of different gender identities, as enforced in the Gender Recognition Act 2015.

2.2 Sexual Health

Sexual health is an inclusive concept that accommodates the positive achievement of health as well as safety and freedom from violence. The World Health Organisation (2006) definition of sexual health states:

“Sexual health is a state of physical, emotional, mental and social well-being in relation to sexuality; it is not merely the absence of disease, dysfunction or infirmity. Sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence. For sexual health to be attained and maintained, the sexual rights of all persons must be respected, protected and fulfilled”.

2.3 Sexual Misconduct

Sexual misconduct is any form of unwelcome behaviour of a sexual nature. It can be committed by a person of any gender and it can occur between people of the same or different gender. Sexual misconduct may occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Examples of sexual misconduct include sexual assault and rape, which are defined below, and non-consensual taking or sharing of intimate images, stalking, and verbal or physical harassment .

2.4 Rape and Sexual Assault (as defined by Irish Law)

Rape under Section 2 Criminal Law (Rape) 1981 Act as amended. Absence of consent is necessary to prove this offence. Penetration of the vagina by the penis where the man either knows that the woman does not consent to sexual intercourse, or is reckless as to whether she consents or not. Proof is necessary that the penis entered the vagina, but even a very slight degree of penetration is enough.

Rape under Section 4 Criminal Law (Rape) (Amendment) Act 1990 as amended. Absence of consent is necessary to prove this offence. A sexual assault that includes: a) Penetration (however slight) of the anus or mouth by the penis. b) Penetration of the vagina (however slight) by any object held or manipulated by another person

Aggravated Sexual Assault under Section 3 Criminal Law (Rape) (Amendment) Act 1990 as amended. Absence of consent is necessary to prove this offence. A sexual assault that includes serious violence or the threat of serious violence or is such as to cause injury, humiliation, or degradation of a grave nature to the person assaulted.

Sexual Assault under Section 2 Criminal Law (Rape) (Amendment) Act 1990 as amended. Absence of consent is necessary to prove this offence. An assault which takes place in circumstances of indecency is known as sexual assault. It includes any sexual touching without consent and is not limited to sexual touching involving penetration. Technically, the word "assault" also covers actions which put another person in fear of an assault (e.g., pointing a gun, raising a fist in victim's face).

2.5 Trauma Informed Approach

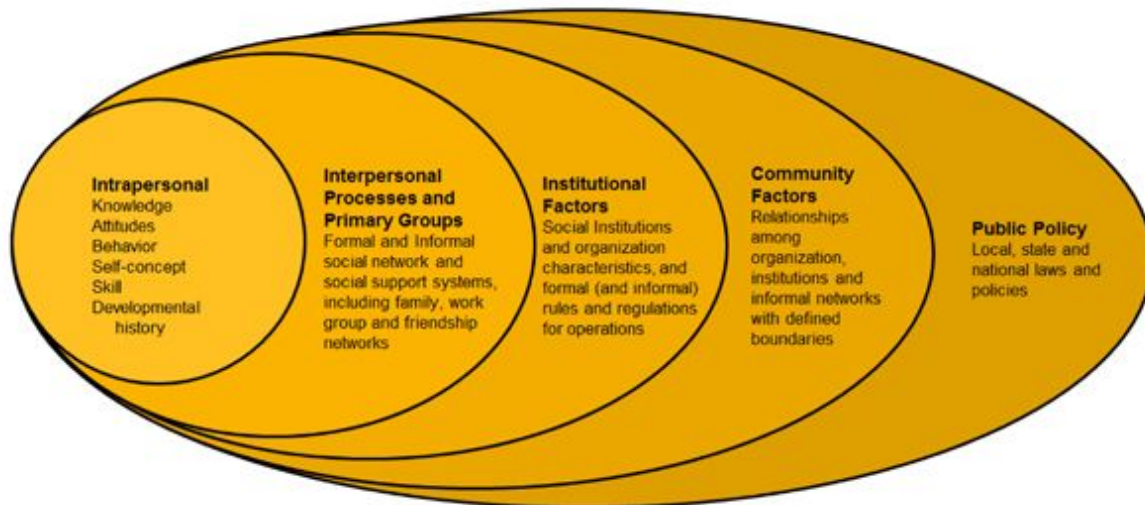
Trauma-informed services are sensitive to the pervasiveness of trauma and its impact on survivors, including how trauma affects a survivor's ability to cope, to access services, and to feel safe both physically and emotionally. Trauma-informed services are strength-based and non-pathologizing. They take steps to identify potential trauma triggers, reduce re-traumatization, and attend to the quality of interactions between staff and survivors receiving services. Trauma-informed organizations provide survivors and staff with an environment and structure that is inclusive, welcoming, de-stigmatizing, and not re-traumatizing. A critical component of trauma-informed service delivery is attending to the emotional needs of direct service staff, including recognizing vicarious trauma, and addressing self-care in substantive ways. (The White House Violence Against Women Statement on Trauma Informed services).

