



Economic  
and Social  
Research Council



UNIVERSITY  
*of York*



Department of  
Education



# Higher Education After #MeToo: Institutional responses to reports of gender-based violence and harassment

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May 2023

## **Summary report**

This is the full-length version of this report. To read a summary version, please go to <https://1752group.com/higher-education-after-metoo/>

## **Acknowledgements**

This research was funded by the Economic and Social Research Council under a New Investigator Grant.

Many thanks to Kelly Prince and Lisa Brooks-Lewis, both of whom commented on full drafts of this report, as well as Mark Dean, Vanita Sundaram, Rory O'Neill, Jim Dickinson, Peta Franklin-Corben, and Georgina Calvert-Lee for providing advice on specific sections. The research was informed throughout by discussions with the Preventing University Sexual Harassment practitioner group.

We would like to extend our deep gratitude to interviewees who took part in this research.

## **To cite this report:**

Bull, Anna and Erin Shannon (2023, May). Higher Education After #MeToo: Institutional responses to reports of gender-based violence and harassment. York, U.K.: The 1752 Group/ University of York.

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# INTRODUCTION: FROM *POWER IN THE ACADEMY* AND *SILENCING STUDENTS* TO NOW

In 2018, The 1752 Group published two reports – *Power in the Academy*, and *Silencing Students* – outlining quantitative and qualitative data on students’ experiences of sexual misconduct from staff in UK higher education (HE), and their perspectives on attempting to disclose or report these experiences to their higher education institutions (HEIs). Since that time, there has been sustained media, policy and activist pressure on HEIs around this issue. Some HEIs have made significant investment in tackling gender-based violence and harassment (GBVH), particularly where this occurs between students. But there is evidence that such investment – and the impacts this is having on students – is uneven (Universities UK, 2019; SUMS consulting, 2022a) and that staff-staff and staff-student GBVH remain particularly challenging areas (Al Jazeera, 2021; UCU, 2021; Universities UK, 2022a).

However, GBVH remains a significant issue for staff and students in UK HE. While at the time of writing there did not exist robust national data in this area in UK HE, there is evidence from international studies as well as smaller-scale studies in the UK of how common this issue is. In relation to students’ experiences of gender-based violence and harassment, a national survey of student experiences of sexual violence and harassment in Irish HEIs found that 43.6% of a sample of over 6000 students in Ireland had experienced unwanted sexual touching, completed or attempted penetration since starting college (Active Consent and Union of Students in Ireland, 2020, p.14). In 2018, a survey of 1839 students in the UK found that 41% had experienced sexualised behaviour from staff (National Union of Students & The 1752 Group, 2018, p.17). Among staff, a survey of 3516 staff in Ireland found that 11% of female and 7% of male respondents had experienced unwanted sexual attention, one in ten of the respondents described receiving unwelcome sexual comments online, and 7% had been touched in a way that made them feel uncomfortable (MacNeela et al., 2022, p.19-20).

Against this backdrop, this study aims to explore the impacts of changes that have been occurring in HEIs in addressing GBVH since 2016, widening the focus to examine student-student and staff-staff cases as well as staff-student issues. While the #MeToo movement accelerated after October 2017 (after being initiated by Tarana Burke in 2006), in UK higher education #MeToo could be argued to have been already underway, with activism and research ongoing from the National Union of Students since 2010, and the Universities UK *Changing the Culture* report in 2016 giving a clear steer that this work is a requirement, not an option. In order to capture these changes, this study focuses on experiences of reporting and institutional work to address GBVH reporting processes since 2016.

Rather than exploring GBVH in HE more generally, this study focuses specifically on reporting, complaints and disciplinary processes for addressing GBVH. This area had already been highlighted in our report *Silencing Students* as tending to lead to further harm for reporting parties rather than safety and support (Bull and Rye, 2018). Since *Silencing Students* was published, Sara Ahmed’s phenomenological account of complainants’ experiences of navigating complaint structures has laid bare the experiential dimension of reporting, and given voice to the contradictions and ‘brick walls’

that complainants encounter along the way (Ahmed, 2021). This study aims to excavate those 'brick walls', focusing on the nuts and bolts of policy and practice, and situating reporting experiences within a specific times, places, and institutional and legal frameworks in order to argue that it is possible to do this work better and to point towards how it might be done. As Sara Ahmed notes, in conversation with 1752 Group co-director Adrija Dey:

I think we have to be careful to remember why we need complaint mechanisms – indeed why we have policies on harassment and bullying in the workplace – in the first place. We need formal mechanisms because of how hierarchies enable harassment. You have a policy and a mechanism because otherwise many who work in organisations would not be able to challenge harassment from those who are higher up (Dey, 2022, p.25)

Supporting this position, this report also starts from the assumption that complaint mechanisms are important, and that it is possible and worthwhile to try to improve them – even when, or perhaps especially when they exist within hierarchical and/or marketised institutions whose structures may be causing or enabling harms.

Much of our previous research carried out through The 1752 Group has focused on staff-student sexual misconduct. This study broadens the focus to explore responses to reports and disclosures in relation to staff-staff GBVH as well as student-student. This is because since we published guidance for HEIs in handling staff-student sexual misconduct (The 1752 Group and McAllister Olivarius, 2020a), we realised that there are many issues in complaints handling processes that are common to the experiences of GBVH complainants whether they are targeted by students or staff (even while there are also differences). Therefore, we have broadened the lens from our previous research to look at institutional responses to complaints and disclosure relating to all forms of GBVH in HE. The structures for handling these issues are also relevant to complaints relating to other types of discrimination or harassment under the Equality Act where this involves reports about other members of an institution (see for example issues with racial harassment complaints in higher education from the Equality and Human Rights Commission (2019)).

As such, the report does not describe in detail experiences of sexual misconduct/gendered harassment, nor analyse the cultures or structures that facilitate both the misconduct and responses to reports, but instead focuses in detail on the reporting process – paying attention both to how formal reports were handled, as well as what happened when interviewees disclosed but did not report – in order to build knowledge and evidence to contribute to improvements in case handling. In addition, in recognition that staff working within institutions on these issues may also be struggling with this work, the report draws on interview data not only from reporting parties but also from 25 staff handling reports/complaints on GBVH in HE.

## Policy and practice context

At the time of carrying out these interviews, in late 2020 and 2021, there was a substantial level of national policy discussion around how UK HEIs should be tackling student-student sexual misconduct, but less about staff-student sexual misconduct and almost none on staff-staff. There has been in the UK, since 2016, a policy position that HEIs have an obligation to investigate breaches of their policies – such as sexual harassment or violence that breaches staff and student codes of conduct – whether or not reporting parties also choose to go to the police (Pinsent Mason, 2016). It is important to note that institutions' investigations of such breaches of their policy are not the



same as criminal investigations. Indeed, Cowan and Munro (2021) warn against this ‘criminal justice drift’, noting differences between criminal justice and HEI processes in issues such as standards of conduct, burdens of proof, legal representation, and adversarialism. Indeed, as they note, ‘disciplinary investigations and hearings have long been conducted by universities in respect of other forms of conduct that might constitute criminal offences (including theft, criminal damage, and drug use)’ and so ‘the inadequacy of existing processes [for addressing GBVH] does not, and should not, provide a basis for a ‘rape exceptionalism’ that would enable universities to abdicate the responsibility for addressing [student sexual violence and misconduct] that is so clearly owing’ (Cowan and Munro, 2021, p.324).

Indeed, there are a set of legal obligations – across human rights law, equality law, consumer law, health and safety law, and contract law – that require HEIs to address this issue (Cowan and Munro, 2021; Eversheds Sutherland, 2022). As Cowan and Munro, among other authors, have noted, ‘universities may be in breach of their equality and human rights obligations if they fail to take steps to ensure that students are, and feel, safe when accessing education, and can do so without undue obstacles relative to their counterparts’ (2021, 318; see also The 1752 Group and McAllister Olivarius, 2020a; Eversheds Sutherland, 2022). Most notably:

In a society where vastly more sexual misconduct complaints are made by women against men than vice versa, a process for investigating sexual misconduct complaints which gives those responding more rights than those complaining might well be thought to place women as a group at a particular disadvantage and so to amount to indirect discrimination, in breach of the Equality Act 2010 (Bull, Calvert-Lee and Page, 2021, p.74).

Nevertheless, as Cowan and Munro note, ‘a lack of specificity within existing guidance, and the grafting of responses onto pre-existing disciplinary procedures and campus codes, have allowed a plurality of norms and processes to emerge across this largely self-regulating sector’ (2021, p.316). This report outlines, from the perspectives of student and staff reporting parties as well as staff handling these reports, where this lack of specificity exists, and what the consequences of this situation are.

Indeed, the Office for Students, the regulator for higher education in England and Wales, is now calling for HEIs to ensure that they have in place a ‘fair’ process for handling sexual misconduct and harassment reports (2021). As this report will outline, such a requirement is a long way from where HEIs’ processes currently are.

## Methods

Interviews were carried out in the second half of 2020 and during 2021. The data sources are as follows<sup>1</sup>:

### **1. 25 interviews with staff in HEIs and students’ unions who were involved in handling reports/complaints on gender-based violence and harassment (described as ‘staff handling reports’ or ‘response staff’).**

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<sup>1</sup> See Appendices 1 and 2 for further details of the sample.

20 interviews were carried out with staff from three case study institutions. Five further interviewees were sampled to explore specific issues, and comprised three external investigators working across different HEIs, and two further staff who had specific experience of handling GDPR-related issues.

Interviewees were from the following roles/areas of the institution: Human Resources (HR), senior management, academic staff in head of department/pastoral care roles, student services (including specialist sexual violence support and investigation staff, and those in leadership roles), complaints, and counselling services. From students' unions, advice workers and sabbatical officers across all three case study institutions were interviewed. Two out of the three case study institutions had carried out substantial work in this area and therefore this sample is not generalisable; however, hearing perspectives staff in different roles at the same institution helped to reveal points of consensus and dissensus around how reports were being handled.

## **2. 27 interviews with staff and students who disclosed or reported GBVH to their institution (described as 'reporting parties') whose experiences were as follows:**

- Staff who were targeted by other staff: 6 interviewees.
- Students who were targeted by staff: 13 interviewees.<sup>2</sup>
- Students who were targeted by other students: 8 interviewees.

All identified as women, other than two male interviewees who had not themselves been subjected to GBVH but had reported as part of a group that included women reporting GBVH from the same responding party. They were recruited via The 1752 Group's twitter account and via word of mouth. This sampling method – necessary in order to reach this group – means that interviewees are more likely to be those who had worse experiences than is typical as they had followed us on social media and wanted to speak out. Therefore, this sample should not be taken as representative or generalisable. Instead, these interviewees reveal a range of experiences of the reporting process.

Overall, while this study cannot give a comprehensive picture of reporting experiences, it does provide an overview of the challenges identified by both these groups. The report aims to summarise key findings arising from the study in order to inform ongoing public and policy discussion. Further, academic publications will explore specific issues arising within the study.

## **Definitions and geographical scope**

The phrase 'gender-based violence and harassment' is used throughout. This is used to refer to a continuum of violence that includes sexual harassment; sexual assault; rape; abusive relationships; stalking; spiking; gendered bullying; and sexualised abuses of power including grooming and consensual relationships across positions of power that were harmful to one party. This relatively broad terminology and scope is necessary because, as noted below, it was difficult for some interviewees to find the right words to describe their experiences.

In line with the terminology used for internal investigations within HEIs (Humphreys and Towl, 2020, p.7), we use the term 'reporting parties' to refer to anyone who disclosed or reported GBVH to their

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<sup>2</sup> This figure includes three interviewees whose status changed between student and staff member during their experiences. Their status at the time of the main incident(s) of GBVH is used here.

institution, and the term ‘responding parties’ to refer to the people who they were reporting for carrying out such behaviours. The term ‘response staff’ refers to interviewees employed by an HEI who were involved in handling reports or disclosures in any way. These terms are chosen to reflect the focus of this research on reporting or disclosing to the institution.

Interviewees were based in England, Wales or Scotland. As such, the findings and recommendations are relevant to these countries. It is likely that they are also relevant to Northern Ireland, but where policy and legislative contexts are referred to, these will be limited to the jurisdictions of England and Wales or Scotland.

## Structure of report

This is the full-length version of this report. If you prefer to read a summarised version of please go to <https://1752group.com/higher-education-after-metoo/>

The two data sources – reporting parties and response staff – are discussed separately in the report in order to reveal where the priorities and challenges were different across each group of interviewees. The first half of the report focuses on reporting parties’ experiences, and the second half focuses on the perspectives of staff handling reports.

The report begins with a brief overview of the experiences and impacts of GBVH that reporting parties described, and a summary of the outcomes of their reports or disclosures. Subsequently, the report outlines reporting parties’ perspectives on what their institution did well in handling their disclosure or report.

The report then discusses challenges in reporting, complaints and disciplinary processes for addressing GBVH. These challenges are divided into two categories: first, challenges relating to culture and implementation, which are those that can be addressed by practitioners and/or on the level of individual institutions; and second, structural issues, which need to be addressed at the level of the sector as a whole or through legal guidance and the creation of shared standards.<sup>3</sup> These two categories of challenges are outlined first from the perspective of reporting parties, and then in the second half of the report, from the perspective of response staff.

There is a danger that publications produced by academics such as this one describes the problems without outlining ways forward. For practitioners reading this report, who will be very familiar with many of the challenges outlined, Appendix 3 includes a table outlining issues with culture and implementation that came up in the study, alongside recommended actions for addressing these within institutions.

The final section outlines recommendations from reporting parties for how reporting, complaints and disciplinary processes for addressing GBVH can be better handled in higher education, and recommendations aimed at national bodies to address the structural issues identified.

Finally, throughout the report, text boxes introduce specific issues that arose during the study that deserved a more detailed exploration.

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<sup>3</sup> Thanks to Clarissa Humphreys for suggesting this mode of organising the data.



# PART I: REPORTING PARTIES

## Types of gender-based violence and harassment

While this report focuses on experiences of reporting to institutions, it is important to bear witness – even if briefly – to the experiences of GBVH recounted by interviewees. The accounts from interviewees in this study supported the findings from *Power in the Academy* (National Union of Students & The 1752 Group, 2018) and *Silencing Students* (Bull and Rye, 2018). The current study found evidence of ‘grooming’ and boundary-blurring behaviours (Bull and Page, 2021), which were described by seven of the interviewees, and occurred alongside sexual harassment. Six interviewees (four students, and two staff members) had been targeted for sexual harassment by staff members without any ‘grooming’ behaviours. Three students had been subjected to sexual assault or rape by staff (in one case a member of staff on a placement, in the context of a grooming relationship), and one further interviewee had been in an abusive relationship with a member of staff.

Out of the students who were targeted by other students, all eight had been subjected to sexual assault or rape, in one case alongside spiking, and in another case as part of a coercive, controlling relationship that included threats of intimate image abuse. Two interviewees, both men, had reported as part of a group where other members of the group (but not themselves) had been subjected to sexual harassment. Two others were subjected to behaviours that they found difficult to label, but which could be described respectively as sexualised abuse of power, and gendered bullying. This difficulty in labelling GBVH behaviours is significant, as is discussed later in this report.

## Impacts of GBVH and the reporting process on reporting parties

Academic and career impacts of these experiences included having to change universities or take time out of studying; academic work impeded or halted; grades suffered; stopped coming onto campus; becoming isolated; losing funding or being removed from grant applications, job interviews, or losing collaborative opportunities (particularly important for ECRs). Two interviewees had complaints launched against them after they raised concerns, and one interviewee was fired from her job after raising concerns, while the other had to leave a good job for a different one with much worse conditions in order to get out of the situation. For one interviewee in the creative arts, the abuse from a lecturer negatively affected her relationship with her art form.

The more intangible career impacts that interviewees recounted were also impactful. Multiple women interviewees described being scared or nervous about working with men after being targeted for GBVH. Relationships with academic staff other than the harasser could also be disrupted or negatively affected. This, as well as the impacts of speaking out, left many unable to network, for example unable to join regional/disciplinary networks or present at/attend conferences. As one senior academic, who had been subjected to harassment since she was a PhD student, noted, ‘the limitation to academic freedom has been throughout my career’. Other affective impacts included becoming more distrustful of institutions, feeling worthless as an academic, and loss of confidence, with one interviewee noting that ‘it took a lot of time and counselling to get the confidence back to apply for the jobs I wanted.’ It was not surprising, therefore, that some interviewees considered leaving academia or made the decision not to continue in academia after their PhD, with one commenting that ‘I have no passion about my PhD

at all, I didn't write my thesis at all. [...] I think this whole thing quite changed my ... It changed my life, it changed what I wanted to do'. In addition, as with the interviewees in *Silencing Students*, the time and cognitive/emotional load of the grievance/disciplinary process was immense. Undergraduate interviewees described how being subjected to sexual violence and lacking support and adjustments from the university subsequently ruined their experience of university:

'[it] felt like a dream being taken away from you, almost. Because I'd worked hard to get into this institution, and now suddenly I'm too scared to be in the city. So, it was impacted in the way that I lost all aspects of university life. Just never being on campus, never being able to have, I guess, the typical experience, but knowing that my perpetrator was allowed to have that, because he wasn't suffering from whatever fallout I was suffering from.'

**Victoria, undergraduate student**

**Mental health, emotional and physical impacts** included feeling suicidal, being hospitalised in a psychiatric unit, panic attacks, nightmares, PTSD, and depression. Physical impacts included catching an HPV infection from the perpetrator which required surgery, a long-term skin allergy, sleep issues, and exhaustion.

'I don't think unless you've been through it you can really appreciate the huge amount of emotional energy it takes to go through it, which is so far beyond what I would have ever predicted. And so far beyond what you would objectively guess just looking at like the process like. [...] I feel like I spent most of 2020 just in bed. Just crying every day in bed. [...] it's so hard to explain why it is such a massive drain. But it is.'

**Charlotte, lecturer**

**Social, personal, and financial impacts** included stopping socialising or difficulty making friends, and being unable to have a romantic relationship, or ruining an existing romantic relationship. Some interviewees noted that the experience of being subjected to GBVH changed the way they dress at work, for example they would wear trousers rather than skirts or dresses. Others described losing trust in their own judgement, with one interviewee stating that what happened to her 'changed a lot about how I view the world and how I'm viewed by the world'. Several interviewees also experienced financial impacts such as paying for an extra year of PhD fees and living costs; paying for therapy; and using up savings to pay for these things.

A few interviewees – usually those whose case led to an upheld or partially upheld outcome – also described some **positive impacts of the reporting process**. Courtney, whose report about an abusive relationship with her lecturer was upheld, described how 'the aftermath of getting a report of the result of the process was like a real kind of book closing, like, "I can move on"'. While the reporting process was very difficult, it helped her deal with the experience.

Other positive impacts included one interviewee describing that dealing with GBVH led to important conversations with colleagues, creating an atmosphere of more openness in their department. Another interviewee described how ‘the process also makes me rethink about gender – like how I think of myself as a girl, and it makes my life easier, to be honest, less influenced by those quite traditional ideas about, you know, a girl should be gentle, should be less aggressive’. Other interviewees noted that the process of harassment and reporting had led to personal growth, although at a cost.

## Outcomes of reporting parties’ disclosures and reports

Before exploring reporting parties’ perspectives on the process of disclosure and reporting, we outline below an overview of the outcomes of reporting parties’ disclosures, in Table 1.

