

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

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Personal information

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What is the name of your organisation, if relevant?

The 1752 Group

Which of the following best describes you?

Other (please specify):

Director of research and campaigning organisation The 1752 Group

Are you submitting

A collective response?

Confidentiality

Are you happy for your response to be published on the OfS website?

Yes, I am happy for my responses to be published

Proposal A: Introduce proposed ongoing condition E6 (harassment and sexual misconduct)

1a: Do you agree or disagree with the proposal to introduce a new general ongoing condition of registration relating to harassment and sexual misconduct? Please give reasons for your answer.

Yes. Our research (Bull and Shannon, forthcoming; Bull and Rye, 2018; National Union of Students, 2018; as well as SUMS consulting (2022)) shows that HEI responses to handling harassment and sexual misconduct is very uneven across England and Wales. A new condition of registration will help to address this unevenness.

Furthermore, our research (Bull and Shannon, forthcoming; Bull and Rye, 2018; National Union of Students, 2018) has evidenced the deep impacts that sexual misconduct has on students in HE, and therefore the proposed condition of registration has the potential to help to mitigate these impacts.

This is an urgent issue for addressing gender inequality in higher education, particularly for postgraduate researchers and early career academics who are more likely to be subjected to sexual misconduct from staff.

Impacts of gender-based violence and harassment (GBVH) and the reporting process on reporting parties as outlined in Bull and Shannon (forthcoming, 2023), an interview-based study of 27 students and staff who had reported or disclosed gender-based violence and harassment from other students or staff are outlined below:

1. Academic and career impacts of gender-based violence and harassment 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 early career researchers). 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 as a result of their experiences, 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* (Bull and Rye, 2018), the time and cognitive/emotional load of the grievance/disciplinary process was immense. For undergraduate students in this study, being subjected to sexual violence and lacking support and adjustments from the university could ruin their experience of university and their ability to reach their academic potential.

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

3. 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 dressed 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 (Bull and Shannon, forthcoming, 2023).

These impacts can be long-lasting and profound. In some cases the HEI was directly responsible for the gender-based violence, for example by continuing to employ a staff member who was already known to them to be engaging in GBVH.

These impacts are often invisible to HEIs as no data is collected that would bring them to light; those affected may drop out, or stop coming onto campus, or change institutions/programmes of study without ever informing the institution why they have taken these steps. However, in order to ensure a safe and equal environment for study (and work), this work must become mandatory for HEIs.

Bull A and Rye R (2018) *Silencing students: institutional responses to staff sexual misconduct in higher education*. September. The 1752 Group/University of Portsmouth. Available at:

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https://1752group.files.wordpress.com/2018/09/silencing-students_the-1752-group.pdf (accessed 1 November 2019).

Bull A and Shannon E (Forthcoming, 2023) Higher Education After #MeToo: Staff and students' perspectives on challenges in institutional responses to reports of gender-based violence and harassment. The 1752 Group/University of York.

National Union of Students and The 1752 Group (2018) Power in the academy: staff sexual misconduct in UK higher education. Available at: https://1752group.files.wordpress.com/2021/09/4f9f6-nus_staff-student_misconduct_report.pdf (accessed 19 April 2018).

SUMS Consulting (2022) Evaluation of the statement of expectations: Preventing and addressing harassment and sexual misconduct. 9 November. Office for Students. Available at: <https://www.officeforstudents.org.uk/publications/evaluation-of-statement-of-expectations-final-report/> (accessed 13 November 2022).

2a: Do you agree or disagree that the definition of harassment in proposed condition E6 should have the meaning given in section 26 of the Equality Act 2010 and section 1 of the Protection from Harassment Act 1997? Please give reasons for your answer.

These two definitions may contradict each other. The Equality Act 2010 definition includes sexual harassment which can be a one-off occurrence. The Protection from Harassment Act 1997 includes a 'course of conduct', which tends to include two or more incidents.

If these definitions are used, then 'sexual harassment' and harassment based on protected characteristics will have different thresholds – one incident for the Equality Act and 2 or more for the Protection of Harassment Act. This needs to be made explicit in definitions.

3a: Do you agree or disagree that the definition of sexual misconduct in proposed condition E6 should mean any unwanted or attempted unwanted conduct of a sexual nature and include but not be limited to the definition of 'sexual harassment' contained in section 26(2) of the Equality Act 2010 and rape and assault as defined by the Sexual Offences Act 2003? Please give reasons for your answer.