3. Background

USI understand that sexual misconduct is a wider societal issue, and thus requires various factors come together to form a culture; a culture we're trying to change. To effect change, we must take an ecological approach to sexual health promotion. The American College Health Association (ACHA, 2016) have issued guidelines for comprehensive programmes on sexual violence prevention, based on the premise that prevention work:

- Supports both positive, healthy relationship skills and strategies for preventing negative experiences
- Engages with audiences at their current level of preparation and reference for change - for example, if there's limited previous sexual health education engagement, at school or explicit awareness of consent and sexual misconduct.
- Addresses the significant relationship between alcohol [or other drugs] and sexual violence.
- Supports students' practical communication skills specific to consent.

The ACHA organise their guidelines around the social ecological approach to health promotion.



Caption: McElroy et al., 1988

In order to address intrapersonal attitudes and behaviour, we have to consider their social context. We must consider interpersonal processes and social groupings, institutional factors, community factors, and national/public policies.

3.1 Intra-Personal factors

Understanding of interpersonal factors is fundamental to ensure the success of a framework. We believe that in addition to inclusion of marginalised college communities are necessary to contribute to all levels of the framework.

3.2 Inter-Personal factors

We believe that to address interpersonal factors, we must have targeted college initiatives, such as non-mandatory sexual consent workshops, year-long campaigns, and inclusion in college campaigns (such as SHAG campaigns, and orientations).

3.3 Institutional Factors

We believe that institutions must provide wider support by adapting their structures and processes to best deal with student cases. We encourage institutions to provide student supports (such as trauma-informed counselling), and various access options to help students continue their studies. We also encourage institutes to provide training to staff members to deal with disclosures, clear reporting structures, as well as encouraging school/department-based initiatives.

Institutions have a responsibility to challenge internal cultures. We believe that any evaluation and monitoring of an institution should be visible, transparent, consistent, student centred, actively promote sexual health supports and help seeking, and actively ensure that its values are reflected in its practices.

3.5 Community factors & public policy

As previously stated, sexual harassment and violence is a wider societal issue. USI are proud to fight on societal issues which affect our students. This strategy does not cover

comprehensively cover wider issues linked to sexual misconduct, and recognises mandates outside of this strategy related to issues such as those,

4. Action points

4.1 Training, awareness and education

Aim: To ensure that MOs are best prepared to engage with institutional initiatives in relation to consent.

USI will:

Provide necessary information for MOs to lobby and to be involved in developing, maintaining and reviewing all elements of a whole-institution framework.

Build partnerships with external experts, and support MOs to represent minority students who may be most at risk of sexual harassment.

Provide training on sexual consent, how to deal with casework relating to sexual harassment and sexual violence, run campaigns

Support MOs to run information campaigns on positive sexual communication, and include information and resources on the identification, prevention, response and reporting of sexual harassment and sexual violence.

Include sexual consent, positive communication and relationships and ending sexual harassment and violence (such as the ESHTTE project) in our campaigns.

Work closely with a range of organisations that are working on this topic and build on existing partnerships.

Form an expert advisory group, to assist on the roll-out of consent communications. Invitations should be extended to current and past expert advisors in the area of sexual health who have contributed positively to the work of our consent campaigns.

4.2 Local Policy

Local Policy:

Aim: To ensure Students' Unions across the country have a sexual harassment and sexual violence policy for instances when a student will bring a case to their Students' Union attention.

USI will:

Support Member Organisations (MOs) in developing a sexual misconduct policy for their Union.

To provide support and guidance to MOs to bring said policy to their Governing Authority for adoption and to add on to existing policies covering respect, dignity and harassment.

Support MOs in ensuring policies, and structures, are trauma-informed.

4.3 Lobbying

Aim: To improve services made available to students in the area of consent

USI will

Make use of data collected by HEA, and other resources to lobby relevant institutions (including HEI governing boards and the Department for Education and Skills) for improved services.

Identify areas in support services (such as counselling and legal advice), institution policy and supports, and wider societal supports which can be improved to stem the wider problem of sexual misconduct.

Lobby the HEA and other relevant bodies to ensure its continued compliance with the “Safe, Respectful, Supportive & Positive: Ending Sexual Violence and Harassment in Irish Higher Education Institutions”, and work to updated this report on areas most affecting students.

Lobby the government to amend laws which affect students in relation to reporting sexual harassment and violence. This is inclusive of prolonged delays in criminal proceedings which puts victims under duress, lack of availability to legal supports or advice or basic legal information so that students can make an informed decision, and provisions in the current laws which burden students with undue stress and difficulty should they choose to report a case of sexual misconduct.

5. References

American College Health Association (2016). ACHA guidelines addressing sexual and relationship violence on college and university campuses. Hanover, MD.

Dublin Rape Crisis Centre (2018). Preventing and healing the trauma of rape and sexual abuse; Statistics Supplement 2017.

Hickman, S.E., & Muehlenhard, C.L. (1999). "By the semi-mystical appearance of a condom": How young women and men communicate sexual consent in heterosexual situations. *Journal of Sex Research*, 36, 258-272.

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World Health Organisation (2006). *Defining sexual health: Report of a technical consultation on sexual health, 28-31st January 2000, Geneva*. WHO: Geneva.