

Our response to the Office for Students’ consultation on a new approach to regulating harassment and sexual misconduct in English higher education

Universities UK (UUK) is the collective voice of 140 universities in England, Scotland, Wales, and Northern Ireland. Its mission is to create the conditions for UK universities to be the best in the world, maximising their positive impact locally, nationally, and globally. Universities UK acts on behalf of universities represented by their heads of institution.

This document outlines UUK’s response to the [Office for Students \(OfS\) consultation](#)

can live, work and study in a safe environment. UUK has been committed to this goal for many years, including by developing our 'Changing the Culture' guidance, which provides a strategic framework to support universities in preventing and responding to violence against women, harassment, and hate crime. Our members share this commitment and have undertaken significant work in recent years.

Whilst we agree that the sector must continue to do more to tackle harassment and sexual misconduct, we do not believe these issues represent a suitable matter for OfS regulation. A continuation or evolution of the current collaborative, self-regulatory approach would be far more appropriate than opting to expand the OfS' already wide remit.

UUK's own guidance outlines the importance of institutions taking context-specific approaches to tackling harassment and sexual misconduct. OfS' proposals demonstrate the inherent difficulties in reducing this issue to a detailed and standardised set of 'rules', intended to apply to a wide diversity of over 400 registered providers and their students – studying in very different ways (often with the involvement of third-party partners), living in different contexts, and with a wide range of ages and backgrounds. There is already a strong legal basis for universities to tackle harassment and sexual misconduct, and the proposed condition of registration does not usefully add to this. Conversely, tackling harassment goes beyond the

introduction of systems, policies and processes, and regulation cannot account for

many2D61 (d)11 (s)cco(ti2i6-4 (ty)2 (p2 (e)15x)-1 (.u6(v)1.s)-4 (s) (s)-2 (e)5u)-1n0(v)1.s)-4 (on)-1 (d)-1 (u

h12 (i)2 (l)2 (e)5 th)1 (o)2 (s)-2 (e)5wtho do(n)1 (o)2 (g t)10 ae(s)-2 (u)2 (f(i)2 (c)-4 (i)2 (e)5n)1 (t(s)-2 (te

nd(s)-2 (e)5x)ual misconducts82 (h12 (o)2 (u)1 lo)2 (d)1 (b)1 (e)5thed account,Oe mst r

ndcsh1.alene involved(i)2 (n)1 ((ta)2 (c)-4 (k)2 (l)2 (i)2 (n)1.1 (g th)1 (e)5s)-2 (e)5y)1

If the OfS does introduce a condition of registration, it is crucial that this is proportionate, provides the flexibility for institutions to act in a context-specific way, and minimises unnecessary burden and bureaucracy. OfS must also produce clear guidance, with precise expectations of institutions, and be clear about what would constitute successful outcomes.

1b. Do you have any alternative suggestions to the proposal to introduce a new general ongoing condition relating to harassment and sexual misconduct? If so, please explain and provide reasons for your view.



We are supportive of this proposal's intention to make information about tackling harassment and sexual misconduct prominent and easily accessible to students and prospective students. We agree that this not should be behind a password or security check. We are also supportive of the proposal to require providers to communicate this information with students and staff.

However, we have concerns about how accessible the single document would be to students in practice. Given the minimum content requirements set out in the consultation proposals, especially OfS' expectation that the document must include all relevant policies in full (not just signposting to them), many universities would be likely to have an extremely long single document (possibly hundreds or even thousands of pages). This would not be accessible or useful to students in practice, especially in a time of crisis, and we encourage the OfS to consult with students on what they would find most helpful. The approach set out seems to be at odds with the approach taken on other OfS regulatory matters eg access and participation plans (APPs) where a short, accessible summary for students is required. If the single document is intended to aid the OfS by compiling relevant information related to this

make judgements about making information accessible and with the sufficient level of detail.

5a. Do you agree or disagree with the proposal that minimum content requirements should be specified for the single document we propose a provider should maintain? Please give reasons for your answer.

We support the proposal that minimum content requirements should be specified for the single document for providers to maintain. This will promote consistency across the sector and make information more accessible for students and prospective students. As set out in question 4, we question the utility and accessibility of the single document in practice, and OfS should allow universities to demonstrate how they have made information accessible to students in other ways eg through student-facing webpages.

If the requirement for a single document is part of regulatory requirements, we would encourage OfS to provide further guidance and/or a template for providers to use. This will help encourage consistency and reduce burden on providers. We are concerned by the idea set out in the consultation that single documents will

6b. Do you have any alternative suggestions to the proposal in question 6a? If so, please explain and give reasons for your view.