We disagree. We note that the consultation document states that sexual misconduct 'means any unwanted or attempted unwanted conduct of a sexual nature and includes but is not limited to [...]' ensures that where sexual misconduct does not fall within the descriptions set out in the Equality Act 2010 or in rape and assault as defined in the Sexual Offences Act 2003, it is still covered by our definition if it is unwanted or attempted unwanted conduct of a sexual nature'.

However, the reliance on criminal definitions risks what Cowan and Munro (2021) call 'criminal justice drift'. Cowan and Munro note differences between criminal justice and HEI processes in issues such as standards of conduct, burdens of proof, legal representation, and adversarialism. There is a risk that using criminal justice definitions conflates higher education institutions' (HEIs') handling of sexual misconduct with criminal justice responses, when they are in fact very different systems. HEIs are upholding their own internal codes of conduct/policies rather than investigating crimes. Criminal justice definitions should therefore be avoided.

Furthermore, criminal justice definitions fail to recognise the ways in which gender and other inequalities, as captured in the Equality Act definition of harassment relating to protected characteristics, create and enable a context in which sexual misconduct – whether violence or harassment – can occur. In order to successfully implement any preventative measures to tackle harassment and sexual misconduct, the social environment – include gender norms, stereotypes, and inequalities – that creates a 'conducive context' (Kelly, 2016) for such harassment must be recognised and addressed. The Equality Act definition framing allows such an approach, but criminal justice definitions are less likely to support this framing.

Cowan, S., & Munro, V. E. (2021). Seeking campus justice: Challenging the 'criminal justice drift' in United Kingdom university responses to student sexual violence and misconduct. *Journal of Law and Society*, 48(3), 308–333. <https://doi.org/10.1111/jols.12306>

Kelly L (2016) The conducive context of violence against women and girls. Discover Society, 1 March. Available at: <https://archive.discoverysociety.org/2016/03/01/theorising-violence-against-women-and-girls/> (accessed 6 June 2020).

Proposal B: Proposal to require a provider to develop and publish a 'single document' with 'minimum content requirements'

4a: Do you agree or disagree with the proposal that a provider should create a single document which comprehensively sets out policies and procedures on subject matter relating to incidents of harassment and sexual misconduct, and prominently publish that document in the manner we are proposing? Please give reasons for your answer.

We disagree.

We think that the requirements for reporting to the OfS should be separated from the ways in which content is communicated to members of the university community. As the proposal stands, it appears that the 'single document' serves the purpose both of communicating an HEI's approach to students/staff/visitors, and of communicating to the OfS that it is fulfilling its regulatory requirements under the proposed condition of registration. However, such a document would be extremely long and detailed, and therefore would not contribute materially to accessibility of information for students and staff who need it, but in fact would risk overloading reporting – and possibly traumatised – students/staff with irrelevant information. It would also risk being inaccessible to disabled students and staff. Policies and procedures relating to incidents of harassment and sexual misconduct will need to cover student-student and staff-student reporting and disciplinary processes, as well as any informal adjustments available, and wider policies such as provision for environmental investigations and preventative measures.

The OfS may require such a document as part of its oversight and reporting. However, this should not dictate the ways in which this information is communicated to students and staff.

4b: Do you have any alternative suggestions to the proposal in question 4a? If so, please explain and provide reasons for your view.

It would be more appropriate to ensure accessible websites are available for students and staff to access reporting information, which signposts to support and policies as well as data reporting and other transparency measures, as well as ensuring that there are trained staff who are deeply familiar with all the policies and processes within their institution, who can advise students/staff.

HEIs can communicate separately to the OfS about how they are fulfilling the requirements of the condition of registration.

In relation to the minimum content requirements point (a):

a. multiple steps which could (individually or in combination) make a significant and credible difference in protecting students from behaviour that may amount to harassment and/or sexual misconduct, including, but not limited to, steps that may reduce the likelihood of harassment and/or sexual misconduct taking place.

We suggest that the following point reframes the problem of sexual misconduct to highlight that reducing the likelihood of sexual misconduct will require awareness raising around gender norms and inequalities that create a conducive context for sexual misconduct to occur (Sundaram and Stenson, 2022).

Sundaram V and Stenson, A. (2022) Preventing violence against women through formal and informal education: Article 14 of the Istanbul Convention. Council of Europe.

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

We partially agree. We agree that the OfS should specify minimum levels of provision that HEIs should make in this area. However, this minimum service level should not be communicated to staff/students/visitors in this way.

