

Office for  
Students



# Consultation on a new approach to regulating harassment and sexual misconduct in English higher education

7 March 2023

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# Agenda

1330 **Welcome**

**Introduction**

**Consultation proposals: Proposals A-B**

**Questions and answers on Proposals A-B**

**Consultation proposals: Proposals D-F**

**Questions and answers on Proposals D-F**

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Questions and answers on Proposals D-F

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# Introducing the team



**Rowena Rowley**  
Head of Compliance  
and Student  
Protection



**David Smy**  
Director of Monitoring  
and Intervention



**Amy Norton**  
Head of Equality,  
Diversity and Inclusion

# Expected timeline



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Questions and answers on Proposals D-F

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# Background

- Harassment and sexual misconduct in higher education
- OfS activity to date
- Independent evaluation of our statement of expectations



# Consultation proposals



- We are proposing to introduce a new ongoing condition of registration to address harassment and sexual misconduct
- Topics covered by our proposals include:
  - A. Defining harassment and sexual misconduct
  - B. Requiring a provider to develop and publish a 'single document' explaining its approach to harassment and sexual misconduct
  - C. Capacity and resources
  - D. Freedom of speech principles
  - E. Non-disclosure agreements
  - F. Personal relationships between staff and students
  - G. Implementation

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# Definitions

- **‘Harassment’** has the meaning given in section 26 of the Equality Act 2010 and section 1 of the Protection from Harassment Act 1997 (in its entirety, and as interpreted by section 7 of the Act).
  - Objective tests for harassment under both the Equality Act and Protection from Harassment Act
- **‘Sexual misconduct’** means any unwanted or attempted unwanted conduct of a sexual nature and **includes but is not limited to:**
  - i. sexual harassment as defined by section 26(2) of the Equality Act 2010; and
  - ii. assault as defined by the Sexual Offences Act 2003; and
  - iii. rape as defined by the Sexual Offences Act 2003.



# Minimum content requirements

- Requirement to have a 'single document' which should be 'prominently published'
- **In addition** to any other steps required by virtue of the condition, **multiple steps which could (individually or in combination) make a significant and credible difference** in protecting students from behaviour that may amount to harassment and/or sexual misconduct, including, but not limited to, **steps that may reduce the likelihood of harassment and/or sexual misconduct** taking place
- Other minimum content requirements cover reporting, information handling, staff and student training, student support, investigations, and how those involved are informed of the outcomes of investigations
- Additional 'content principles' for the single document ensure and explain that a provider may include other information in its single document, but that these or any other document must not contradict, undermine or conflict with the minimum content requirements. The minimum content requirements take precedence over any other information or provisions.

# Reporting, investigations and decisions about complaints



- How students, staff or others can report incidents to the provider
- How information related to incidents will be handled sensitively and used fairly
- How the provider will ensure that investigations undertaken and decisions made are credible, fair and otherwise reflect established principles of natural justice
- Staff training requirements

# Support for students

- Covers both personal support (e.g. counselling) and academic support (e.g. extenuating circumstances)
- Support for **all** students – covers potential or actual victims, witnesses, and actual or alleged perpetrators of harassment/sexual misconduct
- Students do not need to formally report an incident to be eligible to receive support





# Training

- Students must be ‘appropriately taught’ about harassment and sexual misconduct. Examples of how to ensure students are appropriately taught might include:
  - mandatory training for all students
  - bystander training and sexual consent training
  - training is underpinned by credible evidence, evaluated, and designed and delivered by those with expertise