We suggest allowing providers to provide links to existing content eg policies as part of their singl

However, we note that the existing condition of registration D (part iv) requires universities to have the necessary financial resourcing to comply with all conditions of registration. We would take this to include resourcing for staff capacity, so introducing this as a specific requirement of condition E6 is unnecessary. It risks unnecessary duplication and starts to create overly prescriptive requirements on how resourcing is managed across a provider.

In addition, higher education providers are diverse, and 'necessary capacity and resourcing' will look very different in different institutional contexts. It is crucial that providers continue to have the autonomy to judge the specific resourcing requirements in their own institution, in light of their model of education delivery and the nature of their relationship with their students. The factors influencing a providers' resourcing requirements are varied and complex; for instance, a large provider with high numbers of registered students in franchise provision may not need to dedicate as much resource to this issue as a mid-size institution whose students have a higher degree of vulnerability. Should OfS introduce this specific proposal as a condition of registration, they must be very clear about how they will assess what constitutes a 'necessary' amount of resourcing, and how this will take into account a diversity of institutions, including small and specialist providers.

We note that the consultation document proposes a link between the prevalence of incidents of harassment and sexual misconduct at a provider and their resource allocation. While we agree that resourcing decisions should be informed by the nature and scale of incidents, we would note that there need not always be a direct correlation between the two, and an increase in reported incidents does not automatically entail a need to increase resourcing. Conversely, increased resourcing may actually lead to increased reporting, if such increased resourcing has, for instance, enabled a provider to communicate information about its reporting channels more effectively. On this point, we would also welcome further clarification from OfS on how their proposal to introduce a sector-wide prevalence survey of sexual misconduct will interact with the condition of registration (see question 14); our strong preference is that the two interventions remain distinct, while recognising the need to work in tandem.

We would also like to reiterate that the cost and resourcing of regulatory compliance with the OfS is already significant for many of our members, particularly in smaller institutions. We would encourage the OfS to work with the sector to explore where and how burden can be further reduced elsewhere. In the case of these proposals, this should include ensuring all guidance is clear on what is required to demonstrate compliance, and reduc (c)-4 (l)md oua (i)2 (a)2.1 (nu)1 (r)-4 (.0012M.9 (c)-i)12 (d)fou t w7(l)2 (e)5aTJtc

8b. Do you have any alternative suggestions for the proposal in question 8a? If so, please explain and give reasons for your view.

We note that our members are currently under significant financial pressure, due to a combination of factors including: high inflation; reduced income from capped tuition fees and teaching and capital grants; increased costs (including energy bills); and the

during investigation processes. We also urge the OfS to provide guidance on disclosure of the outcome of staff investigations under staff disciplinary procedures following a concern raised by students, in line with Acas best practice on maintaining confidentiality in relation to disciplinary warnings or dismissal.

The OfS should provide guidance on the requirement to 'take all reasonable steps to ensure no other person places or enforces restrictions on the disclosure of information', including what third parties are deemed to be in scope of this requirement and what is expected of universities here. It is likely to be very difficult for them to prevent third parties from using NDAs in practice. For example, for a university with a large number of students undertaking work placements, this type of requirement would be difficult to enforce in practice, as not all employers may be willing to agree to not use NDAs in their employment practices. Universities' obligations in this area are further complicated by the fact that if a student does sign an NDA with a third party, this is likely to contain provisions preventing the student from informing the university.

Finally, we are aware that there are very occasionally cases where a complainant may ask to sign an NDA. The OfS should clarify how those cases should be handled by providers once this condition is in force, and consider allowing universities to make an exception in extreme cases and circumstances.

10b. Do you support any of the alternative options we have outlined or do you have any other proposals? If so, please explain and provide reasons for your view.

We support option b set out in paragraph 83. If the Higher Education (Freedom of Speech) Bill has been passed by the time the OfS makes final decisions following the consultation, we would strongly urge the OfS to align regulatory requirements with statutory obligations. This will reduce confusion and burden on universities, and provide clarity for students and potential students.

11a. Assuming that the OfS introduces a new condition of registration E6 (subject to the outcome of this consultation), which of the following options discussed in Proposal F do you think should be included in condition E6:

- A. Option A as proposed;
- B. Option B as proposed;

C. An option similar to Option A but with some changes (in which case please set out the changes that you would suggest in the next question);

D. An option similar to Option B but with some changes (in which case please set out the changes that you would suggest in the next question);

E. Any of the alternative options considered in this proposal;

F. None of the above.

Whilst fully noting the importance of tackling staff-student sexual misconduct, Proposal F risks becoming overly prescriptive, which is at odds with the OfS' commitment to principles-based regulation, and could set an unhelpful precedent for the level of detail in future regulation. Many of our concerns with the specifics of this proposal demonstrate the difficulties of seeking to apply overly detailed, prescriptive regulation to a diverse range of higher education providers, without allowing institutions the flexibility to tackle important issues in the most suitable way for their context.