Outcome of reporting process	Number of cases
Responding party left or graduated during the investigation	9
Complaint(s) upheld	3
Complaint(s) partly upheld	5
Complaint(s) not upheld	3
Informal process only	5
Interviewee disclosed but did not report	4
Other (respondent died)	1

**Table 1: Outcomes of reporting parties’ cases**

This table is an oversimplification of what was, for many interviewees, a convoluted and complex process.<sup>4</sup> However, it does show that responding parties leaving or graduating during the investigation (both staff and students) was the most common outcome for this group of interviewees. This outcome occurred for two interviewees who reported other students and seven interviewees who reported staff. This finding points to the importance of implementing protocols for sharing information between institutions when responding parties leave during an investigation.<sup>5</sup>

<sup>4</sup> The outcomes refer only to the primary responding party (where there was more than one person harassing the interviewee) and the most recent reporting experience; in two cases (Polly, Mary), interviewees were targeted by more than one person, and four cases (Chisimdi, Andrea, Willow, Mary) the interviewee reported the same experience twice, sometimes several years later, after it was not acted on after the first report. In one case the student’s complaint was not about the sexual misconduct directly, but about lack of provision for a disability – PTSD – that had been caused by the sexual violence she had been subjected to from a member of staff on her placement.

The number of cases adds up to more than the total number of interviewees as in three cases, the responding party left the university during the reporting process but the complaint was still upheld or partly upheld.

<sup>5</sup> See Eversheds Sutherland (2022) for legal guidance on information sharing about ongoing investigations as well as upheld findings. UCU (2021, p. 72) recommend that ‘employers should develop policies that allow investigations into alleged perpetrators to continue after the alleged perpetrator leaves the institution’. This is important but not sufficient, as information about any upheld findings also needs to be shared.



Out of the upheld cases, one was a student-student case. At the disciplinary panel, the reporting party was told that the responding party was 'no longer enrolled at the university' which she assumed to mean that he had already graduated. As a result of the upheld finding he was banned from campus; this appeared to be all that the university could do in this situation. The other two upheld cases involved staff responding parties. In one case, a confidential note was put on the respondent's record for a year, and he apologised to the reporting party as well as writing an apology letter to be circulated to other staff aware of the situation. In the other upheld case, the reporting party was not told of sanctions applied. She found out subsequently that the lecturer she had reported was no longer working at the institution, but she suspected that rather than being fired, he had simply not had his contract renewed.

The partly upheld findings were, for the five interviewees in this position, highly problematic. This was because the failure to uphold aspects of the complaint was, they described, due to poor practice in the investigation, such as the investigator not interviewing witnesses they had named, or an external investigator not being given access to relevant institutional information. These issues were also apparent in the cases that were not upheld (see 'Reporting parties' perspectives on challenges: cultural and implementation issues with handling reports").

As this study did not have a representative sample of interviewees in any way, these outcomes should not be generalised. It was clear, however, that practices varied hugely between institutions. Indeed, external investigators interviewed for this research stated that at one institution which was working proactively to improve in this area, disciplinary panels were finding a case to answer in 65%-85% of cases. By contrast, in one of the case study institutions for this study in which response staff were interviewed, only two cases had been upheld over three years. These differences demonstrate that it is possible for tangible improvements to be made within individual institutions. As the next section outlines, differences in experience were also very apparent when interviewees were asked 'What went well?' in their experiences of disclosing and reporting.

## WHAT WENT WELL – REPORTING PARTIES’ ACCOUNTS

All interviewees who had disclosed/reported GBVH to their institution were asked whether they thought there was anything their institution had done well as part of the process. These responses are thematically outlined below.

### ‘They did well in general’: positive experiences of reporting

Since the 2016 *Changing the Culture* report (Universities UK, 2016), some HEIs have invested significant resources into tackling sexual violence and harassment, leading to improved practices in this area in some institutions and a body of expert knowledge starting to form. This shift was visible in some of the interviewees’ accounts, although there were still staff and students who described very poor responses occurring as late as 2019-20.

Three interviewees – all students – described how their institution responded really well to their disclosure or report. Notably, two of these were students (in the same department and institution) who were offered a restorative approach by a member of staff in their institution who had expertise in this area (see Text Box 1). One student, Xuilin, had a relatively positive experience of the formal reporting process. She was an international PhD student who reported another student in 2021 for multiple incidents of rape, threats of intimate image abuse, and coercive behaviour. Notably, however, this case did not go to a disciplinary panel as the responding party – who was suspended during the investigation – died during this period. The investigation had run for some months by this point, and Xuilin had felt supported and encouraged:

I think they did well in general, I would say that. The most difficult part was to start it, and after I started reporting him, the university actually make me feel encouraged and more relieved or reassured about reporting. They offered me the counselling, all kinds of support. They talked to me whenever I feel not sure. [...] And it was really slow, that was the part [that] makes me worry, but... Yeah, investigation process itself is quite good.

### ‘She really, really supported me through it’: staff with expert knowledge of GBVH

The investment that some HEIs have made towards supporting students was evident in accounts from some students (this was not the case for staff reporting parties). In particular, some interviewees described the specialist support they had from staff with expertise in gender-based violence. One account, from an undergraduate student, Kelly, who reported a staff member for grooming and sexual harassment in 2019, found this support to be invaluable. As she described:

There was a sexual violence officer who met up with me once a week. [...] She was just amazing. [...] She had a real understanding of these kinds of abusive powers and, again, gender-based violence. [...] Because she was on my side, and because she believed me, and because I was heard - and that’s what it was about: it was about being heard, and when I spoke about it, having everything validated, as in, “This isn’t your fault. There’s

nothing you could have done. This wasn't your fault," and just being told that over and over again [...] All members of staff that were involved, as in my tutors, my supervisors, they also understood that this wasn't my fault. They were able to see it for what it was. Whereas during it, I wasn't able to see it for what it was. [...] I was able to phone her whenever, and she really, really supported me through it. She even wrote to the uni on my behalf. So I waited six months, and then she was like, "No, you've waited long enough now." As soon as she got involved, then they picked it up quicker.

Other interviewees stated that their HEI paid for specialist counselling – in some cases externally to the university – on an ongoing basis.

### **'If anything he believed me more than I believed myself': good response to disclosure**

Some interviewees – both staff and students – had good responses to their disclosures from staff in occupational health, line management/Head of Department, HR, and student services roles. As in the quote below from Zainab, a student who reported after another student who had spiked and raped her during Fresher's week, a calm, informed and compassionate response to disclosures could be enormously important in helping reporting parties make sense of what had happened to them and giving them faith that they could make a formal report.

There was never a point where I felt like [senior member of staff] didn't believe me. If anything he believed me more than I believed myself. [...] In the very first meeting I said to him—God knows how many times—"I don't know that anything bad happened, you know? I can't remember it, so maybe nothing happened". He was the one that kept being like, "Yeah, maybe nothing did happen, but also let's consider the fact that something probably happened and shouldn't have to some degree because if you're incapacitated then blah, blah, blah". [...] He was always very validating and that's one thing that I'll always be grateful for because even though I have so many self-doubts still, as a lot of survivors do I'm sure, I still can sometimes go back to the conversations I had with him where he is the first – he was the first person to say to me, "It doesn't matter if you said yes if you don't have the capacity and the judgement to". And I never understood that consent is broken down into different things before.

Training in responding to disclosures has been widely available across higher education for some years now, for example in open access resources from USV React (Alldred and Phipps, 2018). Such training of staff to handle disclosures is making a difference.

### **'He really did try his best': committed staff within inadequate systems**

Many interviewees described individual staff members who were respectful, immensely supportive, and brought their own values to the process, even within systems that were inadequate. There was evidence of specialist support staff making a difference to students' experience of reporting. For example, as Chisimdi described, when she reported in 2020 'the caseworker misconduct officer was quite nice, she was really responsive, she was really communicative and found time to talk and make calls and stuff so that was good, but I feel like that's more down to an individual than to the system'.

This could be the case even in situations where it was clear that staff themselves were struggling with the role they had been assigned. Charlotte, a lecturer who reported another staff member described ‘As bad as the second investigation was – I felt like the guy that did it wasn’t properly trained for it, wasn’t properly equipped for it, was totally out of his depth – but really did try his best. And he treated me with respect’.

## **‘It gave me confidence that they were taking it seriously’: good practice in handling reports**

There were examples of good practice in handling formal reports as well as adjustments made to make the process more manageable for reporting parties. These included:

- Precautionary measures taken, such as reported student being moved out of shared accommodation or removed from contact with students. In another case with a staff reporting party, arrangements were put in place for contact to be minimised with the responding party in the lead-up to the formal process, for example being excused from staff meetings.
- A good response at department level, such as an extra seminar group being added to the timetable so that the reporting student wouldn’t be in the same class as the student who had assaulted her.
- The formal grievance process delayed until the reporting staff member was well enough to go through with it.
- The appointment of an external investigator, which gave the reporting student confidence that the university was taking the issue seriously.
- The reporting party being allowed to have someone with her at formal interviews.
- Staff handling a case being organised with complex paperwork.
- A reporting staff member described how the disciplinary panel allowed her to put her side across and she felt like they were listening to her.
- A transparent process where the reporting party was allowed to see transcripts of other interviews.
- Allowing an academic researcher from the university to give expert evidence.

## **‘They told me they’d opened up their own investigation’: proactive responses from institutions in the formal reporting process**

There were also examples of proactive steps being taken by HEIs as part of a formal reporting process. These included:

- Taking reports from former students (see Text Box 3).
- Allowing a collective grievance to go forward (see Text Box 6).
- Allowing complainants to stay anonymous (see Text Box 4).

Finally, a notable example was that two institutions started formal investigations in the absence of a formal report.

## **‘I’ve been really trying to advocate for getting things changed at the university so that this doesn’t happen to anyone else’: good practice after the end of the process**

Whether or not cases were upheld, there were some examples of good practice in learning from reports and sharing this learning with the reporting party. Courtney, a former student who reported some years after she graduated, described that:

I received a written response to the ‘desired outcomes’ section of the complaint form that I had [filled out]. This written response included the [institution’s] pledges and commitments to those desired outcomes.

Daisy, a staff member, noted that despite her report not being upheld, after the end of the process she was able to feed into changes more widely in the university.

For the most part reporting parties were not aware of sanctions taken against responding parties even when cases were upheld. However, in two cases where an emeritus professor was the responding party, interviewees described that he was banned from campus as a result of the reporting process. However, among the accounts from reporting party interviewees there did not appear to be any staff or students fired or excluded from the institution as a result of reports (although there was some evidence from response staff that this was happening in some institutions).

## **‘They did really well at covering their own arse’: no good practice could be identified**

Four interviewees could think of nothing or almost nothing positive to say about how their institution handled their disclosure or report. Amy described how ‘my department failed on multiple levels repeatedly. It wasn’t just it was one person, one mistake, there were so many people that I’ve mentioned that have all failed’. Similarly Jean replied that ‘they did really well at covering their own arse. I’m someone who likes to be positive and I can’t think of anything.’



### Text Box 1

## Informal processes: successes and failures

Three interviewees described going through an informal process to handle the GBVH that they had been subjected to. Several other interviewees also commented that they wanted the option of an informal response – such as a facilitated conversation with the person who had harmed them – but were not able to access this. In fact, informal approaches are still, in some institutions, required as the first stage of a policy. These are very risky in cases of GBVH, both for reporting and for responding parties. In general mediation is unlikely to be appropriate for GBVH due to the imbalance of power between victims and perpetrators, and the risk that a responding party could use the process to carry on the abuse. To illuminate these challenges, the experiences of three students who went through informal processes are outlined in detail below.

### Handling student-student cases informally

Two students who were subjected to sexual assault from other students in their cohort went through an informal, restorative-style process that was offered by their head of school (HoS), Michelle, who was also interviewed as part of this study. While this process was not part of their HEI's institutional offer in this area, Michelle had expertise in gender-based violence, experience in complaints handling and investigations in this area, and had had intensive training in mediation. The institution's policy had a stage that required reporting parties to explore whether they could resolve the issue informally. Michelle commented that her instinct was that 'trying to even suggest that people could resolve this informally was offensive', but as it was in the policy, she felt she needed to find a way to ask reporting students about this option. To her surprise, sometimes they said yes, and therefore she had to devise a process for this as there was nothing available at institution-level.

She devised a document with ground rules which explain the process and what they are aiming to achieve. In this document she mentioned that she explicitly includes the allegation to make sure that this is not forgotten. The document explains that the two parties will take turns to speak, that the reporting party goes first and has an uninterrupted time to speak, up to ten minutes, then the responding party will respond. As she describes in terms of the process itself:

We take our time, there's going to be painful silences, we just sit there. People have got to get out, they can get out of it if it's all horrible and they don't want to be there anymore. I'm listening and re-framing a lot; every time anyone speaks, I re-frame. I'm guiding it quite hard – I'm like, "I need them to hear that bit that she just said."

Sometimes the process is able to resolve the issue and close it, and at other times they will take some time and come back for a further session. When it works, Michelle described 'it's amazing' – 'when the person who's been accused of something takes responsibility and says, "I just did not realise the impact my actions had on you and I'm so sorry"'. However, Michelle is also very aware of the risks for the responding party, in that if they apologise that means they are admitting what they have done. If at that stage the reporting party decides they are not satisfied and wants to go through a formal disciplinary process, the responding party has admitted their actions.

Two students who had been through this process as reporting parties participated in interviews for this study. Gracja was an undergraduate student who had had a coercive sexual experience with another student on her course who she had been dating. She tried to forget about it and move on, but the student was bullying her online. As she described, she 'just wanted to get it sorted so it would stop'; 'I wanted him to know what he did was wrong so he wouldn't do it again'. She felt that 'he had to be told that by someone other than me, more of a professional'. In late 2019 she disclosed her experience to one of her lecturers who referred her on to the Head of School. After talking through her options, she decided to go for the informal option 'because it was the least aggressive one, and at the end of the day, the way I saw it at least, was that he made a mistake'. She also felt that as he was still young, 'if you talk to him now and try to stop it from happening, then it could save him and others.' The process involved carefully organised meetings with the responding party facilitated by the Head of School where Gracja had the opportunity to explain how this experience had affected her and why it was wrong, and the responding party had the chance to respond and explain. Gracja commented that 'I understand why he wouldn't know [it was sexual assault] because I didn't either [at first]'.

A further meeting was arranged where the responding party would have the opportunity to apologise, but he didn't show up. Another meeting was arranged, and this time he did come and he apologised. Gracja was not sure if the apology was genuine, and thought that 'more than likely, he just wanted it over with as well.' Despite this, she felt that 'because of what happened, it will always somehow be in his head that he needs to be careful.' When asked 'was there anything your university did well in this process?' she replied 'the entire understanding of it', in particular the way 'everything stayed calm throughout the entire time' and 'the way they always tried to get us to feel comfortable'. After this, the department also arranged that they wouldn't be in any groups or classes together.

Another undergraduate student, Joanna, who is also a sexual violence activist, was assaulted by another student in the same programme. The experience started affecting her sleep, so she felt she had to tell her lecturer why she was missing classes. One of her lecturers explained to her that she could report this to the university if she wanted to, and she decided to do so in March 2020. She described having her first meeting with the Head of School online, and the HoS explained to Joanna how reporting to the university was different to the police, and told her that she believed her. Joanna described that 'from the outset, that being the first conversation, that was incredible, that was amazing to me.' She decided to instigate an informal processes. She didn't want the responding party to get kicked out of university without understanding what the issue was.

After an initial preparatory meeting, the mediation meeting was held. As Joanna describes it, before the meeting the responding party had denied his actions, but by the end of the meeting he had admitted that it happened. They made some agreements about actions going forward. The responding party agreed he would go and do research into these issues, based on resources shared by the Head of School, and that he wouldn't come into the pub Joanna works in or have any social media contact with her. She was satisfied with these steps and didn't want to take it any further.

Joanna thought the situation was a case of the responding party not realising what he had done, but she commented that if she had thought he was a danger to others, she would have acted differently. But, she reflected, 'I got the best possible perpetrator for this situation' – he was open to listening and learning. 'The university provided the safe space and the format for us to do [the work] ourselves'. When asked what her ideal outcome would have been, she said that this was it.

### **Handling staff-student cases informally**

These positive outcomes need to be balanced with a perspective on what can go wrong if informal processes are not carried out by highly skilled experts with deep knowledge of gender-based violence.

Sophie, a PhD student, had been subjected to repeated sexual harassment from her PhD supervisor. She was highly dependent on his expertise for her specific topic so changing supervisors was not possible. She sought help from the university's sexual harassment and violence advisory service, who recommended conflict resolution and mitigation measures. As she described:

We had a conflict resolution meeting with me, my colleague, the head of HR of the department and the professor. It was a very uncomfortable meeting. He was very upset. He was crying and saying how sorry he was and that he hadn't realised, and that obviously he needed to change his teaching behaviour towards women. I was like, "Well, you should just change it period," but anyway – and that he shouldn't drink, it's all about the alcohol, it's all because of the alcohol.

Sophie asked for this meeting to remain confidential between those who had attended. However, subsequently when she needed feedback on her PhD drafts, she found that his attitude towards her had changed:

He would take ages and ages to get back to me. He just wouldn't really read my chapters in many, many months and I would send more and then ask for feedback, and he wouldn't really give it to me. [...] [he] would send it back completely crossed out like, "It's horrible," and actually there wasn't that much wrong with it, it's just grammar. [...]

He ended up not reading large parts of her thesis. However, the night before she was due to hand in her thesis:

at 8:00pm he sends me an email with one of the chapters to my thesis being like, "There is still a lot of work to be done. Here are all my comments." [...] None of them were science, they were just, "Oh, this structure is a bit odd," and blah, blah and, "Use this one synonym instead of that one synonym," and, "You should put a full stop there." I didn't do any of it. I handed it in and then a month-and-a-half later I had my viva and my examiners told me that one was my best chapter. [...] My examiners loved my work and some of my research was highlighted on the front cover of a journal.

She went on to make a formal complaint after she graduated, as she realised that her supervisor was also harassing multiple other students. In regards to the conflict resolution meeting she thought 'they should have checked on me. They didn't at all. No one checked on me until I made a complaint. I had made a sexual harassment conflict resolution a year before the end of my thesis and no one checked on me.'

In this case, there were several differences with the student-student cases described above. First, in Sophie's case there was a vast power imbalance between her and her supervisor. Second, she was obliged to remain in a teaching and learning relationship with him following the informal process. Third, the person carrying out the informal mediation in her case did not appear to have any formal training in GBVH. Fourth, it appeared that the professor was not willing to take responsibility for his behaviour. And finally, this process occurred on a one-to-one basis and therefore did not keep others safe, nor did it contribute to making wider change in the culture that had enabled this behaviour to occur. Not only that, but the process put her at risk and led to her being subjected to the victimisation.

A more appropriate route in Sophie's case would have been for the institution to take responsibility for the formal reporting process, rather than this being the responsibility of the person/people who have been targeted. In this case, as there were many students and other witnesses who were aware of the professor's harassing behaviour, it may have been possible for an investigator appointed by the department/institution to gather sufficient evidence for a disciplinary case. Failing this, behavioural interventions could have been put in place alongside monitoring of the professor's interactions with students to ensure that, moving forward, his behaviour was appropriate. Such interventions would need to be governed with strict terms of reference including through an overt statement about the consequences of any non-compliance by the responding party with their behavioural agreements (wherever legally permissible, this should articulate the prospect of termination with or without notice).

There is, therefore, a difficult balance to be found where reporting parties want informal processes, but where there may be significant risks attached to them. It is not appropriate to rely on the reporting party's assessment of risk, as they may not understand risk indicators or the risk of serial perpetration. Nevertheless, in some cases informal processes may be the only option that reporting parties feel safe with. Sophie was clear that a formal report would not have been possible at this stage of her PhD and felt that the option of facilitated mediation was the only option open to her. HEIs may therefore wish to outline risk thresholds where an informal process would be inappropriate. Furthermore, where reporting parties request an informal approach, HEIs will almost certainly need to consider outside providers with expert knowledge of GBVH as staff with Michelle's expertise are not usually already employed. In such instances, it is strongly advised that the parties be provided with follow-up coaching, support and, especially in relation to the responding party, monitoring to ensure that any documented behaviour change commitments are being met with full vigour.<sup>6</sup>

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<sup>6</sup> Thanks to Mark Dean from En Masse for providing expert input to this section.

