

Office for Students statement of expectations for preventing and addressing harassment and sexual misconduct affecting students in higher education

Introduction

1. This statement of expectations provides a set of consistent recommendations to support higher education providers in England develop and implement effective systems, policies and processes to prevent and respond to incidents of harassment and sexual misconduct.
2. Underpinning this framework is the principle that all higher education students registered at a provider, however and wherever they may be studying should be protected from harassment and sexual misconduct from other students, staff and visitors.
3. The OfS cannot intervene in individual student cases to provide resolution or redress. These should be dealt with through a provider's internal complaints processes. If a student feels that an issue is not resolved, they can refer their concerns to the Office of the Independent Adjudicator for Higher Education (OIA).¹
4. While this statement focuses on the interests of students, we anticipate that providers would seek to take a similar approach to protecting staff and visitors from harassment and sexual misconduct.
5. The OfS statement of expectations refers throughout to 'harassment and sexual misconduct'. Our definitions for the purposes of this framework are as follows:
 - a. **Harassment** (as defined by Section 26 of the Equality Act 2010) includes unwanted behaviour or conduct which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment because of, or connected to, one or more of the following protected characteristics:
 - i. age
 - ii. disability
 - iii. gender reassignment
 - iv. race
 - v. religion or belief
 - vi. sex
 - vii. sexual orientation.

¹ See www.oiahe.org.uk/.

- b. Under our definition, we understand harassment to include domestic violence and abuse (which can also involve control, coercion, threats), and stalking.
- c. We would also consider harassment to include any incidents of physical violence towards another person(s) on the basis of a protected characteristic, and hate crimes, such as those criminal offences which are perceived by the victim or any other person, to be motivated by hostility or prejudice, based on a person's disability or perceived disability; race or perceived race; or religion or perceived religion; or sexual orientation or perceived sexual orientation or transgender identity or perceived transgender identity.
- d. **Sexual misconduct** relates to all unwanted conduct of a sexual nature. This includes, but is not limited to:
 - i. Sexual harassment (as defined by Section 26 (2) of the Equality Act 2010)
 - ii. Unwanted conduct which creates an intimidating, hostile, degrading, humiliating or offensive environment (as defined by the Equality Act 2010)
 - iii. Assault (as defined by the Sexual Offences Act 2003)
 - iv. Rape (as defined by the Sexual Offences Act 2003)
 - v. Physical unwanted sexual advances (as set out by the Equality and Human Rights Commission: Sexual harassment and the law, 2017)²
 - vi. Intimidation, or promising resources or benefits in return for sexual favours (as set out by the Equality and Human Rights Commission: Sexual harassment and the law, 2017)³
 - vii. Distributing private and personal explicit images or video footage of an individual without their consent (as defined by the Criminal Justice and Courts Act 2015).
- 6. Our definitions include harassment and sexual misconduct through any medium, including, for example, online.
- 7. In considering this statement of expectations, providers will also need take into account their statutory duties, and the OfS's regulatory requirements, relating to academic freedom and free speech.
- 8. As outlined in EHRC guidance on freedom of expression⁴, published in February 2019, exposure to course materials that students might find offensive or unacceptable is unlikely to constitute harassment.

² Sexual harassment and the law: Guidance for employers, Equality and Human Rights Commission, 2017.

³ See www.equalityhumanrights.com/en/publication-download/sexual-harassment-and-harassment-work-technical-guidance.

⁴ See www.equalityhumanrights.com/en/publication-download/freedom-expression-guide-higher-education-providers-and-students-unions-england.

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1. Higher education providers should clearly communicate, and embed across the whole organisation, their approach to preventing and responding to all forms of harassment and sexual misconduct affecting students. They should set out clearly the expectations that they have of students, staff and visitors.

We consider this to include:

- a. Visible and ongoing commitment from senior leaders and the governing body to preventing and responding to all forms of harassment and sexual misconduct. There should be clear governance accountability lines to ensure that the provider's approach is embedded, upheld in practice, and remains fit-for-purpose across all of the provider's higher education activities.
- b. Collaboration with students' unions, or other relevant student bodies, and student representatives to deliver a clear and consistent message to students, staff and visitors that harassment and sexual misconduct will not be tolerated. This should involve making clear the possible consequences and action the provider may take in response to such instances.
- c. A clear statement of behavioural expectations for all students, staff and visitors, and the possible sanctions that can be imposed where these are not followed. These expectations should be visible and easy to understand for all students, staff and visitors, with communications adapted to the needs of different groups. It should be made clear to new and continuing students and staff as part of induction and relevant ongoing activities.

2. Governing bodies should ensure that the provider's approach to harassment and sexual misconduct is adequate and effective. They should ensure that risks relating to these issues are identified and effectively mitigated.

We consider this to include:

- a. A systematic approach to tackle harassment and sexual misconduct embedded within existing governance structures. For example, committees and working groups set up to tackle these issues should form part of the provider's governance structure to allow effective oversight across the provider's remit.
- b. The governing body routinely being given information on the provider's approach to harassment and sexual misconduct for consideration and action (as necessary). This may include the provision of information on any prevalence data collected, as well as reported incidents and cases and outcomes of cases. It could include the review and evaluation of the provider's approach to harassment and sexual misconduct and its impact on students.