5b: Do you have any alternative suggestions to the proposal in question 5a? If so, please explain and give reasons for your view.

Minimum content requirements – including accessibility guidance – for online information available to reporting students and staff who may be supporting/signposting them could be helpful. However, this should not be on a single document as this will be too long and inaccessible.

6a: Do you agree or disagree with the minimum content requirements proposed for the single document we propose a provider should maintain? Please give reasons for your answer.

We partially agree. Our response is as follows:

Our main concern is that HEIs are required to outline their provision in this area but there are only minimum requirements for the level of provision in some areas, not others. While there are minimum requirements relating to support and training, in relation to 'reporting, investigation and decisions about complaints' (p.23), the level of provision required is not evident from the guidance provided. HEIs are required to outline how they ensure that investigations are credible, fair, and reflect the principle of natural justice. However, if their information for students states that students who report gender-based violence to their institution will be told that they must report to the police before the university takes any action – which some HEIs currently do, contrary to the Pinsent Mason guidance – they will still be meeting this condition of registration.

It appears that the condition of registration will therefore be met by providing this information, regardless of the content. This means that it will be possible for HEIs to meet the condition of registration without having in place any provision for investigating reports of sexual misconduct that are also a criminal offence.

We therefore propose that implementing the Pinsent Mason (2016) guidance should be part of the condition of registration.

Also in relation to reporting, investigation and decisions about complaints, we have outlined, together with discrimination lawyer Georgina Calvert-Lee, the ways in which existing guidance for staff-student sexual harassment gives more rights to responding than reporting parties, and therefore amounts to indirect discrimination under the Equality Act, as reporting parties are more likely to be women (Bull et al., 2020). Our forthcoming work (Bull and Shannon, 2023) reveals that this discrimination in the complaints process extends to staff-staff and student-student complaints; it is embedded within existing guidance from the Office for the Independent Adjudicator for Higher Education (OIA) and (to a lesser extent) ACAS. We would therefore welcome guidance from the OfS as to what a 'fair' investigation and complaints process looks like.

Furthermore, we have outlined the difficulties that reporting parties experience in getting through complaints processes and obtaining remedy (Bull and Page, 2022). We would therefore welcome guidance from the OfS as to how they will ensure that reporting parties are able to access the remedy to which they are entitled under OIA guidance.

The other two areas outlined are training and support.

In relation to training, we agree that mandatory training should be in place for all students and staff to ensure they understand the behavioural expectations in place at their institution. We also agree that further training is needed for staff engaged in handling cases, and that such training should be evaluated, and that training needs to provide opportunities for discussion and questions.

This proposed approach will require a significant investment on the part of HEIs. We therefore note (as outlined below) that it will not be possible to implement such steps within three months of the condition of registrations being announced.

However, we have concerns that the proposed approach to training does not mention the social context that enables and supports harassment and sexual misconduct to occur, namely gender and other inequalities. A successful bystander training approach, for example, needs to understand how gender norms create a context where harassment and sexual misconduct is normalised and invisibilised (Jackson and Sundaram, 2020).

In relation to support, we agree that appropriate support should be in place for students who are subjected to harassment and sexual misconduct.

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We would also like to comment on the guidance given in Appendix A which provides 'an illustrative non-exhaustive list of examples of the range of steps the OfS may expect a provider to identify and take' (p.59).

In particular, point (b) is particularly important. We would suggest that point (b) should be made mandatory. This is because currently it is very difficult for students/staff within a particular HEI to understand how their HEI is responding to reports of harassment and sexual misconduct. The information proposed for publication on number and type of incidents reported, how many of these lead to an investigation, and the outcomes of these investigations, has already been gathered periodically by journalists via Freedom of Information requests. It is therefore already in the public domain, but is not routinely reported on by most HEIs (with some notable exceptions such as UCL, LSHTM, Cambridge, Durham). Requiring HEIs to publish such data annually will increase transparency and allow

6a: Do you agree or disagree with the minimum content requirements proposed for the single document we propose a provider should maintain? Please give reasons for your answer.

students/staff/the public to monitor HEIs' work in this area, and will not constitute an undue burden on HEIs as this data should already be collected by them. We note that for HEIs that use Culture Shift's Report and Support online reporting tool, templates for gathering and reporting this data (as well as data on anonymous reports) are already available. Greater transparency is urgently needed in this area and making this – fairly limited – area of data reporting mandatory would be one step that would increase this transparency.