# REPORTING PARTIES' PERSPECTIVES ON CHALLENGES: CULTURAL AND IMPLEMENTATION ISSUES WITH HANDLING REPORTS

Challenges arising in institutions' handling of disclosures and reports are separated into two areas: cultural and implementation issues, and structural issues. The former are able to be tackled on an institutional or local level, while the latter need to be addressed at a higher level such as through sector-wide guidance or legislative reform. Below, reporting parties' perspectives on cultural and implementation issues are summarised, organised into four groups: first, issues arising prior to and during reporting; second, issues with gathering and assessing evidence; third, issues at outcome/appeal stage; and fourth, issues after reporting. A full overview of issues with implementation, with suggested actions to address these, can be found in Appendix 3, and practitioners may wish to skip directly to that section.

## Challenges arising prior to, and during the reporting process

### **Abusive behaviours could be difficult to recognise and label – by those victimised as well as staff receiving disclosures**

Some interviewees described how difficult it was to find appropriate language for the behaviours they were experiencing. It is not unusual for people who are subjected to GBVH to struggle to find the language to label their experiences. Nevertheless, these difficulties in labelling were compounded for some interviewees due to the sometimes subtle, confusing (even while deeply distressing) types of behaviours that were occurring, sometimes within apparently supportive friendships or mentoring relationships. This difficulty with labelling experiences could occur even when interviewees had experienced sexual violence. This meant that responses from those who they disclosed to were even more important in helping to make sense of their experiences.

### **Intersectional inequalities could shape experiences of, and recovery from, GBVH**

Experiences of GBVH, and the ways in which institutions responded to these, could be shaped by interviewees' wider identities, including not only race, class, disability, nationality, and sexuality.

For example, Xun, an international East Asian PhD student during the Covid pandemic, was targeted for racist sexual harassment and sexual assault by a lecturer in her department, who was open about his preferences for East Asian women. Chisimdi, a Black British student, was assaulted by another student who claimed he had 'jungle fever'. Both Chisimdi and Zainab, a British Asian student, described a wider culture of racism particularly among other students at their institutions. Zainab described how this environment compounded her difficulties in healing from being raped.

### **When reporting parties disclosed their experiences on social media, marketing departments led on the institutional response instead of specialist GBVH staff**

In these instances, students were not signposted to any relevant support after the contact from marketing staff. A third interviewee described how her university didn't address a harassment



situation (where there was widespread knowledge but no formal reports) until there was the threat of it going public. Two further interviewees described having to contact senior members of the institution to get an effective response (both in 2019). These examples suggest a lack of a joined-up approach across the institution and in some cases, a concern with reputational damage over the wellbeing of reporting parties.

### **A lack of support for with the reporting process was described by some reporting parties**

While, as noted in the 'What went well' section, some student interviewees received very good specialist support, others – especially staff – received no support at all. In some cases of students make reports about staff, interviewees were not in contact with student services at all. This lack of support could include a lack of guidance on what information should be included in a statement (which is important as statements need to be strong enough to build a disciplinary case on).

### **There was evidence of a lack of joined-up working/information-sharing between agencies**

Five interviewees reported to the police as well as their HEI (see Text Box 2). For two interviewees, other organisations were also involved (placement organisations, fitness-to-practice bodies, and an umbrella body for a specialist HEI). In both cases there was poor communication or a lack of joining-up of information between agencies, and in one case this meant that the responding party was not suspended from contact with students, even though the reporting party was told that he would be.

### **There was evidence of gender bias in some processes**

Several interviewees gave examples of how their gender as women had led to bias against them in the reporting process. This included apparent failures to believe women's accounts – even when verified by other women – and 'himpathy', which Kate Manne defines as 'the excessive sympathy sometimes shown towards male perpetrators of sexual violence' (Manne: 2017: 197).

For one interviewee, Charlotte, a lecturer, there was a direct point of comparison in that both she and the responding staff member put in a complaint against the other about the same incidents. She described the ways in which she was treated differently to him throughout the process, for example, he was able to see the transcripts of both his and her own interviews, and she noted that when interviewing him:

the investigator apologises to him that he's being put through this process. I didn't get that. The way that they ask him questions is a lot more respectful and nicer than the way they asked me questions. He was – at the end of the interview they said, "after you have seen a transcript of her interview, do you want to come back and give us any more details?" They didn't offer me that.

These differences – particularly the opportunity to add further evidence after seeing the other party's transcript – could make a material difference in the assessment of evidence and ultimately in the reliability of the outcome of a complaint. Furthermore, in this process, where a complaint was made against Charlotte by the responding party as soon as he heard that she was thinking of reporting him, response staff failed to recognise the common tactic of 'DARVO' – Deny Attack, Reverse Victim and Offender (Halsey and Freyd, 2020) – used by responding parties. Had they been aware of this tactic and taken note of the power imbalances between Charlotte and the responding party, this would have alerted them to assess the evidence more critically.

### **There can be a lack of protection against victimisation during reporting processes**

Being subjected to victimisation was described by six interviewees (five students and one casualised staff member) and others mentioned being scared of this happening as no precautionary measures were put in place. Victimisation included threats to sue the reporting party for defamation; calling the reporting party abusive names in her presence; failure to provide supervision or giving vindictive feedback on academic work (see Text Box 1); and the responding party telling other people – including strangers – to ask the reporting party about what had happened, so that she ended up having to repeatedly disclose her experience and defend herself to people who accosted her on social media and in person. Three of these interviewees experienced third-party victimisation, i.e. from friends or colleagues of the responding party, such as bullying or intimidatory behaviour.

### **Issues with gathering, assessing, and reaching conclusions from evidence**

Issues with evidence took three main forms:

#### **a. Failure to interview witnesses, leading to gaps in investigation report**

Two interviewees – reporting in 2019 and 2020 – described inaccuracies in the evidence gathered due to failure to interview witnesses that they had put forward. In one case, the responding party's witness was apparently interviewed, but not the reporting party's witness. In another case, the staff member investigating the complaint did not carry out any interviews at all, despite the reporting parties asking for this to happen.

#### **b. Inability to assess evidence/credibility**

Three interviewees described issues with assessing evidence or carrying out credibility assessments. As outlined by Humphreys and Towl (2020, p.160-1), assessing credibility means 'to weigh the reliability and accuracy of each piece of evidence presented in an investigation in light of all evidence'. Daisy described how in her complaint, there were 15 people providing evidence of the responding party's behaviour, but the case was not upheld. In James' complaint there were 15 complainants who provided statements and witness statements from 13 further people, and only a few points of the complaint were upheld. Daisy and James both noted that they were not given any convincing reasons for this weighting of evidence.

In a third case, the reporting party, Jean, provided Whatsapp and photographic evidence to support her case. The responding staff member refuted this evidence, but Jean noted that his responses were taken at face value rather than being critically assessed against the evidence she had provided. This shows a failure to adequately test the responding party's account. Furthermore, Jean described that the investigator placed weight on the responding party's emphasis 'that there was no sexual intention of his behaviour'. This is problematic as under the Equality Act (2010), the recipient of the behaviour decides whether or not it is unwanted (EHRC, 2017, p.2); while there is an objective element of the test ('whether it is reasonable for the conduct to have that effect') this does not appear to have been assessed in this case.

By contrast, Courtney described how statements from the responding party in her case were critically assessed in the report she received at the end of the investigation:

essentially [the case] was upheld and the kind of angle that the university had taken was satisfying I suppose because despite the teacher saying, 'Oh, that didn't happen; on this day she wasn't a student anymore', the [HEI] was like, 'Well, it started when she was a student. This type of relationship was sexual already and even if there was a period of time between, that doesn't rewrite the nature of the relationship... You were still in a teacher/student relationship to each other'; so, that was satisfying.

### **c. Contradictions in investigation report**

Three interviewees also described contradictions in the investigation report (which not all of those who went through a formal reporting process were able to see). For example, Sophie described how the investigation report upheld the finding that her PhD supervisor had sexually harassed her, but did not uphold complaint of failings as a supervisor (which includes a pastoral care element at her institution). As she noted, 'the implication is you can sexually harass a student and still be upholding the standards of supervision expected'.

## **Issues with disciplinary panels, outcomes and appeals**

### **There was evidence of some good practice in disciplinary panels, but also poor practice**

There were some good practice examples given in relation to disciplinary panels, for example reporting parties able to respond to written questions rather than appearing in person, or over zoom being able to keep their camera off.

However, there were also examples of poor practice, including victim-blaming questions, such as "Did you find him attractive?" and "Why didn't you report this at the time?". This led to one interviewee describing that 'it felt like it was an attack on me as a person coming forward', which was particularly upsetting as she was reporting in order to make the institution safer for others.

### **Some interviewees described contradictions in the case outcomes**

There were examples of sanctions being applied to the responding party despite cases not being upheld, for example an undergraduate student, Victoria, was told 'on the [balance] of probability, they don't believe I was sexually assaulted. But they do believe he breached university's conduct expectations, which—I don't know how he breached those if he didn't do anything wrong'. A staff interviewee, Mary, was told she should consider her grievance closed, even though the primary responding party was still off on sick leave and had not been interviewed in relation to her report. This appeared to be due to her grievance being against the institution, rather than being a disciplinary case against the staff member. Nevertheless, she was left with the uncertainty of not knowing when he would come back to work and how he would react when he did. Such a lack of information about outcomes can leave reporting parties in limbo, unable to properly assess the level of risk – whether psychological and/or physical – to their safety. In this way, institutional response processes may cause more harm than they address.

### **The appeals process could be unclear**

The few reporting parties who made it as far as the appeals process found it unclear. Indeed, the rights of reporting parties in sexual misconduct cases are generally unclear at appeal stage; one of the response staff interviewees, an investigator working on student-student sexual violence cases, noted that in their institutional process, a report of sexual misconduct goes directly to investigation

and disciplinary process, without a complaint stage, which means there is no clear appeal route for a reporting party at that institution.

The issue of whether reporting parties should have any rights in disciplinary appeals is indeed unclear in current guidance; our 2020 guidance (specifically focusing on staff-student sexual misconduct cases) argued that 'complainants and respondents must have equal rights to request a review/appeal' (2022, p.22). Similarly, Eversheds Sutherland in their 2022 legal briefing recommended that 'the reporting student be given a right to make comments or representations on the investigation report or a provisional disciplinary outcome, before a final decision is made, rather than a right of appeal of a final decision' (2022, 54). This point is an example of where further, detailed guidance is needed across the sector in order to ensure that complaints and disciplinary processes are fair.

## Issues arising after the reporting process

Even after the end of a formal disciplinary case, or after the responding party had left the institution and the case had been dropped, there could be ongoing issues.

### **GBVH can have complex, long-term impacts; PTSD stemming from GBV needs to be better recognised**

While there were many accounts of student reporting parties receiving positive responses to their disclosures and being able to access expert support, there was also evidence that the more complex, longer-term impacts of GBVH were not always recognized or understood within HEIs, in particular when this led to PTSD (post-traumatic stress disorder) as a result of sexual assault.

For Sally, the lack of understanding of PTSD as a disability led to her losing her career as a doctor. On her first placement during medical school, living away from home away from her friends and family, she was groomed by a consultant on her ward. Eventually the grooming escalated to sexual assault and rape, which caused her to develop PTSD and eventually to be hospitalised. Despite reporting these assaults both to the police and to her university, and registering her PTSD diagnosis with her university, she did not receive the accommodations she was entitled to for taking exams (such as rest breaks) and found herself in an exam invigilated by a colleague of the consultant who had targeted her, which was triggering for her. Effectively, her university failed to put in place its own reasonable adjustments around disability; this was a particularly egregious failure as this disability was caused by abuse from someone who was training her. Had the mitigations she required for the PTSD been implemented, she is confident she would have passed the exam that had been triggering her and graduated as a doctor.

### **Systems and expertise are needed to enable recognition of multiple perpetration**

Out of the 27 reporting parties, 16 interviewees either had evidence, knew of, or strongly suspected that the person who had targeted them had also targeted others (in the other ten cases this was not known). This was the case across student-student, staff-staff, and staff-student cases. A similar finding was outlined in *Silencing Students* – that 11 out of the 15 staff members carrying out sexual misconduct were described by interviewees to have targeted at least one other woman (Bull and Rye, 2018, p.3). Indeed, sexually aggressive behaviour is rarely a one-off incident (see for example Hales and Gannon, 2021; Cantalupo and Kidder, 2017).

Currently, processes for identifying serial perpetrators within HEIs appear to be informal, based on the memory of response staff handling reports. There was some evidence that some HEIs were beginning to implement systems towards this end (see Text Box 7 on ‘institutional memory’, as well as Text Box 6 on group/multiple complaints). HEIs need to be able to document such patterns of behaviour, particularly where incidents occur within a student accommodation block, or within a department or research group. This is a crucial part of prevention work in this area; if early harmful behaviour can be picked up, then further harms can be prevented. In this study, there was evidence that harmful behaviour was not being picked up until it escalated severely. Furthermore, four interviewees described their institution’s unwillingness to hear cases as a group. We have previously called for better guidance on how HEIs should handle group/multiple complaints (Parr, 2021); this is echoed in Morag Ross KC’s report on tackling GBVH at Glasgow University, which recommends that HEIs implement protocols for ‘complex cases’ (Ross, 2022) for example where there are multiple reporting parties. Such protocols should not be seen as exceptional or unusual, but should be part of normal case-handling.

#### **Further challenges:**

- Departments could exist in a silo where reports of GBVH did not escalate beyond the department to be dealt with appropriately and/or cultural issues in the department overrode any formal institutional process.
- Formal processes could be very slow, for example taking over a year. The majority of interviewees described issues with the length of time their reports took.
- Processes could be unclear and/or staff sometimes did not know how their own institutions’ processes worked.
- Inadequate administrative practices such as poor quality note-taking could impact on investigation/decision-making processes.



## Text Box 2

### Reporting to the police

While many of the reporting parties interviewed for this study experienced behaviours that were not criminal offences (such as adult grooming and other sexualised abuses of power), for those that had been subjected to rape or sexual assault, HEIs were in several instances handling cases which had been reported to the police, but no action had been taken. This was the case for four interviewees who were subjected to sexual assault or rape from another student (one PhD student and three undergraduate students), and one student who had been raped by a member of staff at their placement.

In two of these cases, the police interviewed the accused party, but due to a lack of evidence these cases were not taken forward. In a third case (Zainab) the accused party was arrested but then left the country and the police case was dropped. In the fourth case (Xuilin), the police case was dropped due to a lack of physical evidence. In Zainab's and Xuilin's experiences, reporting in 2018 and 2020, the responding party was moved out of their shared university accommodation as a precautionary measure during the police investigation. In the case of Sally, who was raped by a member of staff on her placement, the police dropped and picked up the case three times, but ultimately didn't take it forward. In three of these cases, the university's case was put on hold until the police decided to take no further action. In one case, the student only informed her HEI of the full details once the police case had been dropped.

One further interviewee, Kelly, attempted to report to the police, but described how after 'interrogating' her and asking her why she hadn't come forward earlier, they told her that her experience – grooming and sexual harassment over a period of several years from an academic staff member – was not a crime. She reflected that 'one huge takeaway from it is that the law doesn't reflect my experience. That's something that I have to emphasise. The law does not [cover] the kind of sexual violence that I experienced.' Her experience highlights an important aspect of why HEIs need to be tackling this issue; it was extremely traumatising but it was not a crime, and as she was targeted by an academic member of staff who was in a position of trust towards her, this experience affected her ability to access education, violating her rights under various legal duties such as contract and equalities legislation (as outlined by Eversheds Sutherland, 2022).

In terms of reasons for reporting, interviewees sometimes reported to the police for the same reasons they reported to their HEI: to make sure that their experience didn't happen to anyone else, particularly when they were aware, or suspected, that others had been targeted by the same person. Two interviewees who reported initially in 2017 were both told by the university that they should report to the police only; it appears that the changes outlined by the Pinsent Mason guidance in October 2016 (that HEIs could take action on and investigate sexual violence whether or not a police report was made) had not yet filtered through into frontline practice by this stage. But students reporting to HEIs (even after or alongside a police report) tended to be looking for outcomes that could be more appropriately provided by the HEI than the police, such

as not being in teaching/accommodation spaces with the person who had targeted them, to deal with rumours being spread about them relating to the incident, or finding a way to let the responding party know that he had done something wrong without necessarily wanting a punitive response. They also wanted the incident to be 'on file' or recorded somewhere so that if the same person targeted others, then the pattern of behaviour would be visible. (In fact, HEIs tend to be very nervous about connecting cases in this way; see Text Boxes 6 and 7 on institutional memory and on group/multiple complaints).

Overall, it was clear that HEIs' role in handling such cases was for the most part different to the criminal justice system's role. As Cowan and Munro (2021, 321) note, when students report to HEIs 'it is clear that although this may be driven in part by a reluctance to engage with an evidently failing criminal justice system, it may be motivated more positively too by a desire to satisfy a broader range of justice interests than can be accommodated within those adversarial and carceral criminal processes.' The different possibilities afforded by the HEI response (rather than the police) – including for precautionary measures and informal adjustments – should be centred more fully in HEI responses by moving away from punitive measures and towards community safety and victim-centred measures that support all students and staff to be able to continue to study and work in safety, without fear.

### Text Box 3

## Reports from former students

Four interviewees described reporting GBVH once they were no longer enrolled at the institution they reported to. In all of these cases (three staff-student sexual misconduct, and one student-student) had occurred some years previously. Such cases are sometimes referred to as 'historic'; however, while the GBVH may have occurred some years previously, the impacts (such as mental health impacts, fear of retaliation, and career impacts such as not being able to participate in disciplinary networks or not trusting male colleagues) were still present with them. Therefore, here we use the phrase 'reports from former students/staff' rather than 'historic reports' to emphasise that the impacts were by no means in the past.

At the time of these reports, the responding parties were all still members of the institution – either in their academic posts (including one emeritus professor who still had a key to an office on campus) or enrolled as a student. All four institutions opened up formal investigations into the reports. One interviewee was a professor reporting misconduct from staff that had occurred while she was a PhD student in the same institution, many years previously, and had continued once she started working there. Two further interviewees had graduated – one now working in academia abroad, and one working in the industry she had trained in – and reported lecturers in the departments they had studied in, several years after having left. The interviewee who was reporting another student had in fact changed universities as a result of the racist assault she had been subjected to by him. She

had tried to report it at the time (in 2017) but had been told to go to the police; in 2020 she tried again to report this to the university and this time the case was investigated.

Two of these reports were not upheld, and two were upheld. While there were substantial problems with the process in the two cases that were not upheld, it is good practice that these institutions opened up a formal process to tackle reports of GBVH that had occurred some years previously – in one case over 20 years previously. These examples show that there is a level of awareness – at least at these four institutions – that it is important to allow alumni to make formal reports, especially where these relate to staff or students who are still members of the institution as they may still be targeting others. Due to the ongoing impacts that GBVH can have, HEIs should also be open to investigating reports – to the extent possible – into staff or students who have left the institution. This is because the reporting party may need evidence of an upheld report in order to explain gaps in their career or to explain to collaborators or professional societies any restrictions on activities she can participate in. There are, however, practical issues with such investigations, both in terms of jurisdiction – as some institutions' disciplinary regulations refer to registered students and current staff only – and also in relation to whether discipline committees will be willing to make an upheld finding without any input from the responding party, who is unlikely to take part in the process.

On a personal level, as noted in the 'impacts' section, upheld reports can also be important for helping to deal with the impacts of GBVH.

# REPORTING PARTIES' PERSPECTIVES ON CHALLENGES: STRUCTURAL ISSUES WITH HANDLING REPORTS

This section describes problems that exist at the level of policies and structures for tackling sexual misconduct, i.e. they are issues that cannot be tackled effectively by staff alone. These are, therefore, issues that need a sector-wide and/or legislative response.