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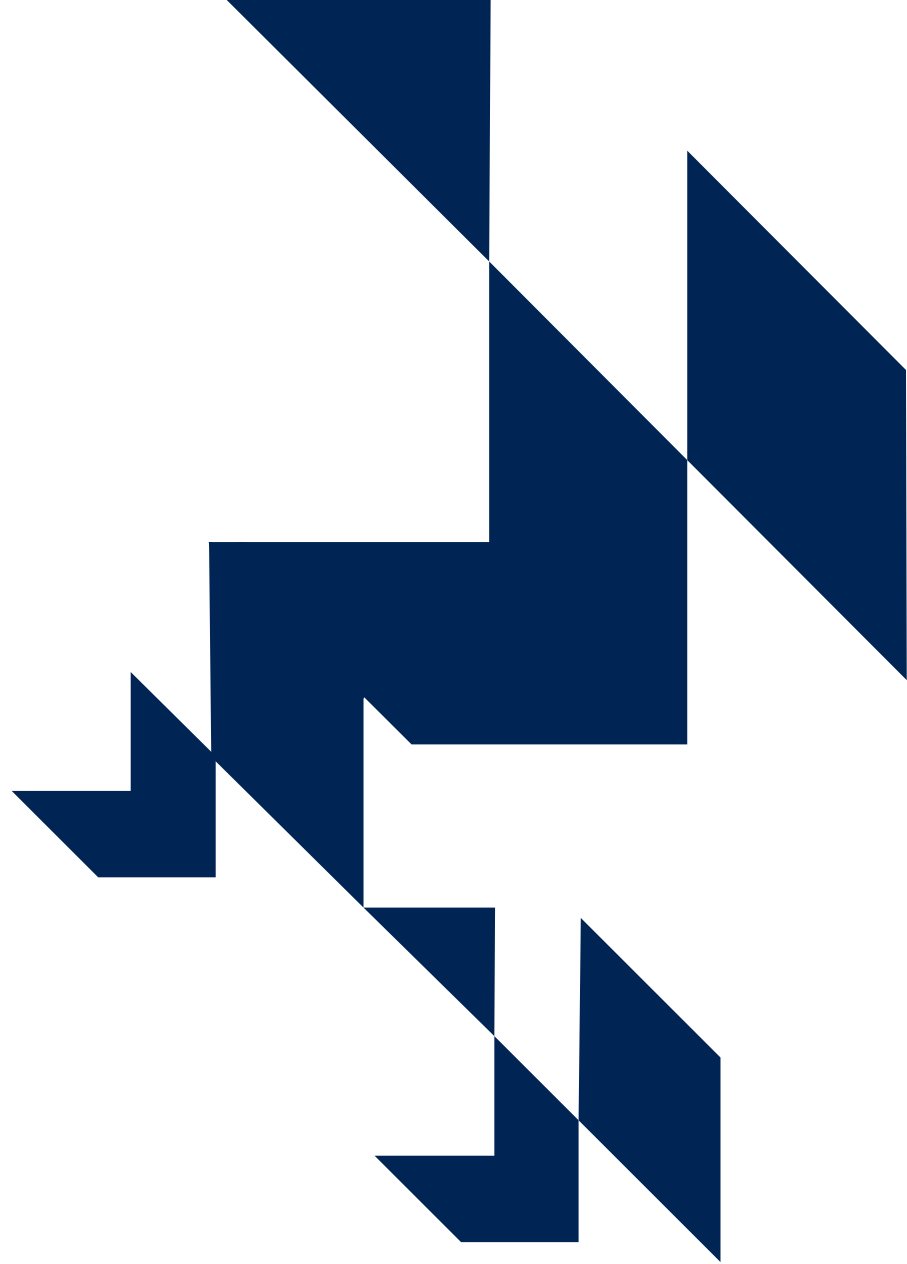
Consultation proposals: Proposals D-F

Questions and answers on Proposals D-F

1500 Close



# Questions and answers



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# Freedom of speech principles