- c. Steps taken to ensure that those with a governance role have a clear understanding of the issues that are relevant to their responsibilities and, where appropriate, their obligations under the Public Sector Equality Duty. This could be achieved for example through appropriate training and briefing of relevant staff or members of the provider's governing body and committees.

3. Higher education providers should appropriately engage with students to develop and evaluate systems, policies and processes to address harassment and sexual misconduct.

We consider this to include:

- a. Proactive and meaningful engagement with students and student representatives in the development, implementation and evaluation of systems, policies and processes for preventing and responding to harassment and sexual misconduct, and in how to support students who have experienced it.
- b. Engagement with a diverse range of students, as well as learning from the experience of students who have been involved in reports or investigations, to ensure that the development, implementation and evaluation of systems, policies and processes are adequate and effective. This may include consideration of protected characteristics and mode and level of study.
- c. Engagement conducted in a sensitive manner to support student wellbeing. This means that engagement should be accompanied by appropriate support and safeguards, which have been informed by specialist expertise, where appropriate.

4. Higher education providers should implement adequate and effective staff and student training with the purpose of raising awareness of, and preventing, harassment and sexual misconduct.

We consider this to include:

- a. A clear training strategy which supports staff to respond effectively to different types of harassment and sexual misconduct incidents. This should involve an assessment of the training needs of all staff. This strategy should be reviewed and evaluated on a regular basis to ensure it is fit for purpose.
- b. Training made available on an ongoing basis for all staff and students to raise awareness of harassment and sexual misconduct with the purpose of preventing incidents and encouraging reporting where they do occur. For example, this may include covering areas such as bystander initiatives, consent and receiving and handling disclosures.

5. Higher education providers should have adequate and effective policies and processes in place for all students to report and disclose incidents of harassment and sexual misconduct.

We consider this to include:

- a. Provision of easy to understand information for all students and staff on how they can report, disclose or seek support and advice if they experience or witness any incident of harassment and sexual misconduct. This should include clearly communicating how the provider may receive and respond to anonymous reports or reports made by student representatives or third parties, for example third party reporting centres.
- b. Provision of support for students regardless of whether a formal report or complaint is made.
- c. Policies and processes for reporting communicated to all students in an accessible way: for example, inclusion in student handbooks, via the provider's website and social media and as part of early communication with prospective students.
- d. If required and requested, signposting or referring students to the police, NHS, sexual assault referral centres or hate crime reporting centres, or to local specialist services such as Rape Crisis, if specialist support is needed.
- e. An understanding of and minimising any barriers to reporting and disclosing incidents that may exist for particular groups of students.

6. Higher education providers should have a fair, clear and accessible approach to taking action in response to reports and disclosures.

We consider this to include:

- a. A visible and easy to understand policy which sets out the circumstances in which a provider would initiate disciplinary proceedings against a student, staff member or visitor (including member of the governing body) where relevant, and how the process addresses disciplinary issues that may also constitute a criminal offence.⁵ We would anticipate providers investigating (for example, as a disciplinary matter) complaints made in relation to any of its registered students.
- b. Visible and easy to understand information for all staff and students about the provider's investigatory process, decision-making process, associated timescales and factors which may impact on timescales. This should be explicit about the range of actions that may result from the provider's investigation and should include information about any appeal process and how this can be accessed.
- c. An investigatory process that is demonstrably fair, independent, and free from any reasonable perception of bias. This may include consideration of and consultation with appropriate expertise.
- d. Disciplinary hearings that consider student complaints and appeals conducted by a panel that is free from any reasonable perception of bias, is diverse and includes student representatives where appropriate. All panel members should be appropriately trained in handling complaints of this nature and be independent from the investigatory process and specific case being considered. For example, this may include consideration of and consultation with appropriate expertise.

- e. An approach which ensures that staff are able to respond appropriately and consistently to a disclosure about harassment and sexual misconduct.
- f. A clear explanation of how confidential information will be used and shared as well as the protections in place for individuals, within investigatory and disciplinary processes.

7. Higher education providers should ensure that students involved in an investigatory process have access to appropriate and effective support.

We consider this to include:

- a. In the event of a disclosure about an incident of harassment and/or sexual misconduct, both the reporting and responding parties having equitable access to appropriate support prior to the decision to launch a formal investigation, for the duration of any investigation, and following its outcome.
- b. An appropriate protocol for timely communications with reporting and responding parties.
- c. Procedures that ensure that all reports of incidents of harassment and sexual misconduct are dealt with within a clearly communicated and reasonable timeframe.
- d. Reporting and responding parties being provided with an outcome of the investigatory process where the provider is able to share this information, or an explanation of any actions the provider has taken, or not taken, as a result of the complaint. Should the outcome of a process change, the reporting and responding parties should be informed of this.

⁵ UUK/Pinsent Masons LLP's '[Guidance for Higher Education Institutions: How to Handle Alleged Student Misconduct Which May Also Constitute A Criminal Offence](#)' may help providers develop appropriate practice in this area.