## Inappropriateness of the formal grievance/complaints process for tackling sexual harassment

While some HEIs now have bespoke policies and processes for reporting GBVH, this does not appear to be standard. Guidance from the Advisory, Conciliation and Arbitration Service (ACAS) (2021) states that sexual harassment can be reported through a standard grievance procedure where organisations do not have a specific sexual harassment policy and procedure; similarly the Office of the Independent Adjudicator for HE (OIAHE) states that 'If the provider does not have a separate procedure for students to raise [complaints about the behaviour of staff or other students], then students should be allowed to raise concerns about behaviour under the general student complaints procedure' (2022, p.31). For reporting staff, this leaves them with what one interviewee described as the 'nuclear option' of taking out a 'grievance' (i.e. a formal complaint taken out by a member of staff). 18 out of 27 interviewees made, or attempted to make, formal reports. Out of the nine who did not take this route:

- Three took an informal route that was offered (although one of these later reported formally) (see Text Box 1).
- Two felt that the formal process would be more harmful for them than for the responding party.
  - In one case the interviewee took this decision after discussing the possibility of reporting with staff who handled such complaints within her institution. They gave her the understanding that she would have to go through an adversarial formal process including a face-to-face hearing with the responding party, and testifying in front of the person who assaulted her, if she wanted any chance of it being upheld.
  - In the other case, the interviewee (a student) mentioned the lack of a bespoke policy for sexual misconduct reporting at her institution, as well as the senior status of the responding party and the poor responses from some members of staff to her initial disclosure as factors in her decision.
- Two interviewees had had poor responses to their initial disclosures, and this led them to feel that it was not safe to make a formal report. One of these interviewees attempted to report twice via an online reporting platform, but was told to find someone in her department to speak to about it; she felt that doing this would put her at risk of victimisation and therefore did not take this step, and there was no other option put to her for reporting.

- One interviewee felt that a formal process wouldn't offer the outcomes that she needed (see below). Counselling was offered to her, as well as 'assertiveness and confidence training'; she accepted the former and rejected the latter.
- One interviewee wasn't required to put forward a formal report as the institution took proactive steps when there was the threat of media coverage of a serial abuser on their staff.

However, even for the 18 interviewees who did go through a formal process, it was not necessarily because this process offered the outcomes that they wanted or needed.

## Formal process does not prioritise the outcomes that reporting parties need

The formal reporting process is centred on the responding party in the form of a disciplinary case against them. This prioritises outcomes around punitive sanctions for the responding party; while these may be needed, this focus risks losing sight of what reporting parties need. As our previous research has outlined (Bull, 2022), the types of responses reporting parties wanted were:

- To keep themselves and others safe.
- To do the right thing, and pass over the knowledge to the institution in order for that to happen.
- To be able to continue their careers or studies.

These options are sidelined by the formal structure of disciplinary processes for handling sexual misconduct, in which an 'outcome' is a finding for/against the responding party, rather than focusing on what reporting parties want or need. Indeed, one interviewee, James, who along with 14 other PhD students reported the leader of their research group for bullying and sexual and racial harassment, summed up his perspective by explaining how the university insisted that their complaint was about the responding staff member, despite them saying 'this is about our mental health, our studies being affected'. Similarly, two interviewees, Zainab and Polly, described how they both received counselling and other support during the process, but after the responding party left the university (in one case a staff member, in the other a student), the case was considered closed; as Zainab described, 'he left and then I was just left to pick up the pieces by myself because the university were like, "Okay, well the case is closed, we have no safeguarding issues anymore, he's not here. What else do we need to do?"'

In fact, interviewees were just as likely to need support after the reporting process had finished in order to pick up their studies or career and get back on track. A formal process that prioritises the disciplinary case against the responding party over any outcomes needed by the reporting party in their complaint de-centres such support. This issue was exacerbated in some institutions by an approach whereby reports of sexual misconduct were routed directly into a disciplinary process without a formal complaint being opened up for the reporting party. This meant that they had no right to remedy, appeal, or to access the services of the adjudicator for higher education (if they were students). Overall, centring the rights of the reporting party is not just an ethical imperative (even though that should be sufficient considering the multiple losses experienced as a result of the incident and the process); it is also a safety imperative. This is because if fewer people report because they believe the system is unfair, this has profound consequences for campus safety for all.



It is also important to note that some interviewees emphasised that they did not want punitive sanctions for responding parties; for example, they might simply want the responding party to be aware of the harm that he had caused. This position can lead to a difficult balancing act for HEIs as reporting parties may vary in whether or not they want sanctions to be imposed, but institutions need to be consistent in the way they handle formal reports. It is clear, however, that a process that prioritises the outcomes of a disciplinary process over the outcome of the reporting party's complaints process – as is currently the case – is unbalanced and in many cases will not meet the needs of reporting parties.

## Reporting process may not include remedies for reporting parties

As outlined in more detail in Part II, reporting parties often had to go through a further round of complaints processes in order to gain any remedy – for example an extension on their PhD enrolment period, or financial support – following a reporting process. As outlined in Bull and Page, (2022) remedies are very difficult to access for reporting parties, and where offered, they tend to centre financial offers regardless of whether this is what reporting parties need.

In this study, remedies offered after formal reporting included:

- Counselling (including ongoing counselling for an indefinite period) and/or external training.
- Agreements with responding party around sharing space on campus (for both staff and students).
- After a lengthy appeals process, one interviewee obtained a one-year extension on a PhD programme and stipend, with £5000 compensation.
- After taking legal action against her institution, one interviewee obtained a £60000 settlement.
- A further interviewee was offered £5000 after she went to the OIA, if she signed a non-disclosure agreement. She declined the money and the NDA.

12 of the interviewees who went through a formal reporting process did not receive any remedy after their reporting process was concluded (discounting the standard counselling offer that students are already entitled to).

Remedy for staff reporting parties is more complex due to the employment law context. However, for student reporting parties, the Office for the Independent Adjudicator gives clear guidance on when remedy should be provided. In the case of upheld student complaints about the behaviour of another member of staff or a student, the Office for the Independent Adjudicator's *Good Practice Framework* (OIA) states that:

Where a complaint or appeal is upheld, the provider should explain how and when it will implement any remedy, whether that includes an apology, and what the student can do if they remain dissatisfied (2022, p.22)

Information considered as part of this resolution should include, 'if the behaviour is found to have had an adverse impact on the reporting student, a remedy for that impact' (2022, p.22).

However, evidence from this study suggests that remedies are still not being applied in sexual misconduct complaints. Two students, who reported other students and had their cases upheld in

2019 and 2020, were not aware of any remedy that they had received as a result of their complaints. Four other students found themselves in the situation where the responding party either left the institution during the reporting process, or in one case, died, and did not receive any remedy. In the cases above where financial or academic remedies were obtained, reporting parties went through either an appeal, a claim to the OIA, or a legal challenge.

Remedy is important for sexual misconduct complaints because of the long-term impacts that GBVH can have on survivors' personal and professional lives (see 'Impacts of GBVH and the reporting process on reporting parties' section above).

## Reporting process assumes people are reporting on behalf of themselves alone

As well as being centred on responding parties, reporting processes were also individualised. Previously, we have raised the issue of reporting processes being difficult to negotiate for students or staff attempting to report as a group, or where there are multiple individual reports about the same person (Bull, 2021; however, see Text Box 6). In this study, similarly, interviewees often reported sexual misconduct on behalf of others as well as themselves.

In some cases, staff on permanent contracts decided to formally reporting behaviour that they had experienced because they were aware that others had also been targeted; they felt that being in a more secure position meant they would be better protected in the process. Indeed, a permanent, senior role in the institution could sometimes help mitigate some of the worst impacts of reporting sexual harassment, but it did not necessarily protect interviewees. However, where staff were on permanent contracts and in positions of seniority, they could sometimes use their institutional status to ensure that the process was less damaging for themselves and others, or that the issue was taken seriously. For example, even though Daisy's report was not upheld, she was able to push forward changes across her faculty after the end of the process. Mary, who similarly to Daisy was a senior member of staff, described how knowing that female peers were now in positions of power in the institution helped give her confidence to report. However, Claire found that her status as a professor did not protect her when she raised issues of sexist bullying.

Not only staff, but several students also described reporting other students to try and make sure that their experience didn't happen to anyone else. There were mixed outcomes to this experience but on the whole interviewees felt that their action had not been effective. For example, Victoria explained that she reported to make sure this didn't happen to anyone else but 'the institution has taught him that you can get away with it.'

## Lack of appropriate alternative options for actions that institution could take

This included a lack of resources to deal with cultural issues within departments or research groups including bullying/gender inequality. Facilitated conversations, where offered, were inadequate, drawing on a 'mediation' approach which assumed that the misconduct or harassment was based on a misunderstanding rather than harassing or abusive behaviour by the responding party. However, in some cases where the reporting party wanted mediation, the HEI did not explore whether there were internal specialists or external providers with the sufficient detailed knowledge

of both mediation and GBVH to provide this. It should be noted that there may be instances where reporting parties may wish to pursue a course of action – such as facilitated conversations – which is high-risk and could cause harm to themselves or others (for example, using such a situation to continue the abuse). There may be safety considerations that prohibit pursuing the routes that reporting parties want. Nevertheless, from the accounts of interviewees it appeared that rather than being ruled out after a risk assessment, alternative options were not available at all.

## Lack of oversight/regulation

Some complainants commented on the lack of oversight or regulation in this area; an observation that was made by several of the response staff interviewees (although it should be noted that at the time of writing the Office for Students are consulting on making addressing sexual misconduct a condition of registration for institutions in England and Wales). In some cases institutions were carrying out their own internal reviews of policies or processes, and invited reporting parties to feed into these. This is an example of good practice (assuming it is done in a way which limits the risk of retraumatising reporting parties). It can also be seen as one form of remedy, where reporting parties want this. However, some interviewees also had concerns about the lack of transparency or oversight in such reviews. For example, one interviewee described a review of student complaints after that was carried out after their case. They saw this review as inadequate as it was carried out by an external law firm, was not made available to members of the university, and no commitments were made to transparency or action following the review.

## Unclear practices around confidentiality and information-sharing

Unequal – and sometimes unsafe – practices around data sharing led to a variety of harms and injustices for reporting parties and for the wider institutional community.

Unequal practice around data sharing could lead to injustices in assessing evidence. For example, Jean, an early career researcher who reported a staff member at a university of which she was not a member, described how she did not get the opportunity to see or respond to the staff member's statement, but when she subsequently accessed his statements through carrying out a Subject Access Request, she found inaccuracies that she had never been given a chance to respond to. Similarly, Victoria, who was reporting another student, found that the responding party could submit questions to ask her at the disciplinary panel, but she wasn't allowed to submit questions back. She explained that she would have liked to have known what was being said about her so she could put forward a justification, especially given he was allowed to justify himself. This is a problem because if responding parties' statements are not tested with the reporting party, then inaccurate conclusions could be reached.

In addition, failures to balance health and safety duties with data sharing duties could lead to further students and staff being targeted by the responding party. Sophie, a PhD student, reported her supervisor after he had repeatedly sexually harassed her. After a lengthy formal complaint process in which her complaint was upheld, the findings appeared not to be shared with other parts of the institution where her ex-supervisor is still involved in teaching. Similarly, Kelly was a student who was groomed and abused over a period of years by a member of academic staff. In fact, the staff member, a professor, had left her institution in 2016 but he remained on staff as an emeritus professor, with no information shared as to why he left, despite rumours of sexual misconduct. He had started grooming Kelly before he left his post, and continued this abuse for three years until

2019. The confidentiality around his departure allowed his grooming and abuse to continue and escalate, with very severe impacts on her including being hospitalised in a psychiatric ward. Kelly thought that the confidentiality around his initial departure from the institution was very harmful for her – as it allowed him to continue abusing her.

Data sharing practices could also compound the trauma experienced by reporting parties. The secrecy around the reporting process mirrored the secrecy that Kelly’s abuser had used during the grooming and abuse. At the start of the grooming process, she described how:

he’d ask me for coffee, and he’d say, “Don’t say anything, though,” like, “Keep it a secret.” But he would disguise it as, “Keep it a secret, just in case the other students get jealous of you,” like, “Just keep it a secret, because you’re special.”

After she reported to her university, she found that the requirements for secrecy felt like a continuation of the abuse:

I just thought that after I’d gone forward, I’d feel a sense of relief, but again, because it’s within the university, it’s like, “What am I allowed to disclose? What aren’t I allowed to disclose? What am I allowed to talk to my friends about? What aren’t I allowed to say? [...] I’m now carrying a secret, and it’s like the abuse has continued, because it was already a secret that I was holding. Now, it’s like I hold this even bigger secret. I’m tired of holding secrets.

A further issue was that data sharing practices could lead to the reporting process being used to continue the abuse or to victimise reporting parties. Reporting parties feared how the data would be used by responding parties, for example Xuilin thought that the student who had abused her and others would see their statements as evidence of his success at controlling them, and she was scared of how he would use this material to retaliate against her:

[The] university made a decision that they will show all of our statements and interview recordings to [the responding party]. That scared us a lot. [...] Writing the report itself was – I feel like my spirit was watching my body, was reviewing all the wounds, all the remains of the body, and I was trying to make sense of what has happened. I just couldn’t accept it, [that] he’s going to read all of them also. That will make him feel proud of himself.

Finally, poor practice around data sharing could deter people from reporting. For example, Jennifer, a postgraduate student, didn’t realise that information on upheld findings were not shared between institutions. She had been planning to formally report the student who had assaulted her so that information on an upheld finding could be shared with another university, but finding out that this would not happen contributed to her decision not to go through a formal reporting process.

There is an emerging consensus that it is possible to share some sanctions with reporting parties after the end of a disciplinary process (Universities UK, 2022b; Eversheds Sutherland, 2022) and there are emerging discussions around other areas of data sharing. However, this evidence, as well as the response staff evidence (below), shows that much more detailed guidance is needed.

## Difficulties arising from lack of joined-up approach across sector/institutions

While many instances of GBVH reports occur between members of the same institution, there were many examples from interviewees of situations that did not fit this model. These included:

- Where the responding party leaves/graduates during an investigation.
- Where reporting parties are not, or are no longer, members of the institution. For example, issues around information sharing become even more difficult in such cases. In this study, interviewees in this position included:
  - A PhD student who waited until she had graduated until she reported in order to avoid further victimisation from the staff member she was reporting.
  - Students and early career researchers from within a disciplinary community who are targeted by staff employed at a university. This is a particular concern as early career researchers are required to network with academic staff as part of their career development, but are left with no protection if they lack institutional status.
  - Students who are targeted by other students at a different university within the same city.
- Where GBVH occurs on placement (see also SUMS consulting, 2022a, p.7)
  - There was a lack of clarity around professional boundaries between placement staff and students on placement.
- Where reporting parties also report to the police (see Text Box 2).

### Text Box 4

## Anonymity in the reporting process

Gender-based violence and harassment, especially where it involves sexual assault or rape, often happens behind closed doors or via private verbal conversations or interactions, and so by its nature is usually not observed directly by any third-party witness. This creates a problem for reporting parties and HEIs who wish to take a zero-tolerance stance towards GBVH since it may be difficult for 'behind-closed-doors' GBVH allegations to meet the required 'balance of probabilities'<sup>7</sup> standard of evidence.

Where a reporting party makes a complaint of behind-close-doors GBVH which is flatly denied by the responding party, an investigator or decision-maker may be faced with a conundrum as to which evidence to believe. While there may be other sources of evidence available (see Part II, Section 1), if this is not the case, both parties' accounts may seem equally credible on their face, yielding a 50/50 outcome on the balance of probabilities. Since this does not meet the required standard, the allegation will not be upheld. Yet, the fact that no one else witnessed a specific act of GBVH does not mean

<sup>7</sup> The balance of probabilities requires a finding that there is at least a 51% likelihood that an allegation occurred before it can be upheld and sanctions or remedial measures taken.

that it did not occur and so a system that will only uphold a complaint where there is evidence which, by the nature of the allegation, is unlikely to be available, is a system that stacks the odds against the upholding of complaints. For this reason, anonymous or confidential reports of similar types of conduct engaged in by the responding party may need to be considered as part of a disciplinary case.

A further reason for taking forward disciplinary cases that include anonymous or confidential reports alongside named reports is that those affected by GBVH are often – legitimately – afraid to put their name to a formal report about the person who has targeted them, due to the impacts of their experiences as well as the risk of further harm through victimisation. This is also an important step for prevention of further harm, as evidence suggests that perpetrators of GBVH (whether staff or students) may be targeting multiple people (Bull and Rye, 2018; Cantalupo and Kidder, 2017; Hales and Gannon, 2021) (see also Text Box 6 on group/multiple reports).

However, according to current guidance, anonymous or confidential reports are not usually able to be taken forward in disciplinary action because the evidence is unable to be tested against the responding party's account; under principles of natural justice, the responding party has the right to know the accusations made against them, and to defend themselves against these. The OIA states that:

It is not normally appropriate to keep the identity of witnesses secret during disciplinary proceedings. To do so may undermine the student's ability to defend themselves. If the witness does not agree to the student knowing their identity it may not be appropriate to rely on their evidence (Office of the Independent Adjudicator, 2023, para 16)

ACAS's guide 'Conducting Workplace Investigations' states that:

An investigator should try to avoid anonymising witness statements whenever possible. This is because an employee under investigation is likely to be disadvantaged when evidence is anonymised as they will not be able to effectively challenge the evidence against them. Only in exceptional circumstances where a witness has a genuine fear of reprisals should an investigator agree that a witness statement is anonymised. However, if the matter becomes subject to legal proceedings, and it is necessary in the interests of fairness, an employer may be required to disclose the names of any anonymous witnesses (ACAS, 2019, p.30).

There is a difference between confidential and anonymous reports; in anonymous reports, the reporting party is unknown to the institution, and therefore no formal action can be taken (although an 'environmental investigation' into the wider culture of a department or research group can be instigated). In confidential reports, the identity of the reporting party/ies is known to the institution but is not disclosed to the responding party. This process is rarely used, and is very difficult to implement due to the difficulties in testing the evidence in these cases.

However, in group or multiple complaints where there is a pattern of behaviour that the responding party has carried out, targeting multiple people, it may sometimes be



possible to take forward confidential reports. There were two examples in this study where interviewees described that their identities were not disclosed to the responding staff member. In one case, a group of 15 postgraduate students asked for confidentiality from the responding staff member and the university agreed to this. The reporting students had to describe in detail the incidents of harassment, and so in some instances they may have been identifiable, but the formal confidentiality gave them some protection from victimisation from the responding staff member and his supporters. However, as the responding staff member left the university during the investigation to take up a post abroad, the evidence was not tested.

A second interviewee disclosed grooming and sexual harassment from an emeritus professor who had taught her. She did not make a formal complaint herself, but provided a written statement and screenshots of messages to the HEI which was used as evidence that led to him being banned from campus with his emeritus status revoked. She described that while her identity was known to those she disclosed to, the staff handling the case did not know who she was; her understanding was that her evidence was used without her name being shared. She was aware of four others who had been targeted by the same person (who may have made named complaints). She was not given details of the nature of the formal process that was followed in this case; it is possible that the university took out its own disciplinary case against the responding party or that she was a witness in another person's complaint.<sup>8</sup> Due to the professor being emeritus rather than employed, it may have been easier for the university to take action on her report without sharing her identity with the responding party. Nevertheless, she was clear that she would not have come forward if she had had to put her name to the report.