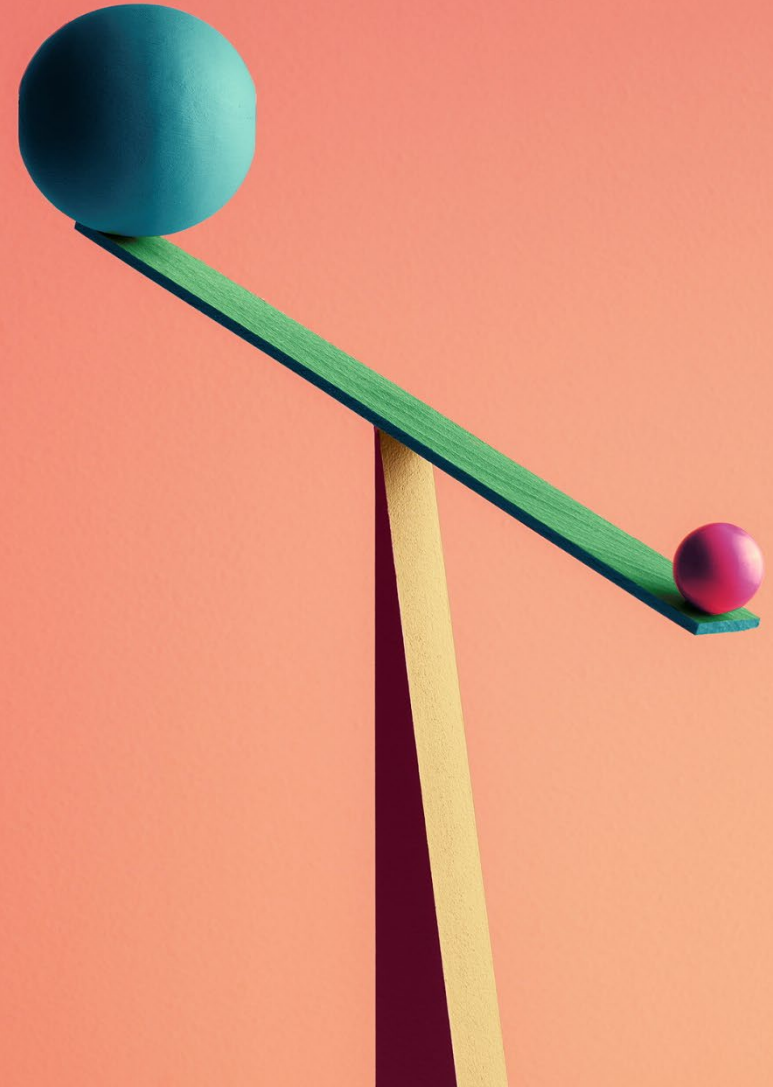
- A provider must have particular regard to and place significant weight on the importance of freedom of speech within the law, academic freedom and tolerance for controversial views
- A provider must apply a 'rebuttable presumption' to the effect that the content of higher education courses and statements made by any person in connection with said content is unlikely to constitute harassment

# Non-disclosure agreements (NDAs)

- Providers should:
  1. Not include any restrictions on disclosure on contracts formed after the condition takes effect
  2. Not rely on or enforce restrictions on contracts already in place
  3. Take all reasonable steps to prevent any other person from including or relying on terms in contracts that apply to students that seek to restrict disclosure
- Alternative option: setting regulatory obligations to refer to compliance with the Higher Education (Freedom of Speech) Bill's provisions on NDAs

# Personal relationships between staff and students

- Power imbalance
- Relationships between students and 'relevant staff members'
- Students who are also staff members



# Personal relationships between staff and students



- Option A:
  - Disclosure and register of personal relationships between students and relevant staff
  - Requirement to manage and address actual or potential conflicts of interest/abuses of power
- Option B: Prohibition of personal relationships between students and relevant staff members, except where there is a marriage or civil partnership in place before this condition