Also in relation to point (b), we note that while some HEIs appear to have been carrying out surveys of gender-based violence and harassment within their student (and in some cases, staff) bodies, there is evidence that such data is not being published (Bull, Duggan and Livesey, 2022). We will submit separately evidence of such a prevalence study carried out at one UK HEI, which has not been published. This shows the complexity of carrying out good quality data collection in this area. We recommend that, following the model of the Australian Human Rights Commission, that data is gathered nationally by the Office for Students as part of its prevalence study, and then data from that survey relating to individual institutions is disseminated to those institutions to inform their prevention and response work. As it stands, any data collection by individual HEIs will require resource and expertise that may not be available in all institutions.

In relation to point (a), we strongly support this suggestion.

In relation to point (c), at present there appears to be little evidence-based evaluation being carried out within this area. Such work will therefore need to be developed and/or external and academic expertise will need to be drawn on. While we support this suggestion, we also note that it is likely, therefore, in the short term that HEIs will not be able to include much material in this category.

Bull A, Calvert-Lee G and Page T (2020) Discrimination in the complaints process: introducing the sector guidance to address staff sexual misconduct in UK higher education. *Perspectives: Policy and Practice in Higher Education* 25(2). Routledge: 72–77. DOI: 10.1080/13603108.2020.1823512.

Bull A and Page T (2022) The Governance of Complaints in UK Higher Education: Critically Examining 'Remedies' for Staff Sexual Misconduct. *Social & Legal Studies* 31(1). SAGE Publications Ltd: 27–49. DOI: 10.1177/09646639211002243.

Bull A, Duggan M and Livesey L (2022) Researching Students' Experiences of Sexual and Gender-Based Violence and Harassment: Reflections and Recommendations from Surveys of Three UK HEIs. *Social Sciences* 11(8). 8. Multidisciplinary Digital Publishing Institute: 373. DOI: 10.3390/socsci11080373

Jackson C and Sundaram V (2020) *Lad Culture in Higher Education: Sexism, Sexual Harassment and Violence*. New York: Routledge.

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

We also suggest that publicly available content made available periodically by HEIs should include:

- Minutes of relevant committees that are handling this issue (eg safeguarding/sexual violence committees)
- Membership of such committees
- Schedule for policy reviews of relevant policies in this area
- Reports to the Governing Board/Board of Trustees in this area
- Strategic plans for carrying out this work

These suggestions are made in order to enable students/staff to be able to access information about work ongoing in this area within their HEI, and to be able to know which students/members of staff are responsible for this work within their HEI, as well as to get involved in policy reviews when they are taking place.

More generally, such steps towards transparency will work towards building trust with student and staff.

7a: Do you agree or disagree with the proposal for content principles for the single document we propose a provider should maintain? Please give reasons for your answer.

See above.

Proposal C: Requirements relating to capacity and resources

8a: Do you agree or disagree with the proposal that a provider should be required to have the capacity and resources necessary to facilitate compliance with this condition? Please give reasons for your answer.

We agree.

Proposal D: Requirements relating to freedom of speech

9a: Do you agree or disagree with the proposal that a provider should be required to comply with the proposed condition in a manner that is consistent with the proposed freedom of speech principles? Please give reasons for your answer.

We disagree. It is not necessary for the OfS to set out separate freedom of speech principles through regulation when the Higher Education (Freedom of Speech) Bill will supersede this

Proposal E: Requirements relating to restricting the disclosure of information

10a: Do you agree or disagree with the proposal to prohibit a provider from using provisions which have the effect of preventing or restricting the disclosure of information about incidents relating to harassment or sexual misconduct? Please give reasons for your answer.

We agree with these proposals but there are two areas which need to be addressed to make the proposals functional.

1. We note that clarification is needed that some level of confidentiality during investigations is seen as generally acceptable. The current wording of the proposals needs to be amended to recognise this.
2. There is a high risk that implementing such proposals will mean that HEIs will circumvent the need for NDAs by simply not providing students/reporting parties with any information that they could then disclose, i.e. that they will share the absolute minimum amount of information with reporting parties during the complaints, investigation and disciplinary process.