These examples show that, in cases where multiple people are targeted, some institutions appear to be affording some of the reporting parties a degree of confidentiality. This is a hugely important area as reporting parties frequently want – and need – the protection of anonymity against responding parties. To redress this structural bias in the process described above, it would seem appropriate for HEIs to take the route suggested by these two accounts: of accepting and giving some weight to other evidence, including anonymous or confidential reports of similar types of conduct engaged in by the responding party. The amount of weight to be accorded this evidence will depend on the nature of the evidence itself, and the extent to which the investigator/decision-maker can test its credibility without disclosing the witness' name to the reporting party. The investigator/decision-maker will want to consider why the witness would like to remain confidential or anonymous (for instance, whether they are still working in the same field, increasing the plausibility of concerns about victimisation), whether their evidence is corroborated by other evidence, and whether it can be put to the reporting party in a way that does not identify the witness. It will no doubt be a good deal harder to test the credibility of anonymous complaints, and so

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<sup>8</sup> In our guidance on handling staff-student sexual misconduct complaints (The 1752 Group and McAllister Olivarius, 2020a, p.19), we noted that anonymous testimony can be considered as part of a group complaint alongside a formal (named) complaint, and we outline steps that may be taken to test such evidence for credibility. We noted that anonymous statements need to be put to the responding staff member so it will only rarely be reasonable for the HEI to take account of an anonymous statement where this is not possible.

these are unlikely to be included very often as the basis for a finding, but it is possible to imagine circumstances in which an anonymous complaint could be taken into account.

This is clearly a complex issue, since it calls for a balancing of the natural justice rights of a responding party against the individual rights of a reporting party to be able to access an environment that is free from GBVH – whether as a student or staff member – as well as the obligations on the HEI itself of providing a safe workplace and educational space. More detailed guidance in this area is therefore urgently needed.<sup>9</sup>

### Text Box 5

## The role of UCU in disciplinary cases

Accounts of involvement from the staff trade union in UK higher education (Universities and Colleges Union (UCU)) in reporting processes were mixed and in some cases, highly critical.<sup>10</sup> On the positive end, two staff reporting parties had very good experiences with the union; in one case an interviewee described an ‘excellent caseworker’, who, at her grievance panel, was ‘the only person in the room that had training in [sexual harassment]’. A further interviewee was himself the union representative for his department who managed to get regional office support in pulling together a group complaint (see later in this section: ‘UCU support for a collective grievance’).

By contrast, several staff reporting parties had poor experiences with the union. One staff member even left the union as a result of her complaint due to the aggressive action against her that union representatives were encouraging the responding staff member to engage in. Another interviewee felt that UCU were unambitious in addressing this issue and willing to settle for what the department wanted; in this case, the reporting parties in fact managed to get more robust action taken. For one further respondent, the perception of the union as male dominated meant that she never wanted to join, ‘partly because I didn’t think they were very interested in women.’

There were also difficulties recounted by reporting parties in accessing representation from UCU (see also UCU’s own research on this (2021, p. 54-8). One interviewee received no response to her requests for representation; she thought this was because the responding party was highly active in their local branch and was blocking her from accessing representation. This experience was corroborated by an HR interviewee from one of the case study institutions, who described that ‘at [this university] at least, UCU will almost always be defending the [responding] party’; reporting parties could be refused representation as a result. Another interviewee was an early career researcher who was on the job market, but as she wasn’t

<sup>9</sup> Thanks to Georgina Calvert-Lee from Bellevue Law for providing expert input to this section.

<sup>10</sup> Seven reporting parties had accessed or attempted to access UCU support. Four response staff interviewees also discussed UCU involvement in reporting processes.

employed, she did not have a local branch, and therefore was not able to obtain union representation. Postgraduate researchers who were members of UCU were also unable to obtain representation due to the harassment taking place in relation to their role as students, not staff.

Three further response staff described UCU using technicalities to support responding staff members in ways that were harmful and damaging to reporting parties. This included finding ways to enable their members to avoid disciplinary action even when there was clear evidence that very harmful behaviours had occurred, or encouraging responding parties in tactics such as using subject access requests to uncover information about reporting parties that could be used to target them and derail complaints.

These accounts suggest that union support for staff experiencing GBVH is unreliable and dependent on the gender politics of the local branch, with representation more likely to be available for responding than reporting parties. It is particularly concerning that there is evidence that, in some cases, union representatives are implementing aggressive actions intended to undermine the reporting party. UCU has recently invested in researching and outlining actions that can be taken to address sexual harassment, signalling that this is an issue that it wishes to address (UCU, 2021). Their own findings state that ‘practices at branch level are... ad hoc, with different branches observing very different standards for processing local casework data and as yet no mechanism for collecting and publishing summaries of branch casework data at regional, national or even UK level’ (2020, p.56). Nevertheless, it appears that there is more to be done to ensure that local branches are addressing their own issues with gender inequality; with equal representation for responding and reporting parties; and to ensure that their tactics to defend staff respondents do not involve attacking reporting parties. We therefore recommend that UCU produces a good practice guide for local branches and representatives in how to handle these difficulties, to encourage more ethical conduct in handling cases. It should also gather, analyse and publish data to explore whether it is representing reporting and responding parties equally.

### **UCU support for a collective grievance**

Group or multiple reports of harassment or bullying from the same person appears to be an issue that many HEIs lack mechanisms to address, as has been flagged up in public reporting as well as our activism (Al Jazeera, 2021; Bull, 2021; Parr, 2021). This was also an issue for many of the interviewees in this study (see Text Box 6). One interviewee described an innovative approach to handling a collective grievance. He was the UCU representative in a department where many members of staff were being targeted for bullying or sexual harassment by the head of department. Working with the regional UCU office, he organised a meeting off campus for staff who were affected. They were all invited to submit accounts of the behaviours they had experienced to the regional UCU representative, who then compiled a report outlining evidence and recommendations for actions to be taken by the university. In order to mitigate any suggestion of collusion, they did not confer with each other in writing their accounts.

The report was submitted to senior management at the university as a collective grievance by the regional UCU representative. Despite pressure from the university for this to be handled individually, the reporting parties succeeded in having it taken up on a collective basis. During the investigation, the responding party left and took up a job at another institution. Nevertheless, this approach outlines an effective way forward for handling collective grievances, as well as a route for UCU to do more to support reporting parties.

## REPORTING PARTIES' PERSPECTIVES ON WHAT THE HIGHER EDUCATION SECTOR SHOULD DO TO ADDRESS GBVH

Before turning to explore the perspectives of staff handling reports, the final section of Part I summarises interviewees' perspectives on what the higher education sector should be doing to address GBVH. These perspectives are important because reporting parties' views are – perhaps surprisingly – not necessarily gathered within institutional data collection processes around GBVH (SUMS Consulting, 2022b). Their responses are summarised below; the interviewees who made each point are named (with their pseudonyms) as a reminder that these perspectives draw on survivors' lived experience.

### **1. More education and training for staff and students is needed to raise awareness of how to recognise GBVH and where to go for help**

- For example, as Sarah noted, for PhD students 'Day one, [you need] a welcome pack: "Here is where your office is; here is where is good to get food; here is where you go if you feel you're being bullied or sexually harassed"' (Sarah, Xun).
- Other interviewees pointed out that education around consent is not enough. Better sex education is needed, and alongside this people need to understand more about how sexual violence affects people, for example how someone's body can respond to sexual activity even if they haven't consented to it (Zainab, Courtney).

### **2. Specialist staff need to be employed to handle cases and support reporting parties**

- Trained professionals should be employed to handle cases (rather than using academic staff investigators), as well as specialist sexual violence support staff (Daisy).
- Specialist sexual violence counselling for staff is needed, not just general counselling (Kim).
- Care and follow-up from members of staff receiving disclosures is needed (Kim).

### **3. Reporting parties need to be at the centre of the reporting process**

This requires that HEIs:

- Start believing victims (Daisy).
- Implement victim-centred approaches (Amy).
- ‘Look at whose viewpoint you’re centring when you consider success, like it was pretty much a slap in the face to have the student no longer enrolled and then to expect me to be happy [with] the outcome’ (Chisimdi).

### **4. Processes for handling reports need to be improved and standardised, including:**

- Removing time limits on reporting to HEIs (Amy).
- Making sure the same rights are given to reporting parties as are given to responding parties (Victoria).
- Cutting the time it takes to investigate a complaint (multiple complainants).
- Implementing a supportive process – where reporting parties can discuss options – rather than a bureaucratic one (Lauren).

### **5. Structural issues need to be addressed**

- Investigations need to be independent from institutions (James, Jean).
- GBVH should be integrated into EDI and Athena Swan processes (Mary).
- Processes need to be reviewed and adapted, including getting feedback from people who have gone through reporting process (Mary).
- Better rights to protection at work/study for both students and staff are needed, including pre-empting sexual harassment (Sarah).
- Consistency in processes and practice between and within institutions is needed (James, Victoria).
- Meaningful, independent oversight of HEIs’ handling of reports is needed (James).
- There needs to be a willingness to act, taking seriously different forms of evidence, leading to consequences for members of the university community who engage in GBVH (Danielle).
- Information on upheld findings should be shared between institutions (Jennifer).

### **6. HEIs need to be more proactive in taking action when they receive disclosures**

- Options other than formal reporting are needed including restorative options or informal adjustments. For example, universities should be a lot more pro-active when receiving disclosures, rather than putting the onus on the person who experiencing the behaviour to fix it (Willow).

## 7. Open discussion of this issue within HEIs is needed.

This should include:

- Transparency, accountability and openness from HEIs. This might include ‘talking about what’s happening, going ‘Well, okay, we’ve had four formal complaints in this time period and then this is what’s happened,’ you know, I would be so interested to know that and it would make me have a lot more confidence in an institution.’ (Danielle, Chisimdi, Xun).
- Conversations about power and consent, including adult grooming (Kelly, Courtney).
- Clearer professional standards of behaviour for staff (Kelly).
- Awareness that abusive relationships between staff also exist, as well as between staff and students (Kim).
- Recognising rather than minimising and normalising the issue: ‘I think they need to not have this attitude of, “This is a one-off incident”, and “These are very isolated, separate things” and, “It doesn’t happen often.” [...] I think actually recognising that this is a serious problem across British campuses is the first step.’ (Victoria).
- Universities taking seriously and taking responsibility for the situation that is being created for new students, addressing culture and consent among freshers. As Joanna noted, ‘Universities need to go, “We need to do something, because otherwise we are just holding our lectures and we are looking into the eyes of victims who have probably been abused the night [...] before.” [...] A lot of 18-year-olds starting in September, six months ago were still asking for permission to go to the loo. You can’t just dump us in the acid like that.’ (Joanna).



## PART II: RESPONSE STAFF

### Response staff's perspectives on challenges: cultural and implementation issues with handling reports

While reporting parties' perspectives should be centred in any work to improve institutional complaints processes, staff handling such reports also have an important perspective. Therefore, this study involved interviews with 25 staff involved in handling disclosures and reports of GBVH (see Appendix 1 for a full list of interviewees). Their accounts are discussed separately from reporting parties' perspectives in order to draw out their distinct concerns and perspectives.

As with Part I, response staff's perspectives on challenges in the process, as outlined below, are divided into two sections: first, issues involved with delivering this work within HEIs, involving areas of cultural and implementation that can be addressed on the level of the institution or by individual practitioners; and second, structural issues, which are difficult or impossible to resolve at the level of the institution. As well as the challenges identified, there were also some positive comments from response staff showing the progress that is being made in HE in this area; these are threaded through the discussion below.

To explore actions that practitioners and institutions can take to address these challenges, please go directly to Appendix 3.

#### **At some institutions, students are not reporting due to fears of being identifiable**

Particularly at Institution 1, a major challenge named by many interviewees was convincing students to formally report. At this institution interviewees noted that students were even nervous of making anonymous reports through online reporting platforms as they were scared of being identifiable. This was seen as less of a concern by response staff interviewed at other institutions.

#### **Parts of an institution may have endemic cultures of poor behaviour**

At some institutions, interviewees described departments or research groups with endemic cultures of poor behaviour which were, nevertheless, tolerated. Such cultures were very challenging to address.

#### **Support is needed for staff reporting parties as well as for students**

There was a perceived lack of support for staff complainants/reporting parties (by contrast with multiple sources of support for students).

### **Lengthy delays are occurring in investigations/disciplinary processes**

Delays in case handling – a key concern for reporting parties - were also highlighted as a problem by staff handling reports. Even where investigations were able to be completed within less than 3-4 weeks – which was not the norm – delays could still occur due to:

- A police case ongoing alongside the university case.
- A responding staff member going off on sick leave for an extended period of time.
- A student taking a leave of absence from their studies.
- The mental health of either party being unable to support an investigation.
- The case involving multiple reporting parties or witnesses or otherwise large amounts of evidence.
- Setting up disciplinary panels, which could take an extra 3-4 months after the investigation.

### **Untrained staff are attempting to investigate and adjudicate cases**

A variety of issues related to staff training were raised. The most concerning issue was that in some institutions, staff carrying out investigations had not had any training in relation to sexual misconduct; they were academic or professional services managers doing this work on top of their day jobs. Disciplinary panel members were trained in some institutions (but not all). However, interviewees' perspective was that this group still needed further, ongoing training, because in many cases the balance of probabilities is not clearly understood or applied and rape myths continue to influence decision-making.

For example, at Institution 2, interviewees described how GBVH investigations were handled by academic managers, who almost always decided there was not enough evidence to carry out a full investigation. This appeared to be due – at least in part – to what is seen to count as evidence in such cases; the lack of training meant investigators did not know what kinds of evidence to look for. Similarly at other institutions it was also noted that there could be a lack of understanding of what counts as appropriate evidence in GBVH cases. This could lead to a lack of parity between reporting and responding parties, as a result of assumptions that direct evidence is needed to make a finding, or the assumption that 'He said, she said' cases are not worth investigating. This perspective can be contrasted with the view of an independent investigator working in HEIs, who had previously been a detective chief inspector with extensive experience of handling sexual and domestic violence cases. As he described:

I've dealt with [...] universities where I get a fairly flat, "Well, what's the point? These things happen in private [...] you have one word against another, where does that leave you?" Well I have to say [my] experience shows that that's nonsense. Nearly all the time, most of the time, you do get evidence, significant evidence, that will really compellingly indicate one way or the other.

Such differences in perspective suggest that much more expertise is needed around what constitutes evidence in sexual misconduct disciplinary cases.

“[The student-student formal reporting process at this institution] is very dependent on the individual person who is implementing the process [...] There’s no specific training as you arrive at this institution and it’s the same everywhere, pretty much. It’s different with the HR side to the student side, if there’s a staff case there is support from HR and there’s a kind of a structure [...] That doesn’t exist for the student casework.” – Response staff member, academic manager

### **There can be a lack of consistency in applying processes**

At one case study institution, some interviewees noted that the institutional response depended on the staff member who ended up handling it. At another institution, the processes were described as overly complex, changing frequently, and not necessarily followed, and academic staff were described as not knowing where to signpost disclosing students.

### **There can be a lack of consistency in disciplinary panels**

Some – not all – interviewees perceived disciplinary panels’ handling of GBVH cases as arbitrary. Criticisms expressed of disciplinary panels were that they:

- May draw on rape myths.
- May be reluctant to uphold cases due to not wanting to harm responding party’s prospects.
- The balance of probabilities may be poorly/unevenly implemented, and can be affected by power imbalance between staff and students.

Indeed, two interviewees, at different institutions, argued that disciplinary panels ‘ended up being ‘beyond reasonable doubt’ (i.e. the criminal standard of proof) rather than the civil standard of ‘balance of probabilities’. This meant that that less serious allegations were more likely to be upheld, while more serious allegations were held to a higher standard of evidence.

However, external investigator interviewees described one university they worked with as having robust and consistent decisions made by disciplinary panels; one investigator, who had several decades experience in the police, noted that ‘my experience of them is more positive than experience in the criminal arena’ both due to their robustness as well as the duty of care shown to reporting parties.

“It is quite difficult for a 21-year-old coming into the role and challenging people who have been in higher education for 30 years and they are senior, respected staff, so trying to challenge them is a very difficult position to be in. And, luckily, I am passionate about these things and so I could push, and I have managed to change the outcome of a [student disciplinary] panel [...] I can’t imagine how many cases in the past few years or however long where they have had a student’s union officer there and they couldn’t really do or say anything [...] we are not taken seriously or we are young, we are [seen as] highly emotional.” - Students’ Union sabbatical officer

### **HR buy-in can be a challenge**

Several interviewees described challenges in getting HR departments involved in this work. This was not the case at all case study institutions; at one institution, HR had had training in handling GBVH cases and HR interviewees were clearly personally committed to this work. However, in other institutions, HR were described as less motivated or committed than student services, and as 'not proactive'. Concerns were also expressed that HR/staff cases are dealt with differently to student cases. For example, in one institution that was described as being proactive in this work, HR staff were seen as sticking to processes that may not be appropriate, lacking a trauma lens, and failing to understand that sexual misconduct is different to standard grievances. One independent investigator described dealing with HR as 'like walking through treacle'.

### **Resourcing issues can inhibit this work**

Interviewees at two of the case study institutions discussed resourcing issues as affecting how this work was carried out, including whether and how support and investigation was provided.

### **Institutional change work can be slow**

During the period in which some of the interviews with response staff were being carried out, the Office for Students in England and Wales were consulting on their Statement of expectations (2021). Despite this evidence of interest from the higher education regulator, institutional change work was still relatively slow, impeded by other events. For example, Institution 1 had been planning to update their student-student disciplinary procedure, but this work was delayed due to the Covid pandemic, and Institution 2 were developing a new policy during 2021, but this work was happening very slowly. Furthermore, 'whole institution' approaches to GBVH (as recommended by Universities UK (2016)) could be impeded by 'siloed' approaches to funding and project management within institutions.

"The way that funding and resourcing of projects is managed in the university [means] that kind of pan-institutional thing is really difficult, because you know, bids for money are made from within the siloed sections of the university [...] It's a sort of chicken and egg situation where the centralised approach doesn't exist and the guidance is to create a centralised approach, but then you don't have a centralised team or a centralised place to attach budget requests and those kind of things." – Response staff member, student services

### **Support is needed for response staff**

Staff supporting reporting/responding parties, running investigations and overseeing case handling carry a very high level of risk (such as suicide risk for reporting parties). However, support to enable them to do this work safely – such as counselling or clinical supervision – was not always available. This is particularly concerning as staff doing this work may themselves be survivors of GBVH, whether or not they choose to disclose this to the HEI. Failing to provide such support is a false economy as it creates a situation where staff are more likely to burn out and go on sick leave.

“When [GBVH cases] happen, they can be just such difficult cases for everyone, for the department, for the students, for the support services, for the complaints team, for everyone. They’re emotionally so hard.” – Student services staff member

It is clear that there remain multiple challenges at the level of HEIs’ implementation of systems for handling reports of GBVH. Despite these challenges, it was evident that it was possible for HEIs to improve their approach significantly where there existed adequate resourcing, expertise, a reflexive approach and a commitment to change from the top. Nevertheless there remained some challenges that response staff – despite their best attempts - could not fully tackle on the level of individual HEIs, as explored in the next section on structural challenges in the reporting process.

### Text Box 6

## Group/multiple complaints

Group complaints were dealt with in strikingly different ways across different institutions. One staff member who supported students in reporting described that at her institution, all reports had to be made individually. At another institution, a student was allowed to put together a group complaint with other students – but staff were not allowed to be included (see Text Box 4). Another example was a group complaint by staff (see Text Box 5).

In situations where multiple reporting parties put in individual complaints about the same person, there were also very different approaches. At one university, the complainant was told that a previous complaint would need to be investigated and completed before her complaint against the same staff member was taken up. By contrast, an independent investigator described being in discussion about how to handle this issue with one of the universities she worked for, including considering the example of rape trials in the criminal justice system (while acknowledging that these were not always good practice to draw on) where witnesses who had been targeted by the same person were allowed to give evidence in each others’ cases.

This issue was highlighted in The 1752 Group’s open letter published in November 2021 (Bull, 2021), and the OIAHE have now included guidance on group complaints into their most recent edition of the Good Practice Framework (2022). While this guidance is focused primarily on complaints from students whose education has been disrupted by industrial action or Covid, it is also relevant to groups of sexual misconduct complainants, for example:

Sometimes, students may want to join a complaint that is already being investigated, or submit individual complaints about the same issues after the provider has made its decision. If their complaint would otherwise be in time under the provider’s procedures, **it would not be reasonable to refuse to look at it because the student wasn’t part of the group from the start.** The provider should explain, or should ask the group’s representative to explain, how far the complaint has got and whether the student has an opportunity to make individual representations, if they choose to join the existing group (OIA, 2022, para. 140; our emphasis).