Universities are free to choose their own policy, and some currently have an outright ban on staff-student relationships. However, we consider that this would be difficult to implement at a sector-wide level, and risks being overly intrusive into the private lives of students and staff. We accept that staff-student relationships will likely still

and universities' position as employers. This would ensure any condition, and its associated guidance, reflects employment best practice.

11c. Do you have any alternative suggestions to the options considered in Proposal F? Please give reasons for your answer.

While having robust policies, processes and systems are important in tackling the issue of staff-student sexual misconduct, they are not a 'magic bullet' solution, and education and culture change remain crucial aspects of prevention. Should OfS introduce the condition of registration, we recommend they also point to clear guidance for providers on the need to educate staff and students about appropriate professional boundaries – such as that developed by UUK.

11d. We would welcome views on whether Option B or any of the other options considered should allow for other exemptions. Please give reasons for your view.

While we do not support the introduction of Option B, if this were to be implemented, we would propose a broader range of exemptions. This should include an exemption for co-habiting couples, as well as relationships where a couple (or former couple) are parents of a child/children. In this instance, it would be reasonable for there to be some degree of relationship and/or financial dependency between the two parties, even if they are not married or a romantic relationship has ended.

12a. Do you agree or disagree with the proposals for the implementation of any new condition of registration? Please give reasons for your answer.

Whilst our members are already meeting many of the requirements proposed within the new condition of registration, certain elements are likely to represent a significant change, which will take time to implement effectively. Allowing three months for providers to implement the entire condition will therefore be too short, and our preference is for a staggered implementation approach, lasting at least twelve months. We recognise OfS' desire to move quickly, but believe it is preferable for providers to take time to get things right, rather than move quickly and risk getting it wrong.

12b. Do you have any alternative suggestions for the implementation of any new condition of registration that you believe may be more appropriate? If so, please explain and give reasons for your view.

As outlined above, we believe that a three-month period is too short for our members to effectively implement all aspects of the condition of registration, and a staggered approach would be preferable. In particular, we consider that the requirements to implement mandatory training for all students and relevant staff, and update policies (especially in relation to introducing a register of staff-student relationships), would take longest to implement. OfS must allow providers at least twelve months to implement these requirements.

Not all universities have the resourcing to deliver mandatory student training on such specialist areas in-house, and we believe the requirement for all providers to implement this within the same three-month period will lead to high demand for outsourced training, which we understand expert, specialist training providers fear they will struggle to cope with. This creates the risk that providers may feel forced to procure training from less suitable or qualified providers than they may otherwise have chosen. In addition, while there is likely to be merit in smaller providers taking a partnership or consortium approach to procuring and delivering training, such arrangements would typically take longer than three months to put in place. Recruitment of specialist staff at individual providers may also be difficult to achieve within three months.

Furthermore, the sheer number of students requiring mandatory, interactive training in many providers (40% of our English members have over 20,000 students) means this training will inevitably take significant time to deliver, especially if the three-month window does not align with periods such as student induction.

12c. Do you have any comments about the proposed timeframe for implementing any new condition outlined in this consultation? If so, please explain and provide reasons for your view.

Please see our response to Question 12b.

In addition, even for elements of the proposals that can be implemented within a three-month period, it will be important that this avoids the summer holiday period. This is a time when many universities are focussed on other important activities (eg facilitating admissions), and it is more difficult to liaise with student representatives. It will also be important for OfS to introduce clear, timely regulatory guidance, to enable universities to comply with any requirements.

13. Do you foresee any unintended consequences resulting from the proposals set out in this consultation? If so, please indicate what you think these are and the reasons for your view.

As outlined in our response to question 1, we do not see this as a suitable area for OfS regulation. We foresee potential for at least four unintended consequences arising from these proposals.