For example, currently some HEIs share the investigation report with reporting parties, and may also share the responding party's statement. These are important steps for natural justice as well as for building trust through transparency. However, if HEIs are concerned that investigation reports, or other information provided to reporting parties during a reporting process, will not be kept confidential, they may start sharing less information. The issues with natural justice that arise can be demonstrated through an example from our forthcoming research (Bull and Shannon, 2023) where a PhD student reported a staff member at a university she was not a member of (after being subjected to sexual harassment after she met him at a conference). She described how she did not get the opportunity to see or respond to the staff member's statement; however, 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. This was one factor that led to inaccuracies in the investigation report, which subsequently influenced the findings from the investigation.

Sharing investigation reports and/or responding parties' statements with reporting parties does unfortunately not always happen; indeed, we understand that HEIs are nervous about sharing information with reporting parties because of the risk that students/reporting parties share this information on social media. This means that a move to prohibit NDAs may mean that reporting parties – whose right to know information about the investigation relating to their report is unclear at best, and is inhibited by the over-cautious use interpretation of GDPR by HEIs in many cases – are even less likely to be have information shared with them by HEIs about the steps taken to investigate and address their report. This is unacceptable. Where mixed data (i.e. personal data that relates to both reporting and responding parties) is present in sexual misconduct (or other discrimination-related) complaints and disciplinary processes, clearer guidance is urgently needed around the rights of reporting parties to access this data. Such guidance should include clarification on the rights of reporting parties to share publicly any details of the handling of their case.

However, at present, information sharing is being carried out in very different ways in different HEIs. While Eversheds Sutherland and Universities UK guidance from 2022 attempted to shed light on these issues, this has not yet clarified how HEIs should address such issues; indeed Universities UK recommends handling such issues on a case by case basis, which is in practice close to impossible due to the complexity of decisions to be made.

However, Eversheds Sutherland (2022, p.11) point to a way forward on this issue: they note that a lawful basis for processing data would be

Article 6(1)(c) – required by law: the processing is necessary for compliance with a legal obligation to which the higher education provider is subject. Legal obligations include regulatory obligations, and therefore may include complying with obligations imposed by the OfS

They further note (2022, p.60) in relation to disclosing sanctions imposed after an upheld disciplinary case, that:

Higher education providers may be on even firmer ground in making such disclosures if they can demonstrate that regulatory obligations (for example, from the OfS) require them, as this would constitute a legal obligation and be another lawful basis open to them.

Overall, therefore Eversheds Sutherland's perspective is that were the OfS to clarify the regulatory requirements on HEIs for sharing of data during complaints and disciplinary processes, then the issues outlined above would be addressed.

This would require the OfS to publish guidance detailing how HEIs should navigate the information-sharing issues thrown up by handling harassment and sexual misconduct complaints. Such guidance would need to be more directive than the Universities UK (2022) guidance, which still leaves many questions unanswered. Such a step would ensure that prohibiting the use of NDAs does not lead to silencing of students and other reporting parties by different means.

Bull A and Shannon E (2023) Higher Education After #MeToo: Staff and students' perspectives on

10a: Do you agree or disagree with the proposal to prohibit a provider from using provisions which have the effect of preventing or restricting the disclosure of information about incidents relating to harassment or sexual misconduct? Please give reasons for your answer.

challenges in institutional responses to reports of gender-based violence and harassment. The 1752 Group/University of York.

Proposal F: Requirements relating to personal relationships between staff and students

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

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

11b: Please give reasons for your answer in question 11a above.

Our view is in favour of D. An option similar to Option B but with some changes (in which case please set out the changes that you would suggest in the next question). Our reasons for this are as follows:

1. First, evidence shows that students themselves want clearer professional boundaries with staff.
 a. We surveyed 1535 students in 2018 and in our report, *Power in the Academy*, compiled with the NUS Women's Campaign, we reported that 80% of respondents were uncomfortable with staff having sexual or romantic relationships with students (National Union of Students, 2018). Women were more likely to be uncomfortable with such relationships than men. Our forthcoming article in the *Journal of Further and Higher Education* includes further analysis on this data set. For example, we find no difference between postgraduate and undergraduate students.

b. We repeated this survey at a UK post-92 institution in 2020 (see findings outlined below) and found that 75% of students were uncomfortable with staff having romantic relationships with students, and 81% were uncomfortable with staff having sexual relationships with students. As with the above study, women were more likely to feel uncomfortable with these relationships.
 It's therefore clear that the majority of students would support the option B. We are aware that the OfS is carrying out more data collection in this area, but from the data, presented above, this appears as a clear cut case.