This guidance therefore indicates firstly, that HEIs should allow group complaints and HEIs 'should consider whether their complaints procedure is flexible enough to allow it to handle complaints from groups of students in an effective and efficient way' (OIA, 2022, para. 136). Secondly, the OIA state that further complainants can join existing complaints processes that are already underway (OIA, 2022, para. 140). They also state that 'if a provider receives a number of individual complaints about the same issues, it may decide to handle those complaints as a group' (OIA, 2022, para. 141). Overall, while the guidance is couched in language that will not make it easy for students to argue for these rights (i.e. stating that HEIs 'may decide' rather than 'should' or 'must'), it does provide some steps forward, even while questions remain such as around whether and how such a complaint would feed into a disciplinary process. However, the difficulties that reporting parties experience in reaching the OIA (Bull and Page, 2022), and the limited powers of the OIA to ensure complainants access remedy and ensure that HEIs address sexual misconduct effectively, still need to be addressed. In addition, similar guidance for staff grievance processes is needed, and for HEIs outside England and Wales. See also Text Box 4 on handling anonymous reports as part of a group complaint.

## RESPONSE STAFF'S PERSPECTIVES ON CHALLENGES: STRUCTURAL ISSUES WITH HANDLING REPORTS

While the three case study institutions were at different stages in their progress in their work to address GBVH, there were many points of agreement around the structural challenges that institutions and practitioners in this area are facing.

### Inadequacy of sector-level guidance and structures

Across interviewees from all three institutions, as well as from the external investigators, grave concerns were expressed at the inadequacy of sector level guidance and structures in this area. One HR staff interviewee at Institution 1 noted the broadness of the ACAS guidance, which they found 'very very high level' while another noted that the OIA fails to give students the same level of rights as staff. Similarly, a Students' Union advice worker from Institution 3 argued that a Code of Practice or similar piece of guidance was needed on how to deal with sexual misconduct cases, specifically from a discipline and investigation point of view. An investigator working on student-student cases at Institution 3 described how the lack of national guidance meant that risk is devolved to individual practitioners within institutions:



in all honesty, I feel in some ways like regulating bodies, since 2016 and overturning Zellick,<sup>11</sup> they've lobbed a hand grenade into the sector, and have asked us to deal with that. And there is some guidance out there, some of it is good, but when you get into this work, you realise that it really [only] scratches the surface. When we've gone back to various guidance from different bodies to try and find answers to the questions that we've got, they're rarely covered in that guidance.[...] I just feel like the sector bodies need to step up, deliver some answers and be prepared to stand by those answers, and be prepared that those answers might be tested in court and that's something that should be welcomed, and that we can reflect and change and adapt, but we're going to step up, own it and deliver something that means that individual HEIs and in reality, individual practitioners aren't shouldering all of these questions that don't have answers until somebody at the end of it says, "Why did you do it like that?"

Some of the major challenges included lack of parity in rights between reporting and responding parties, as outlined below. Other challenges where clear national guidance is lacking included:

- Questions of jurisdiction when students are acting outside the university.
- How to protect the integrity of a police investigation, when it comes after the university has completed an internal investigation.
- How to deal with multiple allegations.
- The relationship between Students' Union and university in relation to case handling.
- Situations involving complaints and counter-complaints.
- Integration of student complaints process and staff disciplinary process.
- Situations where sexual misconduct complaints are mixed up with wider complaints about other issues.
- Remedy (as discussed below).

Further issues that were of particular concern to response staff are explored in more detail in the next sections.

## Lack of parity in rights between responding and reporting parties

One of the major structural challenges that remains unresolved in existing guidance is the lack of parity in rights between responding and reporting parties. In our 2020 guidance on handling staff-student sexual misconduct complaints, co-authored with discrimination lawyer Georgina Calvert-Lee, we argued that:

1. Where staff disciplinary procedures are used to address student complaints, HEIs must modify these to ensure a fair process for student complainants.

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<sup>11</sup> 'Zellick' refers to guidance from 1994 which stated that rape and sexual assault should never be investigated via internal disciplinary procedures within HEIs. This was overturned in 2016 by guidance from Pinsent Mason (2016) which stated that HEIs have an obligation to investigate breaches of their policies – such as sexual harassment or violence that breaches staff and student codes of conduct – whether or not reporting parties also choose to go to the police.

2. Student complainants and responding staff members must be accorded equal rights in the complaints process (Bull et al., 2020, p.7).

This guidance, as with our previous research, had focused on staff-student cases. However, this study broadens the focus to explore staff-staff and student-student cases as well, and it is clear that this lack of parity in rights is a problem for student-student cases as well. For example, at Institution 1, interviewees involved in student-student cases noted a challenge is that there is no formal role for the reporting party in their process as the university – not the reporting party – takes forward the disciplinary case against the responding student. The reporting party only has the status of ‘witness’ in the responding party’s disciplinary case. While the institution may also have opened up a formal complaint as a result of their report (although notably not all institutions do this), this complaint is separate to the disciplinary case. This means that reporting students do not have the same rights in the disciplinary case as the responding party, such as the right to call witnesses or the right to see the investigation report. One example, as explicitly noted by interviewees from Institution 1, was that the complainant might be dissatisfied with the outcome of the disciplinary case but they are not able to appeal because it is not their case (See Section 2). Similarly at Institution 2, staff supporting students noted that the process felt like it was weighted more heavily to the accused student.

Not only do responding students have more rights in the process, but a lack of parity between different responding students was observed where some accused students can afford legal representation, while others cannot. The impacts of the lack of parity between reporting and responding students was evidenced by interviewees, for example at Institution 3 that reporting of sexual misconduct was in fact going down (after initially going up when this issue was prioritised by the institution) and that this appears to be due to with students’ dissatisfaction with the process. At Institution 2, a complaints officer noted that while on average, 15% of student complainants take their complaint for further adjudication to the Office for the Independent Adjudicator (OIA), their institution has never, during her time there, had a sexual misconduct complaint go to the OIA. She argued that this shows that their current process is not effective for student sexual misconduct complainants.

Further points where parity is lacking include where the responding party graduates during an ongoing case. There was some evidence within this study of institutions concluding the investigation where this occurred, but this was not the norm. If a complaint is not concluded, then reporting parties have no right to remedy or appeal nor to access the services of the OIA.

“The procedural question I have at the moment is about the role of the reporting party, because, at the moment, they are not really mentioned in the procedure at all. I think, in common with a lot of other universities, they are essentially put in the role of a witness. [...] And the difficulty with that is, first of all, it means they don’t have an automatic right to be present at the whole of the hearing. It means they are subject to being questioned, potentially by the other students. To those who want to be involved, I think it puts the other student front and centre and they don’t feel like it’s an even contest. But, I am also aware that there is the other kind of student, who would be scared off by a formalised role for a reporting party. All they want is for us to have the information and then to keep out of it.

“And I don’t really know how to square both those kinds of experiences, or those expectations, in one procedure. So that’s the difficult thing. I mean, people are pressing for a review of our discipline procedure, particularly in this area, and I think we do need one. But that’s the fundamental question for me, and I don’t have an answer for it at the moment.” – Response staff member, student services

## Lack of parity between staff and student reporting parties

As well as the lack of parity between reporting and responding parties, interviewees also noted differences in rights depending on whether reporting parties are staff or students. Most notably, in staff-student complaints, staff members have more rights as they can go to an employment tribunal. At Institution 2, for example, interviewees noted that there was a ‘big difference’ between how staff-student and student-student cases were handled. At one institution, levels of evidence needed for staff or student complaints processes were different due to the university regulations. This meant that for complaints about staff, the institution was more likely to take informal rather than formal action, such as having a minuted meeting with the academic to raise concerns.

However, when it came to remedy, interviewees noted that it was easier to give student reporting parties remedy than staff. Offering remedy to staff complainants could be seen as opening up the university to legal claims, i.e. as an admission of liability. Nevertheless, it was noted that non-financial remedies could be used more widely, for example academic remedies such as workload relief could be offered to offset the time spent on a lengthy complaint process, without the institution admitting liability. Even for student reporting parties, however, obtaining remedy tended to require them to go through a further formal process after the end of the disciplinary case, in order to obtain remedy, and this added an extra - sometimes insurmountable - burden to complainants after they had already been through a lengthy and often distressing disciplinary case.<sup>12</sup> These perspectives from staff handling reports support

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<sup>12</sup> The Office for the Independent Adjudicator’s Good Practice Framework states that: ‘If a student has concerns about how the provider handled their complaint or appeal, for example a complaint about delay, they shouldn’t normally have to make a separate complaint about those issues. Providers should act flexibly to consider the impact of any delays, or other concerns about the way it dealt with the case, as part of the process. Where it identifies issues with its handling of the case, the provider should offer a remedy for any impact without requiring the student to make a separate complaint about the process’ (2022, p.26). This section suggests that for reporting students, a separate complaint should not need to be made to obtain remedy at the end of a process.

the findings in our previous research (Bull and Page, 2022) which found significant barriers to complainants in staff-student cases obtaining any remedy, despite OIA guidance requiring this.

## Continuing lack of clarity round information sharing

A further area where there was both a lack of clarity in existing national guidance, and a lack of parity between parties, was around information sharing. In 2022, after the interviews for this study were completed, two pieces of national guidance were published that gave guidance on information sharing in reporting processes (Universities UK, 2022b; Eversheds Sutherland, 2022). Despite this new guidance, there still remain unanswered questions around information sharing protocols including differences in rights between staff and students, and between reporting and responding parties. At the time of interviews, in 2020-21, Institution 1 was already taking steps to share information on sanctions imposed in disciplinary cases; it had been 'decided as an institution that where they feel it's right to share, they'll take the risk and do so'. However, other interviewees described the harms that were arising from failing to share sanctions with reporting parties, such as through being unable to explain to peers or classmates what had happened. The issue of recording informal disclosures, as discussed in Text Box 7 also arose. One interviewee involved primarily in student-student complaints handling noted that if GDPR weren't an issue, informal action on disclosures could be taken, such as notifying the responding party's Head of Department and asking if there were other concerns about the same person.<sup>13</sup> Further issues arising were whether the full investigation report is shared with student reporting parties, with different institutions appearing to have different practices in this area. There appeared to be differences in practice for information sharing between cases with staff or student responding parties.

Furthermore, information sharing could be used as a tool for victimisation. One interviewee described how responding staff members at her institution were being encouraged by their union representatives to make Subject Access Requests – a process whereby they have the right to see any data that the institution holds about them – to find out sensitive personal data about the reporting party and any other information that can be used to disrupt the process. There remains a lack of clarity around legal obligations around sharing 'mixed' data (Panopticon, 2018); this demonstrates one example where a lack of detailed guidance on case handling can lead to unfair practices that may vary significantly between institutions, and even within institutions between student services and HR.

A further area of concern around information sharing noted by response staff interviewees was sensitive information being shared by reporting parties on social media. One interviewee described an institution where investigation reports are not shared with student reporting parties unless cases go to a discipline panel, as the institution is nervous that students will post such information on social media. More generally, managing social media postings by students during cases is seen as a challenge for institutions.

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<sup>13</sup> While Universities UK (2022b, p.40) does address this scenario, it remains unclear according to this guidance whether such an action would be lawful as 'universities are obliged by the data protection principles to ensure the accuracy of the personal data held, which may not be possible if the report cannot be investigated'. However, Eversheds Sutherland's guidance takes a less cautious approach on this issue, stating that data collected must be 'accurate, and where necessary kept up to date. Providers cannot guarantee that information provided to them is always accurate in an objective sense, especially when it forms part of an opinion presented by those involved in a matter involving alleged sexual misconduct and investigation of the allegations; however, care should be taken to ensure that such opinions are collected and recorded accurately, and that objective information is accurate. Unnecessary information should be securely deleted, as should information which is no longer required.' (Eversheds Sutherland, 2022, p. 10).

“I spent three hours with somebody in the legal team, just fighting basically [...] pushing back, pushing back, pushing back. I basically refused to share information with them other than on Share Screen, and by the time I had finished the three hours they were far more willing to be more circumspect with what they share.” – Response staff member, academic staff member in a pastoral role

## Gap between formal and informal processes

Related to the challenge of sharing information on informal disclosures, at Institution 1 (in particular, there were shared concerns across many interviewees about the gap between formal and informal processes). This is a challenge when people come forward but do not want to make a formal report and do not want anyone else to know; such a situation leads to difficult decisions about balancing their wishes, versus protecting other people in the organisation and calling out unacceptable behaviours. Similarly, at Institution 3, staff supporting student-student cases noted a need for measures other than disciplinary processes to let the accused student know that they have done something wrong (however see Text Box 1 on informal processes). To address the former issue, we have produced guidance on ‘proactive investigations’ (The 1752 Group and McAllister Olivarius, 2020b) where the institution attempts to gather evidence more widely when they are put on notice of an issue. A related process is ‘environmental investigations’ (Culture Shift, 2019) which aim to tackle a problematic culture within a department or area of the institution. However, it is clear that the burden of going through a complaints process – even while having no or few rights within that process – also needs to be addressed alongside these more proactive measures.

## Processes in some cases are unfit for purpose

Indeed, even while some interviewees were raising concerns about staff and students not wanting to make a formal report, other interviewees at the same institutions were arguing that their processes – or aspects of them – were not fit for purpose. At Institution 2, in particular, interviewees noted the lack of appropriate structures in place for student-student sexual misconduct complaints within their institution which meant that there was no incentive for students to report. By contrast, at Institution 3, interviewees noted that even if reporting students got no remedy or outcome, at least they were able to have precautionary measures put in place such as ‘no-contact orders’ where the responding party was instructed not to contact the reporting party. However, while at Institution 3 such measures were in development, they were not yet available at the time of interview. Perhaps as a result of this lack of incentive, as well as such cases being handled by academic staff who had not received any training in this area, this meant that there had only been five reported cases over the last three years at this institution. Similarly, at Institution 1, the staff grievance process was also described as ‘not fit for purpose’, with plans in place to overhaul it. Overall, while it is clear that at some institutions significant amounts of work to overhaul staff or student reporting and disciplinary processes had been undertaken, this work had not, at the time of interview – at any of the three case study institutions – progressed to a place where they felt all of their processes were fit for purpose.

## Tackling sexual misconduct is not an institutional priority in some institutions

Finally, at Institutions 2 and 3 in particular, prioritisation of this work was a challenge. At Institution 2, while one interviewee was positive about senior management commitment, others described how proposed work on GBVH kept getting pushed back again and again; actions would be agreed but then would never happen. At Institution 3, despite a commitment to this work following a 'watershed' case, interviewees noted that the university's prioritisation of this issue depended on whether proactive staff were in post in relevant roles, pointing out the lack of external scrutiny as a factor in this variability.

### Text Box 7

## Balancing data protection and safety: Implementing mechanisms for institutional memory

Two staff interviewees – from different institutions – described encountering the same problem around a lack of 'institutional memory' of disclosures in relation to staff sexual misconduct. One interviewee, an academic staff member in a role that involved supporting students, described how her institution dealt with reports or disclosures of staff sexual misconduct individually even when multiple disclosures related to the same staff member. This meant that when a reporting party came forward, any information about past disclosures – whether formal or informal – would not be taken into account in handling the case. This led to situations where disclosures were, as she described, 'swept under the carpet so there is no institutional or lab memory'; any further disclosures or reports would be treated as isolated incidents. As a result, she described how there were parts of the institution where misconduct was allowed to continue without being challenged. This also meant that students lost faith that the institution would act on reports or disclosures.

A similar issue was also described by another staff interviewee. However, in their institution, a process was developed within one department that meant there was an 'institutional memory' to enable informal disclosures to be linked. A working group – with representation from HR, student complaints, and academic experts, among others – led to consultation on, and implementation of a process to store disclosures of staff sexual misconduct or bullying for a defined period, where the disclosing party did not want to take formal action at the time and where the incident was deemed low risk. The responding party would usually be informed that there had been a disclosure, and the area of behaviour that the disclosure related to. This meant that when a new head of department came into post, there was an institutional memory of previous disclosures, and if evidence accumulated of a pattern of behaviour over time the head of department could then escalate the issue to HR. While any formal disciplinary action would be likely to require further evidence, this process made it possible to document patterns of behaviour over time. The department's success in implementing this process was, according to the interviewee, in a large part due to the consensual way in which it was brought about. This process helped to give the work legitimacy and to achieve HR and institutional support.



This example demonstrates how a process was developed from scratch to tackle a common problem in this area. However, it appears that even when innovative approaches such as this are developed, institutions may not be sharing them publicly due to fear of backlash or negative publicity. In keeping with the wider findings of this study, this example shows how – in the absence of detailed guidance in tackling gender-based violence and harassment – HEIs, departments, or sometimes even individual staff, are required to devise their own systems rather than being able to rely on guidance from regulatory bodies. Such work is time-consuming, requires specialist expertise, and can lead to individuals or departments carrying any risks (whether relating to issues of legality, student/staff safety and wellbeing, or reputation) associated with implementing and running these systems.

## CONCLUSION

At their best, higher education institutional responses to sexual misconduct are – according to interviewees with experience across both areas – better than the criminal justice system, taking seriously institutions’ duty of care to students, and taking a nuanced and professional approach. However, examples of such good practice appear to be rare. While the sample of reporting parties in this study is likely to be biased towards those who had poor experiences, there are many accounts of extremely distressing and ultimately ineffectual processes which led to outcomes such as interviewees losing their job or career or becoming suicidal, among other highly debilitating impacts.

Nevertheless, areas of good practice included many examples of good responses to disclosures; some evidence of careful, sensitive practices in handling cases to minimise trauma for reporting parties; some examples of precautionary measures being implemented; and some evidence of innovative practice around informal case handling and investigating reports from former students. In addition, there were two examples of HEIs taking forward a proactive investigation in the absence of formal reports, when they became aware of significant risks. Expertise around GBVH also appears to be increasing, particularly among student-facing professional services staff, but this area still has a long way to go, especially among academic staff and HR. Furthermore, while not all student reporting parties in this study received sufficient – or any – specialist support, it was clear that such support was available in some cases (even if as a sticking plaster for inadequate institutional responses at times). Support for staff reporting parties was much less available.

While there were significant issues with the ways in which HEIs were implementing reporting and disciplinary processes to tackle GBVH, such as academic managers investigating complex cases without the expertise to weigh evidence or assess credibility, the conclusion and recommendations to this report will focus on the structural issues that this research has revealed in order to open up discussions towards shared solutions.

Overall, it is clear that there are significant structural barriers to case handling for GBVH being effective and fair. Issues identified by both response staff and reporting parties included:

- The inappropriateness of the formal grievance/complaints process for tackling sexual harassment. Processes in some cases are unfit for purpose, and there is a lack of guidance for how issues specific to sexual misconduct cases should be handled. In particular:
  - The formal process is centred around the responding party, and works on the assumption that reporting parties want punitive sanctions against responding party/ies.
  - The process works on the assumption that people are reporting on behalf of themselves alone, rather than with or on behalf of others.
- A lack of appropriate alternative options to formal disciplinary processes for actions that institution could take.
- There is a gap between formal and informal processes which leads to some staff/students being unable to get action taken within their institutions. Reporting parties may not be willing or able to go through a formal reporting process, but may still need adjustments to teaching/work arrangements, or monitoring and oversight of staff behaviours/interactions where concerns have been raised.

- Confidentiality and unclear practices around information-sharing.
  - Despite recent guidance published in this area, there remains a lack of clarity around information sharing practices.
- Responding parties (either staff or students) are continuing to leave their institution during investigations.
  - There is currently a lack of shared practice for information sharing between institutions.<sup>14</sup>
- The reporting party is structurally disadvantaged in the process, having fewer rights than responding parties at various points.
  - Reporting parties have different rights according to whether they are staff or students, and whether they are reporting misconduct from staff or students.
- Reporting process may not include remedies for reporting parties; across all three case study institutions, students and staff had to go through a further process to get any remedy.