Firstly, tackling harassment and sexual misconduct goes beyond the introduction of systems, policies, and processes, and requires culture change, which often necessitates innovative, creative solutions. Not all actions conducive to tackling harassment and sexual misconduct are explicitly mentioned in the condition of registration (eg visible senior leadership commitment), and it will be important that the sector does not lose sight of these. If OfS do introduce a condition of registration, we call on them to take a holistic approach to tackling harassment and sexual misconduct, in recognition of the cultural factors that can be harder to measure through a regulatory framework, as well as in response to issues that are not directly in scope of the condition of registration but may be particularly relevant to certain institutions (eg domestic abuse, so-called honour-based abuse). While we believe many institutions will continue to take a holistic approach to tackling harassment and sexual misconduct, there is a risk that some providers (especially those whose resources are constrained) may only feel able to focus on achieving areas specifically mentioned within the condition, meaning the development of initiatives in other areas is stifled.

remain unresolved – for instance, concerns relating to the sharing of personal data about student misconduct between different higher education institutions. We call on OfS to take a supportive, rather than punitive, approach to higher education providers who can demonstrate they are actively seeking to tackle issues of harassment and sexual misconduct robustly. This will contribute to a culture whereby OfS and the sector can continue to work together in a spirit of continuous improvement to find solutions to shared challenges, as has been the case for several years.

In addition, there is a risk that, without proper guidance, the proposals around freedom of speech may inadvertently restrict universities' work on tackling harassment and sexual misconduct, due to confusion over the legal landscape and the perception that the two areas are in tension, or that free speech must be prioritised over and above other duties placed on universities. This relates to the complex and changing legal landscape, as mentioned in response to question 9. To help mitigate this, we call on OfS to set their expectations clearly, and issue clear guidance for the sector, including hypothetical examples, that aligns with the requirements of the Higher Education (Freedom of Speech) Bill.

Finally, while we welcome the fact that OfS' proposals apply equally to all forms of harassment and sexual misconduct, we sense that the current framing has led to a perception that providers must prioritise tackling sexual misconduct above other forms of harassment. This could lead to higher education providers continuing to focus on tackling sexual misconduct at the expense of other forms of harassment, something both UUK and the independent evaluation of the statement of expectations have already identified as an issue in the sector. It would be helpful for OfS to 'over-correct' this narrative in further guidance.

14. Are there aspects of the proposals you found unclear? If so, please specify which, and tell us why.

The proposals have not fully clarified the boundaries of higher education providers' responsibilities for preventing and responding to harassment and sexual misconduct affecting their students where these interact with the responsibilities of other bodies. This is an area that many of our members find challenging to operationalise, especially those who have high numbers of students on work placements, undertaking degree apprenticeships, or taking part in overseas exchanges. Each party in such an agreement will have their own policies and procedures, and it can be very challenging to determine how the two should interact in a particular set of circumstances. In addition, providers often face challenges in relation to sharing information with third parties, including private providers who operate halls of

residence. We call on OfS to provide further clarity on these points in their regulatory guidance.;

Relatedly, we believe the proposals do not clarify the extent to which higher education providers are responsible for preventing and/or responding to harassment that affects their registered students, but is not directly related to university activities - for instance, sexual harassment in local night-time economy venues, or experienced by students while away from the university on holiday. Many of our members have seen an increase in reports of harassment and sexual misconduct from students whose experience is not directly related to the university, but feel they have nowhere else to turn, often due to low confidence in the police and criminal justice system.

While universities will likely be able to support and signpost students in these circumstances, much of the situation will be outside their control, so we would welcome clarification on OfS' precise expectations. Universities should not be expected to take on a quasi-police or quasi-judicial role in relation to harassment and sexual misconduct affecting their students that is unrelated to the university; this would be a significant expansion of their core remit.

In addition, we consider the proposals do not sufficiently account for challenges in extra-territorial application where different legal and regulatory frameworks may apply. For example, if a university has an overseas campus in a country where same-sex relationships are illegal, what would be the implications of a student declaring harassment on the grounds of sexual orientation, or a member of staff declaring a same-sex relationship with a student? There are also different forms of student data collection and rules about what information can and cannot be gathered. For providers with multiple transnational education (TNE) partnerships, understanding appropriate applications in each context may be particularly burdensome.

Furthermore, the consultation proposals give little detail about how the condition of registration will interact with OfS' proposal to introduce a sector-wide prevalence survey of sexual misconduct. While we welcome OfS appearing to keep these two interventions distinct, we would welcome further engagement about how they can best work in tandem and whether OfS intend to use data gathered via the prevalence survey to inform regulatory monitoring. The proposals also provide very little information about how OfS will monitor compliance and enforce this condition of registration more generally, which will be important for providers to understand. The OfS should also ensure it is clear to both universities and students how this condition interacts with and differs from existing mechanisms, such as the OIA complaints process.

Finally, we recognise ongoing questions in the sector about whether a university has a 'duty of care' to its registered students in relation to harassment, and the precise