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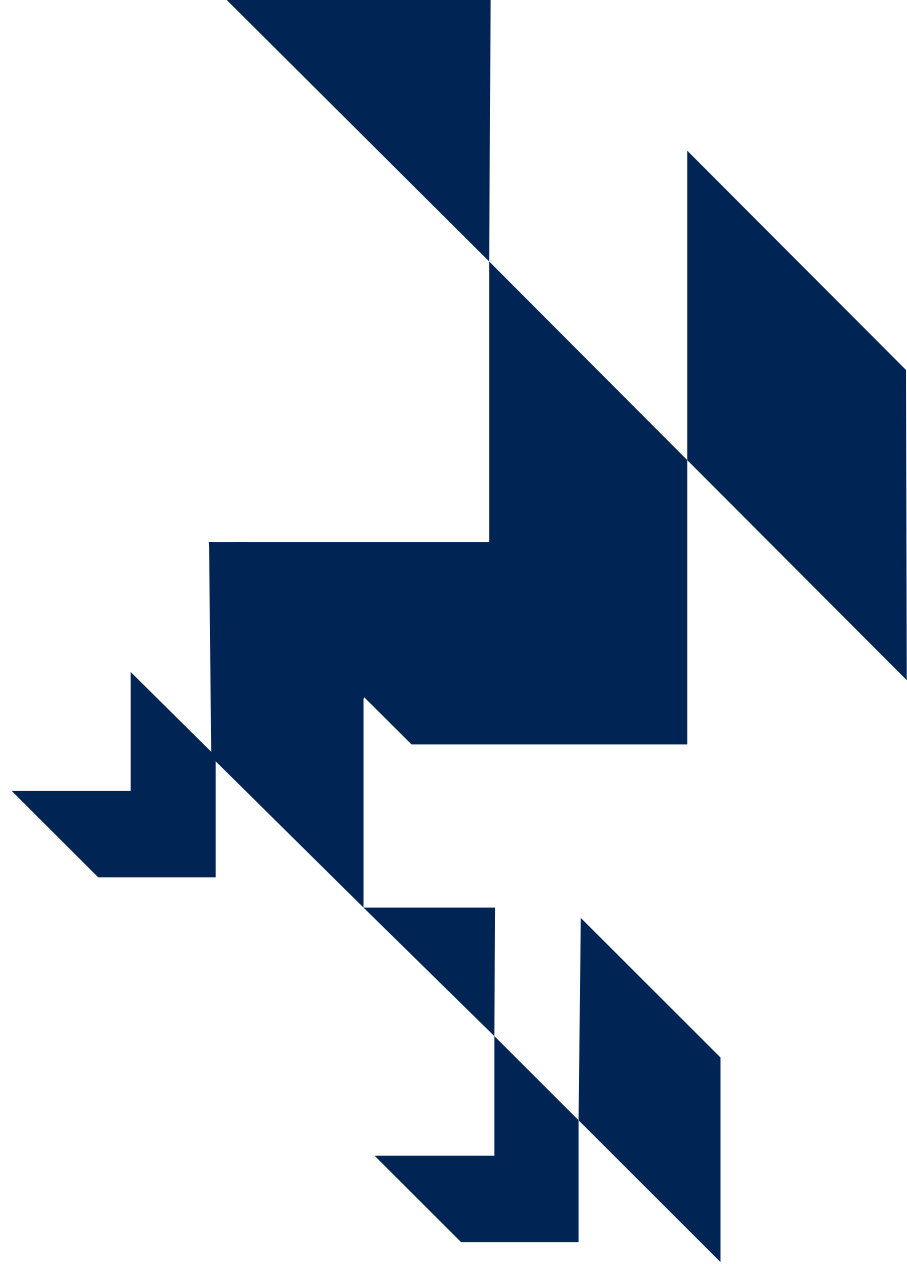
Questions and answers

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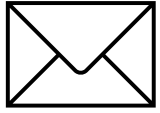
**Questions and answers on Proposals D-F**

1500 Close

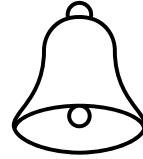
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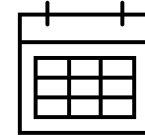




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Deadline of  
consultation:  
**4 May 2023**

Office for  
Students

The logo for the Office for Students, featuring a dark blue square with a yellow square in the top right corner containing the letters 'OfS' in dark blue.

OfS

# Thank you for listening

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