It is important to highlight these critiques did not solely, or even primarily, come from reporting parties; in fact, staff handling complaints were highly aware of the limitations in their own institutions' processes and in many cases were equally, or even more critical of (some) HEIs' handling of GBVH cases as reporting parties.

These structural problems with reporting processes are due to a range of factors; in some institutions there is still a failure to accept that tackling GBVH is part of their role; as one of the independent investigator interviewees noted, the biggest challenge for HEIs is still 'acceptance that there is a need to have a process, a system, a way of dealing with allegations, reports, [...and] then having adequate resources to be able to deal with them'. But another major factor is that staff handling disclosures and reports are struggling with the lack of clear legal or policy guidance in this area. The dominant model for GBVH work across the UK from recent years of 'sharing best practice' in order to disseminate ideas across the sector leaves complex processual and legal questions to be resolved by frontline staff. This leaves institutions, and in some cases, individual staff members having to carry responsibility for unclear procedures.

There is also a lack of accountability mechanisms for when HEIs fail in this area; while the OIA is starting to receive more sexual misconduct reports (Office for the Independent Adjudicator, 2022, p.26), it is extremely difficult for some students to access their services (or access the public sector ombuds organisation in Scotland) due to the difficulty of completing internal reporting processes within institutions (Bull and Page, 2022). The financial burden of taking legal action, as well as time limits on such action, prohibits this route for most students and staff.

It is clear that students and staff who disclose/report GBVH could get entirely different experiences depending on what institution they report to, and whether they are reporting a student or staff member. For example, one institution might have multiple specialist staff in this area across student services and HR, a reflexive approach and strong commitment, which allows them to complete 30+ formal investigations into student-student sexual misconduct per year. By contrast, another institution might have one member of staff covering the entire student discipline role who lacks any

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<sup>14</sup> Although see Eversheds Sutherland (2022, p.45-6) for guidance on what information HEIs can give on staff references.

expertise in this area and is responsible for handling all student non-academic issues. Furthermore, it is clear that in many institutions, student services are a long way ahead of HR in this work. While there was evidence that HR departments at some institutions have been working to improve their response, in some cases they were seen as lacking motivation for and commitment to this work.

There is also a complex picture emerging around HEIs' relationship with criminal justice processes and police (in)action, with all five interviewees who also reported to the police in this study finding that – after initial investigation – they took no further action. This finding calls for more exploration.

These findings only relate to the sector up until the end of 2021 when data collection finished. Since then, there appears to have been a high level of activity with many institutions hiring new staff and accelerating their work in this area. There have also been published several new pieces of guidance on tackling staff-student sexual misconduct and data sharing in harassment cases (Universities UK, 2022a and b, Eversheds Sutherland, 2022) as well as (for HEIs in England and Wales) the new *Good Practice Framework* from the OIA (2022). Therefore, it is possible that institutional responses – particularly around implementation of existing guidance – have improved since data collection was completed for this study. However, the structural issues that this report identifies are not as easily overcome as the issues around implementation. In particular, ongoing issues include the lack of accountability mechanisms (whether for individuals to gain remedy, or to scrutinize institution-level work); responding parties (particularly staff) leaving the institution during an investigation; and institutions failing to uphold reports even where significant amounts of evidence is presented. For these reasons, in many cases HEIs are ultimately failing to take action to address GBVH.

# RECOMMENDATIONS

These recommendations are shaped around the changing policy context in different countries within the UK.<sup>15</sup> They are aimed at the HE sector as a whole; while there is a substantial amount of work that can be done at the level of individual institutions, currently there is little oversight or scrutiny for institutions' work in this area. While the Office for Students is currently consulting on introducing regulatory requirements in this area in England and Wales for harassment and sexual violence experienced by students, this approach will not encompass staff reporting parties, nor does it include Scotland. Furthermore, the unevenness of institutional approaches to this work means that some HEIs may struggle to meet the OfS' expectations. More generally, successful regulation will require appropriate accountability mechanisms; responsibility for these should, we suggest, be shared across more than one regulatory agency. As such, these recommendations aim to complement the OfS' proposed work in this area.

## 1. Scrutiny and accountability mechanisms

To improve scrutiny and accountability mechanisms at the whole-sector level, sexual harassment needs to be addressed as part of HEIs' health and safety responsibilities (as well as under their equality, diversity and inclusion remit). However, the Health and Safety Executive, who have a remit for addressing workplace violence, currently defer most of their responsibility for sexual harassment to the Equality and Human Rights Commission.

**We therefore recommend that the Health and Safety Executive should fulfil their remit in relation to GBVH in HE – to require reporting and to record and monitor this data; to include GBVH risks in its investigations and inspections; and to take appropriate enforcement action where appropriate (i.e. where employers are in breach of their statutory duty to do all that is reasonably practicable to protect the health, safety and welfare of their employees).**

We also suggest that HE sector bodies and trades unions (Office for Students, OIA, UUK, NUS, UCU, Scottish Funding Council, Scottish Public Sector Ombudsman, Universities Scotland) raise the issue of sexual harassment prevention, reporting and investigation with the HSE Board.

An urgent area for action is around mechanisms for individual students/staff to hold their institutions accountable when they fail to protect them from reasonably foreseeable harms. This study found that both response staff and reporting party interviewees had valid and important concerns over the difficulties in holding HEIs to account in individual cases, which need to be addressed. However, the sector landscape is currently shifting due to the forthcoming Higher Education (Freedom of Speech) Bill as well as the proposed regulation of harassment and sexual violence from the Office for Students, so it is challenging to make recommendations at this stage.<sup>16</sup> Nevertheless, it is clear that **steps need to be taken to ensure that the OIA is more accessible for student complainants who have been subjected to sexual misconduct (as well as other discrimination-related issues).**

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<sup>15</sup> However, they do not address Northern Ireland which has a separate Health and Safety Executive to the rest of the UK.

<sup>16</sup> To improve accountability mechanisms for individual reporting/responding parties, one option would be to take forward primary legislation to reconfigure the OIA to become a full higher education ombuds organisation, open to complaints from staff, students, and members of the public, with more powers to enable it to hold HEIs to account in handling of discrimination-related cases, including GBVH. Such a move would bring England and Wales in line with Scotland and Northern Ireland in having access to a public sector ombuds organisation. This reform would recognise the increasing number and importance of discrimination-related cases, including GBVH but also harassment and discrimination related to all protected characteristics.

In addition, **we support the #ForThe100 campaign to introduce a statutory duty of care for higher education institutions towards their students.** Such a duty of care would make a material difference to students who have been subjected to gender-based violence and harassment, giving them more possibility of seeking redress.

## **2. More detailed guidance for handling GBVH cases and ongoing development of shared practice**

For HEIs to be effective in carrying out this work, more detailed guidance is needed on process details and case handling. We note that ACAS has been updating its guidance on handling sexual harassment cases; we have supported them with this work and hope to continue to do so.

**In England and Wales, we recommend that the OIA draw on independent expertise to produce a new section of the *Good Practice Framework* focusing on handling complaints and disciplinary cases relating to gender-based violence and harassment, with specific attention paid to staff-student cases. The Scottish Public Sector Ombudsman along with the Scottish Funding Council should produce similar guidance.**

**Across the UK, we recommend that ACAS produce guidance on bespoke processes for handling sexual harassment complaints, in order to support organisations to move away from using standard grievance/disciplinary processes for this issue.**

There also needs to be ongoing cross-sector mechanisms within the HE sector for scrutinising complex cases and producing guidance on emerging issues, such as a national serious cases review panel (as recommended by Dickinson (2023)).

**We therefore recommend that a complex cases panel is set up to serve this purpose, with membership including representatives from practitioners handling cases in HEIs as well as reporting parties, specialist gender-based violence organisations, Universities HR, and relevant sector organisations as above.**

## **3. Data reporting and transparency**

While this report has not focused on data reporting within HEIs on this issue, this research has been necessary in part due to the lack of transparency and data reporting by HEIs on this issue.

We therefore recommend that public data reporting for GBVH disclosure, reporting and outcomes in HEIs are made mandatory as part of the proposed regulatory regime from the OfS in England and Wales, and are also required from institutions by the Scottish Funding Council, (following the model of similar work ongoing in Ireland).

## **4. A further recommendation is aimed at UCU**

This report found that UCU local branches appear to prioritise representation for responding parties over reporting parties; that in some cases they are using harmful tactics to defend staff respondents; and that ECRs who are looking for work may be unable to access union representation in complaints.

**We recommend that UCU produces a good practice guide for local branches and representatives in how to tackle these issues and work towards more ethical conduct in handling cases, as well as gathering and publicising data on whether reporting and responding parties are being represented.**

As above, we also recommend that UCU – via the Trades Unions Congress – raise the issue of sexual harassment prevention, reporting and investigation with the HSE Board.



## Appendix 1: Response staff interviewees

Institution 1	
Lucia	HR
Ian	HR
Elise	HR
Bev	Student support
Matthew	Academic staff member in student welfare role
Louisa	Student support and wellbeing role
Alicia	Students' Union advice service manager
Neil	Student discipline role
Andrew	Senior management
Savita	Students' Union sabbatical officer
Institution 2	
Jess	Students' Union sabbatical officer
Becky	Complaints officer
Michelle	Head of Department
Natasha	Students' Union advice service manager
Joanne	Head of Counselling Service
Institution 3	
David	Students' Union advice service manager
Naomi	Sexual violence liaison officer
Khadijah	Students' Union sabbatical officer
Lydia	Student discipline manager
Catriona	Student sexual misconduct investigator
Further interviewees	
Emma	Academic staff member in leadership role
Mike	Independent investigator
Maria	Academic staff member in student welfare role
Bobby	Independent investigator
Heather	Independent investigator

Noted: All names are pseudonyms; names of roles may have been amended to ensure anonymity.

## Appendix 2: Reporting party interviewees

Pseudonym	Level of study/work when GBVH started	Respondent level of study/work	Year*
Danielle	Staff: ECR	Staff	2016
Polly	Student: PhD	Staff: Two responding parties	2017
Claire	Staff: Professor	Staff: Professor	2017
Zainab	Student: UG	Student: UG	2018
Daisy	Staff: Senior lecturer	Staff: Professor	2018
Sarah	Student: PhD.	Staff: Lecturer	2018
Sophie	Student: PhD.	Staff: Ph.D. supervisor	2018
Sally	Student: UG	Staff member at her placement	2018**
Jonny	Staff	Staff: Head of school	2019
Charlotte	Staff: ECR	Staff: Senior lecturer	2019
Jean	Student: PhD.	Staff: Senior lecturer	2019
Lauren	Student; UG	Student: UG	2019
Kim	Staff: Research assistant	Staff: Professor	2019
Kelly	Student: UG	Staff: Professor	2019
Jennifer	Student: MA	Student: MA	2019
Willow	Student; MA, then casual staff	Staff: Casual staff	2019
Amy	Student: PhD.	Staff: Professor	2019
Jonny	Staff	Staff: Head of school	2019
Victoria	Student: UG	Student: UG at a different university	2019
Mary	Student: PhD then staff	Staff: three responding parties	2019***
Andrea	Student; MA	Staff: MA supervisor	2020****
James	Student; PhD	Staff: Professor	2020
Xun	Student: PhD	Staff: Ph.D. supervisor	2020
Joanna	Student: UG	Student: UG	2020
Gracja	Student: UG	Student: UG	2020
Chisimdi	Student: UG	Student: UG	2020*****
Courtney	Student: UG	Staff: lecturer	2020
Xiulin	Student: PhD	Student: MA student	2021

\* Year refers to when the formal complaint was made, or if no formal complaint was made, when disclosure was made, with the exceptions of the following interviewees:

- \*\* Sally had originally disclosed sexual violence to her university in 2015; she made a formal complaint around failure to implement their disability policy to support her with adjustments for the PTSD she had developed as a result of the sexual violence in 2018.
- \*\*\* Mary had originally reported some of these incidents many years earlier. The report in 2019 opened up a new process.
- \*\*\*\* Andrea had originally attempted to report the same issues in 2017 but had been blocked from making a formal report. She reported again in 2020.
- \*\*\*\*\* Chisimdi had originally reported to her university in 2017, only for no action to be taken. She reported the same incident again in 2020 and went through a formal process.

## Appendix 3: Implementation issues

This section describes issues that came up in this research that can be addressed by staff within institutions, without requiring an overhaul of processes or wider structural changes. It aims to enable practitioners within institutions to check their current practice against commonly-arising issues. This appendix is not intended to be a fully comprehensive overview of institutional practice in this area. The 1752 Group are able to provide consultancy to support HEIs to improve their work to tackle gender-based violence and harassment; see [www.1752group.com/consultancy](http://www.1752group.com/consultancy)

### Issues arising before reporting:

Issues arising	Example/evidence	Actions that could mitigate these issues
Departments existing in a silo where reports are not escalated to managers outside the department and/or cultural issues in the department override any formal institutional process.	At some institutions, interviewees described departments or research groups with endemic cultures of poor behaviour which were, nevertheless, tolerated. Such cultures were very challenging to address.	<ul style="list-style-type: none"> <li>• Environmental investigations/audits should be carried out. These involve HEIs instigating a proactive information-gathering exercise where an area of the institution is identified as having a problematic culture.</li> <li>• We recommend Kelsey Paske’s toolkit and training: <a href="https://www.kelseypaskeconsulting.com/resources/p/environmental-investigationstraining">https://www.kelseypaskeconsulting.com/resources/p/environmental-investigationstraining</a></li> </ul>
Experiences and impacts of GBVH, and the ways in which institutions responded to these, could be shaped by intersectional inequalities, including race, class, disability, nationality, and sexuality.	<p>Xun, an international East Asian PhD student during the Covid pandemic, was targeted for racist sexual harassment and sexual assault by a lecturer in her department, who was open about his preferences for East Asian women.</p> <p>Zainab, a British Asian student, described a wider culture of racism particularly among other students at her institution, which compounded her difficulties in healing from being raped.</p>	<ul style="list-style-type: none"> <li>• Anti-racist and wider anti-discrimination work should take place alongside work to address GBVH. This work should include policy development and embedding anti-racist practice into organisational development and HR practices, alongside student facing activities.</li> <li>• Staff with relevant expertise should handle complaints in specific areas.</li> <li>• Intersectionality should be recognised in training to support understanding of the additional barriers people face not only in being subjected to GBVH, but also in seeking help and disclosing.</li> </ul>

Issues arising	Example/evidence	Actions that could mitigate these issues
<p>Abusive behaviours could be difficult to recognise and label – by those victimised as well as staff receiving disclosures.</p>	<p>Some interviewees described how difficult it was to find appropriate language for the behaviours they were experiencing. These difficulties in labelling were compounded for some interviewees due to the sometimes subtle, confusing (even while deeply distressing) types of behaviours that were occurring, sometimes within apparently supportive collegial or mentoring relationships. This meant that responses from those who they disclosed to were even more important in helping to make sense of their experiences.</p>	<ul style="list-style-type: none"> <li>• Policies should use more precise language, including definitions, around sexist bullying, sexualised abuses of power, and grooming/ boundary-blurring behaviours.</li> <li>• HEIs should ensure that staff who are likely to handle reports and receive disclosures, such as HR staff, are trained to recognise these behaviours.</li> <li>• There should be consistent messaging across all activities.</li> </ul> <p><b>Good practice example:</b> UCL’s <i>Prevention of Bullying, Harassment and Sexual Misconduct</i> policy includes a definition of ‘grooming’ (2018).</p>
<p>At some institutions, students are not reporting due to fears of being identifiable.</p>	<p>Particularly at Institution 1, a major challenge named by many interviewees was convincing students to formally report. At this institution, interviewees noted that students were even nervous of making anonymous reports through Report and Support, as they were scared of being identifiable.</p>	<p>Encouraging reporting requires a long term process of building trust with students and staff. Steps that can help with this include:</p> <ul style="list-style-type: none"> <li>• Ensuring reporting processes are fit for purpose.</li> <li>• Transparency around sharing outcomes/ sanctions and other actions taken as a result of reports.</li> <li>• Local campaigns co-created with students within specific disciplines/areas of the institution.</li> <li>• Multiple routes for disclosing/reporting.</li> <li>• Understanding when and how catalysts for reporting occur, for example on graduation, or when harm escalates (Bull, 2022).</li> </ul>

Issues arising	Example/evidence	Actions that could mitigate these issues
<p>Academic staff are not familiar with how their institutions' processes work.</p>	<p>Academic staff, in particular (although also sometimes professional services staff) were not always aware of how to report sexual misconduct, including how to use reporting tools within their institution.</p> <p>'It was being treated as if this had never, kind of, happened before, and no one knew what to do.' (Victoria, reporting in 2019).</p>	<ul style="list-style-type: none"> <li>• Institutions should carry out a training needs analysis to make sure they are implementing recommendations from Eversheds Sutherland (2022) and Universities UK (2016).</li> <li>• As part of this, academic staff and relevant HR/complaints staff should undergo compulsory training on recognising GBVH and signposting students/staff appropriately within the institution.</li> </ul>
<p>Difficulty finding out how to make a complaint; inconsistent information available online.</p>	<p>Two interviewees who both reported in 2019 described difficulties finding the right information. One described how '[even] for someone that loves reading stuff and going through all the rules and terms and conditions, it's really hard [...] The information is so different on every webpage [and] a lot of it is out of date'.</p>	<ul style="list-style-type: none"> <li>• Ask student 'mystery shoppers' to regularly search for reporting information online for different scenarios.</li> <li>• Work with student leaders to de-mystify the processes.</li> <li>• Ensure information on processes is available in accessible formats that can be understood people who may be traumatised.</li> </ul> <p>Include names/contact details of key people so that reporting parties can discuss their options if they are not able to process reporting information at a time of trauma.</p>



Issues arising	Example/evidence	Actions that could mitigate these issues
<p>While many interviewees had good responses to their disclosures, well-meaning but poor responses still occurred.</p>	<p>A student disclosing to an academic staff member described how ‘I remember, really vividly, she just gasped and went, “Oh my God.” I think she got a bit teary, and she was like, “What?”, in disbelief. So I said it again in more detail, and I just remember almost like being so humiliated. I don’t like crying. I was in a public space. I was having to tell her again. I think she even grabbed my hand, as if to support [me].’</p>	<ul style="list-style-type: none"> <li>• Ensure that there are staff in all departments trained in responding to disclosures.</li> <li>• Embed key messaging surrounding abuse of power, GBVH and reporting processes into existing training (for example training on safeguarding, Prevent, personal tutoring, welcome sessions, unconscious bias).</li> </ul> <p>Introduce mandatory training for student-facing staff at different levels for example security and personal tutors or supervisors.</p>
<p>Having to repeat a disclosure multiple times to different staff members (particularly when making disclosures to academic staff).</p>	<p>The same student had to disclose to four different members of academic staff in her department, in order to find someone who knew what to do.</p>	<ul style="list-style-type: none"> <li>• Institutions should have in place a central point of contact following a disclosure (either at department level or centrally).</li> <li>• In addition, ensure that academic staff know what institutional systems are in place and what informal adjustments can be offered within departments.</li> </ul>
<p>University advisor tells reporting party to speak to someone in their department about the harassment situation, which puts them at risk of victimisation.</p>	<p>A staff member reported through an online reporting tool and spoke to an advisor who told them to find someone in their department they could discuss the issue with. This is problematic advice as, in their situation, doing this would have put them at risk of victimisation.</p>	<ul style="list-style-type: none"> <li>• Online reporting systems such as Report and Support are only as good as the systems and staff behind them. It is crucial that reporting systems have robust processes behind them which do not require the reporting party to put themselves at risk in order to get action taken.</li> <li>• In this case, options for precautionary measures that could be taken in the absence of a formal report, and options for formal reporting should have been discussed with the reporting party.</li> <li>• If there was evidence that this issue related to a wider culture in the department, an environmental investigation would have been an appropriate way forward (see above).</li> </ul>

Issues arising	Example/evidence	Actions that could mitigate these issues
<p>HR departments may be less far ahead on their journey in this work than student services, and may not be connected up with student services.</p>	<p>In some institutions, HR were described as less motivated or committed than student services. Concerns were also expressed that HR/staff cases are dealt with differently to student cases. For example, in one institution that was described by interviewees as being proactive in this work, HR staff were seen as sticking to processes that may not be appropriate, lacking a trauma lens, and failing to understand that sexual misconduct reports are different to standard grievances.</p>	<ul style="list-style-type: none"> <li>• HR departments can consider employing or training specialist staff to oversee GBVH cases (as well as other areas of discrimination such as racism, disability) who can then provide expert advice to colleagues.</li> <li>• Ongoing professional development is also needed for HR staff in this area.</li> <li>• Regular and ongoing liaison between student services and HR on tackling staff-student discrimination-related complaints is needed.</li> <li>• The 1752 Group currently provide training for HR staff in handling staff-student sexual misconduct complaints; see <a href="https://1752group.com/consultancy/">https://1752group.com/consultancy/</a></li> </ul>
<p>Short time limits on some stages of reporting.</p>	<p>For one interviewee, certain options were only available if she reported within one month of the incident.</p>	<ul style="list-style-type: none"> <li>• Remove all time limits on reporting.</li> <li>• Implement bespoke policies on reporting sexual misconduct.</li> <li>• Ensure policies are clear on when and how third party reports and alumni reports can be received.</li> </ul>
<p>Unhelpful directive advice from support staff.</p>	<p>A student was given the suggestion by her specialist sexual violence support officer to 'take the year out of university' but she heard this advice as 'you could make it go away by not being here'.</p>	<ul style="list-style-type: none"> <li>• Ensure that specialist support staff take an 'empowerment' approach or a 'strengths-based approach' and are trained by specialist sexual violence organisations.</li> </ul>

## During the reporting process

Issues arising	Example/evidence	Actions that could mitigate these issues
Protection from victimisation during reporting processes is not provided.	Being subjected to victimisation was described by six interviewees (five students and one casualised staff member), and others mentioned being scared of this happening as no measures were put in place. For three of these interviewees, victimisation was from third parties who were friends or colleagues of the responding party.	<ul style="list-style-type: none"> <li>• Victimisation as a result of reporting harassment is illegal under the Equality Act.</li> <li>• Reporting parties should be asked if they have concerns about victimisation, including from third parties, and risk assessments should be carried out with input from specialist staff (see Westmarland, 2017).</li> <li>• Reporting parties should not be asked to carry out their own risk assessments, but their concerns should be included in discussions around risk through a formal process.</li> <li>• Either through existing partnerships or through those formed via the new statutory Serious Violence Duty<sup>17</sup>, HEIs can learn good practice in relation to risk assessments.</li> <li>• In cases of staff-student GBVH, independent specialist input into risk assessments was recommended by Nicole Westmarland in her 2017 report into Sussex University.</li> <li>• More generally, risk assessments were identified in 2019 as an area that is under-addressed in HE (Universities UK, 2019).</li> <li>• These risk assessments should be managed and validated by the health and safety directorate and be collaborative between HR and student services with appropriate governance from university leaders.</li> </ul>

<sup>17</sup> The Serious Violence Duty 'requires specified authorities for a local government area to work together and plan to prevent and reduce serious violence, including identifying the kinds of serious violence that occur in the area, the causes of that violence (so far as it is possible to do so), and to prepare and implement a strategy for preventing, and reducing serious violence in the area.' (Home Office, 2022, p.8). Higher education institutions are not 'specific authorities' under this guidance but the guidance states that '[s]erious violence may also occur in higher education residential accommodation or licensed premises, such as student union facilities. If a local higher education institution considers serious violence to be an issue that is pertinent to them then they are encouraged to feed into the partnership where appropriate' (Home Office, 2022, p.98).

Issues arising	Example/evidence	Actions that could mitigate these issues
<p>Support is needed for staff handling cases.</p> <p>Support is needed for staff reporting parties and students making reports about staff (as well as students reporting other students).</p>	<p>Staff running investigations and doing case work carry a very high level of risk and responsibility such as suicide risk for reporting parties.</p> <p>While in some HEIs there were multiple sources of support for students, there is a lack of specialist support for staff (and in some cases students reporting staff). In some cases of students reporting staff, interviewees were not in contact with student services at all.</p>	<ul style="list-style-type: none"> <li>• Regular expert supervision should be in place for staff in these roles to support staff to handle difficult situations.</li> <li>• Where staff hold professional registrations (such as social work or counselling) such supervision will be needed for their ongoing registration.</li> <li>• Supervision may need to be separate to line management responsibility where line managers do not have appropriate expertise.</li> <li>• Students who report staff should have access to specialist GBVH support.</li> <li>• Staff who report GBVH should also have access to specialist trained counsellors.</li> <li>• Employers should ensure that Employee Assistance Programmes allow access to in-person counselling from a specialist in GBVH on an ongoing basis where needed.</li> </ul>
<p>Poor administrative practices that affected the quality of the investigation and/or decision-making processes.</p>	<p>One interviewee described how the notes from her interview were inaccurate but she was not allowed to amend them.</p>	<ul style="list-style-type: none"> <li>• Poor quality administrative support in this area is likely to lead to problems in the longer-term as decisions will be more likely to be appealed and/or overturned.</li> <li>• Staff in admin roles should be supported to access professional development and appropriate line management support and supervision that recognizes the challenging nature of working in this area.</li> </ul>

Issues arising	Example/evidence	Actions that could mitigate these issues
<p>Lack of guidance for the reporting party in writing initial statement, resulting in too much or too little information being shared, GDPR breaches, and distress to reporting parties.</p>	<p>A student who wrote a long and detailed account of repeated incidents of sexual violence and controlling behaviour, and the impacts on her, was devastated when she found out that her whole statement would be shared with the reported party.</p> <p>On the other hand, statements that fail to provide sufficient detail may not be strong enough to reach an upheld finding in a disciplinary case.</p>	<ul style="list-style-type: none"> <li>• Ensure that reporting party has support in writing their statement from someone who knows how it will be used and who it will be shared with.</li> <li>• This will also help to ensure that the statement is as strong as it can be to support a disciplinary case.</li> </ul>
<p>Reliance on reporting party to name desired outcomes rather than stating what options are available.</p>	<p>A reporting student described how, when she reported, 'I didn't know what I wanted, I just wanted it out of my hands, I wanted someone else to help me. I didn't want to have to come up with my own solutions, I wanted options given to me'.</p>	<ul style="list-style-type: none"> <li>• Reporting parties may not be familiar with the possible actions that an HEI can take.</li> <li>• Therefore staff should outline the options that are available to reporting parties, before asking them to suggest further options.</li> <li>• They also need transparency about what will happen during and after a formal report so they can make an informed decision.</li> </ul>
<p>Failure to handle reports against the same responding party as a group.</p>	<p>A student who was told her case (sexual assault) would be heard separately from the other two students (sexual harassment), when she was only reporting because she knew about their experiences.</p>	<ul style="list-style-type: none"> <li>• See Text Box 6.</li> <li>• The Office for the Independent Adjudicator's Good Practice Framework states that HEIs 'should consider whether their complaints procedure is flexible enough to allow it to handle complaints from groups of students in an effective and efficient way' (OIA, 2022, para. 136).</li> </ul>

Issues arising	Example/evidence	Actions that could mitigate these issues
Lack of consistency in applying policies within an institution.	At one case study institution, some interviewees noted that the institutional response depended on the staff member who ended up as investigating manager.	<ul style="list-style-type: none"> <li>• Whether investigations are carried out internally or externally, this must be by trained staff with relevant expertise and sufficient time in their workloads to carry them out in a timely manner.</li> <li>• Consider carrying out case reviews where outcomes/sanctions are assessed for consistency</li> <li>• Ensure disciplinary panels are trained.</li> <li>• See Humphreys and Towl (2020, p. 175-8) for guidance on sanctions in student-student cases.</li> </ul>
Reporting and investigation are very slow.	Sophie described having to wait through '14 months of silence' while she waited to hear what had happened in her complaint about her PhD supervisor.	<ul style="list-style-type: none"> <li>• While some delays are unavoidable (a police case ongoing; a staff member going off on sick leave), HEIs should review their information-sharing protocols and share as much information with reported parties as they can about the reason for the delay.</li> <li>• Other delays are avoidable.</li> <li>• For example, disciplinary panels can be regularly diarized so that they are available whether or not they are needed.</li> <li>• Investigations need to be appropriately resourced.</li> <li>• Either way, regular communication with the reporting party (as outlined below) is needed even in the absence of any new information.</li> <li>• A case officer or support staff member should agree with the reporting party how often they need to be updated, even in the absence of any new developments in the case.</li> </ul>



Issues arising	Example/evidence	Actions that could mitigate these issues
<p>Lack of parity in the process between responding and reporting parties.</p>	<p>The reporting party not being given the opportunity to respond to the responding party's statement; the responding party being able to submit questions in the disciplinary panel but reporting party not being allowed to submit questions back; the reporting party not being allowed to see the investigation report.</p>	<ul style="list-style-type: none"> <li>• As outlined in The 1752 Group and McAllister Olivarius' guidance on handling staff-student complaints, 'existing student complaints and staff disciplinary procedures relating to student complaints in this area fail to offer similar protections and privileges to the student complainant and the responding staff member' (Bull et al., 2020, p.72)</li> <li>• We outline adjustments to disciplinary processes that would allow for parity in the process.</li> <li>• Our approach has been broadly supported – with some suggested amendments – by Eversheds Sutherland (2022). While both these publications discuss staff-student disciplinary processes, the same issues of parity came up in staff-staff and student-student cases in this study.</li> </ul>
<p>Investigators are untrained academic managers and lack the skills to weigh evidence and assess credibility.</p>	<p>Daisy described that the investigators were two Heads of School. After a year-long process, her grievance wasn't upheld, and the reasoning was that it was a 'you said this, he said this' case. However, she had had evidence from multiple witnesses, which the responding party had not, and the investigation report did not show how the evidence was assessed for credibility or weighed up.</p>	<ul style="list-style-type: none"> <li>• As outlined by Humphreys and Towl (2020, p.160-1), assessing credibility means 'to weigh the reliability and accuracy of each piece of evidence presented in an investigation in light of all evidence'.</li> <li>• Investigators should be trained in credibility assessments and critically assessing evidence, and quality control measures should be implemented to ensure that investigation reports are sufficiently robust.</li> </ul>

Issues arising	Example/evidence	Actions that could mitigate these issues
<p>Disciplinary panels are not trained and/or unable to appropriately assess evidence, implement their institution policies, and apply the balance of probabilities.</p>	<p>Disciplinary panel members had had specialist training in some institutions (but not all). However, interviewees' perspective was that this group still needed further, ongoing training, because in many cases the balance of probabilities is not clearly understood or applied.</p>	<ul style="list-style-type: none"> <li>• Relevant guidance is clear that disciplinary panel members must have specialist training: 'mandatory training is [...] needed for all staff in disclosure handling and for specialist staff involved in investigatory and disciplinary procedures, and this should ensure that a trauma-informed approach is taken throughout the response disclosure, reporting and response processes. The quality of training for investigators and for disciplinary panel members, especially chairs, is key' (SUMS Consulting, 2022a, p.47; Eversheds Sutherland, 2022, p.66).</li> </ul>
<p>Victim-blaming questions from disciplinary panels.</p>	<p>Questions, such as "Did you find him attractive?" and "Why didn't you report this at the time?". This led to one interviewee describing that 'it felt like it was an attack on me as a person coming forward', which was particularly upsetting as she was reporting in order to make the institution safer for others.</p>	<ul style="list-style-type: none"> <li>• Reporting parties should be given the option as to whether they want to attend disciplinary panels or not.</li> <li>• If they do attend, the chair should ensure that reporting parties are protected from victim-blaming and personal attacks, and safeguarding measures should be offered, for example responding to written questions, or if the session is held online, being able to keep their camera off.</li> <li>• HEIs should have a policy on legal representation for reporting/responding parties.</li> </ul>
<p>Reliance on arguments about the intentions of the responding party.</p>	<p>A PhD student who reported a staff member described that the investigator placed weight on the responding party's emphasis 'that there was no sexual intention of his behaviour' instead of taking into account her experience of his behaviour.</p>	<ul style="list-style-type: none"> <li>• Under the Equality Act (2010), the recipient of the behaviour decides whether or not it is unwanted (EHRC, 2017, p.2).</li> <li>• This is also assessed through an objective element of the test ('whether it is reasonable for the conduct to have that effect').</li> </ul>

Issues arising	Example/evidence	Actions that could mitigate these issues
<p>Failure to interview all relevant witnesses leading to gaps in investigation report.</p>	<p>Two interviewees – reporting in 2019 and 2020 – described inaccuracies in the evidence gathered due to failure to interview witnesses that they had put forward. In one case, the responding party’s witness was apparently interviewed but not the reporting party’s witness.</p>	<ul style="list-style-type: none"> <li>• The right of reporting parties to call witnesses is unclear in existing guidance (Eversheds Sutherland, 2022; Office for the Independent Adjudicator, 2022).</li> <li>• In our guidance (The 1752 Group and McAllister Olivarius) we suggested that reporting parties should have the right to call witnesses as well as responding parties.</li> <li>• This is a crucial element to ensure parity to all parties and to ensure a ‘fair’ investigative process (Office for Students, 2021).</li> </ul>
<p>There appeared to be gender bias in some processes.</p>	<p>Interviewees described ‘himpathy’, where more sympathy was shown to (male) responding parties than (female) reporting parties.</p>	<ul style="list-style-type: none"> <li>• Gender bias is entrenched in society in general, therefore specific actions need to be taken to work against such biases influencing reporting processes.</li> <li>• This should include, at a minimum, regular training which aims to raise awareness among staff handling reports of the ways in which gender bias might affect the way they work.</li> </ul>
<p>Staff handling complaints fail to recognise the common ‘DARVO’ tactic that responding parties use when confronted – Deny, Attack, Reverse Victim and Offender (DARVO).</p>	<p>Charlotte, a staff member, informally consulted colleagues and HR staff about putting in a complaint about a more senior male colleague. He heard about this and before she could put her complaint in, he put in a formal complaint against her which led to a disciplinary case being pursued against her. Such counter-complaints can be a ‘DARVO’ tactic.</p>	<ul style="list-style-type: none"> <li>• HR and other relevant staff handling complaints should have training in how to recognise DARVO and how to assess power imbalances in situations where counter-complaints are received.</li> <li>• Harsey and Freyd (2020) found that learning about DARVO could mitigate its effects on individuals’ perceptions of perpetrators and victims.</li> </ul>

## After the reporting process

Issues arising	Example/evidence	Actions that could mitigate these issues
Lack of clarity of rights of third-party reporting parties.	This issue arose for more than one interviewee in this study. For example, Victoria was a student at a different university to the responding party, and her rights – for example to know the outcome of her report – were unclear.	<ul style="list-style-type: none"> <li>• Policies should outline reporting processes for third parties.</li> <li>• Reporting parties – whether members of the institution or not – always need to be informed of the outcome of their report.</li> </ul>
Lack of remedy for reporting parties; lack of processes to mitigate harms caused or opportunities lost.	12 of the interviewees who went through a formal reporting process did not receive any remedy after their reporting process was concluded. For those who were offered remedy, these were not necessarily sufficient or appropriate to mitigate the ‘adverse impact’ of the behaviour they had experienced (OIA, 2022, p.22).	<ul style="list-style-type: none"> <li>• The Office for the Independent Adjudicator’s Good Practice Guide (OIA) states that:  Where a complaint or appeal is upheld, the provider should explain how and when it will implement any remedy, whether that includes an apology, and what the student can do if they remain dissatisfied (2022, p.22)</li> <li>• Information considered as part of this resolution should include, ‘if the behaviour is found to have had an adverse impact on the reporting student, a remedy for that impact.’</li> </ul>
The appeals process is unclear or there may be no structure for reporting parties to appeal.	The rights of reporting parties in sexual misconduct cases are generally unclear at appeal stage; one of the response staff interviewees, an investigator working on student-student sexual violence cases noted that in their institutional process, a report of sexual misconduct goes directly to investigation and disciplinary process, without a complaint stage, which means there is no appeal route for a reporting party at that institution.	<ul style="list-style-type: none"> <li>• The issue of how appeals should work in disciplinary cases is unclear in current guidance; specifically focusing on staff-student sexual misconduct cases, our 2020 guidance argued that ‘complainants and respondents must have equal rights to request a review/appeal’ (2022, p.22).</li> <li>• Eversheds Sutherland in their 2022 legal briefing recommended that ‘the reporting student be given a right to make comments or representations on the investigation report or a provisional disciplinary outcome, before a final decision is made, rather than a right of appeal of a final decision’ (2022, 54).</li> <li>• This point is an example of where further, detailed guidance is needed across the sector in order to ensure that investigation and disciplinary processes are fair.</li> </ul>

## Further issues

Issues arising	Example/evidence	Actions that could mitigate these issues
Some interviewees described a lack of joined-up working between institutions.	Five interviewees reported to the police as well as their HEI (see Text Box 2). However for two interviewees, other organisations were also involved (placement organisations, fitness-to-practice bodies, and an umbrella body for a specialist HEI). In both cases there was poor communication or a lack of joining-up of information between agencies, and in one case this meant that the responding party was not suspended from contact with students even though the reporting party was told that he would be.	<ul style="list-style-type: none"> <li>• Information-sharing protocols need to be implemented ahead of reports being received.</li> <li>• However, HEIs may be impeded in this work where other organisations are unresponsive.</li> </ul>
Marketing department reaches out to the student after they post about their experiences on social media.	Two interviewees described being contacted directly by the marketing department at their university when they disclosed their experiences on social media.	<ul style="list-style-type: none"> <li>• Marketing departments should signpost online social media posts to a specialist support staff member for response, and work in collaboration with specialist staff within the institution when handling issues in this area.</li> </ul>
Lack of feedback/evaluation of reporting processes.	Mary, a staff reporting party, noted that ‘it struck me that nobody from the university’s come back to me and said, “Okay, so how was that as an investigative procedure? How was that for you?”’ None of the interviewees mentioned participating in processes for giving feedback on their experiences of reporting.	<ul style="list-style-type: none"> <li>• Feedback on service delivery and processes for handling reports should be part of HEIs’ data strategy in this area, and should be regularly collated, scrutinised, and used for improving processes and services.</li> <li>• Reporting/responding parties should be able to give this feedback anonymously if they wish.</li> </ul>

Issues arising	Example/evidence	Actions that could mitigate these issues
Systems and expertise are needed to enable recognition of multiple perpetration.	Out of the 27 reporting parties, 16 interviewees either had evidence, knew of, or strongly suspected that the person who had targeted them had also targeted others (in the other ten cases this was not known).	<ul style="list-style-type: none"> <li>• Devise and implement protocols for handling reports where there are multiple reporting parties (see Text Box 6).</li> <li>• If online reporting systems allow for names of reported parties to be linked across different reports (as with Culture Shift’s software system ‘Report and Support’) ensure this system is functional.</li> </ul>
GBVH can have complex, long-term impacts; post-traumatic stress disorder (PTSD) stemming from GBV needs to be better recognised.	Sally’s university failed to put in place its own disability protocols for adjustments to mitigate the PTSD caused by an assault from a staff member who was training her on placement. This led to her losing her career as a doctor.	<ul style="list-style-type: none"> <li>• Ensure disability support for PTSD that results from GBVH is easily accessible and allows appropriate adjustments and that PTSD and its links with GBVH are understood by staff implementing disability policies.</li> </ul>



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