2. Second, this approach is it communicates a very clear message on boundaries and the unacceptability of staff making sexual/romantic approaches to students. This would be helpful and very meaningful for many survivors. It will also ensure that staff are not able to make sexual or romantic approaches towards students, thus making sexual harassment more difficult to perpetrate. It also sends out a clear message that the teaching and learning relationship must be prioritised.

3. Third, implementing a register without a ban will be insufficient to tackle the potential for abusive relationships that is heightened where there is a power imbalance. As Donovan and Hester (2015) outline, the more axes of inequality there are within a relationship (age, professional status, class, gender, etc.) the higher the risk of abuse. Our research suggests that HEIs are not ready to implement responsibilities laid out in E6.8(c): 'in respect of such a personal relationship, manage and address any actual or potential conflict of interest and/or abuse of power'. Bull and Shannon (forthcoming, 2023) found that while some HR staff have training to recognise and respond to disclosures of gender-based violence and harassment (GBVH), staff working in roles relating to tackling GBVH outside HR had concerns about the skills and willingness of HR staff to address this issue. These findings suggest that staff who receive disclosures of personal relationships between staff and students – likely to be HR staff – do not currently have the skills or expertise to 'manage and address any actual or potential conflict of interest and/or abuse of power' as required by E6.8(c). Prohibiting such relationships means that untrained HR staff are not put in a position where they are required to recognise, manage and address abuses of power.

Having outlined these arguments for Option D, we also need to state that we do have some very serious concerns about such a proposal. Our major concern is that such a ban would drive relationships underground, and put students in such relationships even more at risk. Such relationships, including hook-ups, are going to happen regardless of whether they are prohibited or not. A student in such a relationship may come under intense pressure from the staff member to keep the relationship secret, preventing them from reaching out for help if the relationship becomes controlling, abusive, or if they want to break up without repercussions for their studies. Any communication of such policies therefore needs to include awareness-raising for students that they will not be penalised for declaring such relationships, at any point, as well as awareness-raising for the reasons for such a policy and academic and pastoral support provided for students to ensure they can continue their studies.

A further risk (with either of the options proposed) is that HEIs will be more likely to take disciplinary action against staff in marginalised/precarious positions.

Amendments proposed to option B:

- In terms of monitoring the implementation of such a policy, further steps would be required beyond what is outlined in option B. We have informal knowledge of – where such policies already exist in some HEIs – that policies are not necessarily filtering to department-level. Therefore, we recommend that in the OfS' monitoring of the implementation of this policy (for either option A or B) that HEIs are asked to document steps they have taken to disseminate such policies (including training).

We also suggest a revision of the definition of 'personal relationships' proposed.

The OfS propose the following definition (p.55):

'personal relationship' means a relationship that involves one or more of the following elements:

- i. physical intimacy including isolated or repeated sexual activity;
- ii. romantic or emotional intimacy; or
- iii. financial dependency

However, this definition would exclude verbal and online sexual and romantic approaches made to students including those via social media or electronic communication. Our research (for example Bull and Rye, 2018) has documented the ways in which staff may use social media or electronic

11b: Please give reasons for your answer in question 11a above.

communications such as email or messaging apps to 'groom' and sexually harass students. Staff may also engage in controlling behaviour towards students, and for example by isolating students and making them feel indebted to the staff member as part of this grooming process. Such 'grooming' behaviour (Bull and Page, 2021) is, due to its gradual progression over time, difficult to identify for those targeted. Furthermore, one-off sexual contact – including online, such as for the purposes of sex work – also need to be included in this definition.

We propose instead an amended definition that draws on Bristol University's definition from their Sexual Misconduct policy:

"Personal relationships include all sexual or romantic contact, whether in person and/or online or via means of other electronic communication, one-off or longer-term."

We further suggest that 'emotional intimacy' and 'financial dependency' need further detail to be able to be operationalised, and that controlling behaviour is added to this definition.

Further data:

A survey was sent to all students enrolled at the University of xxxx in November-December 2020 via email from their Students' Union Welfare Officer. 1303 students completed the survey over a 3 week period, 725 of these consenting to their responses being reported on publicly. Questions on professional boundaries are from the National Union of Students/The 1752 Group report Power in the Academy (2018) and are adapted from Auweele et al.'s questions on coach-athlete boundaries. The questionnaire contained twelve items on a five point scale from very uncomfortable (0) to very comfortable (5) ($\alpha = .92$). Demographic information consisted of: gender (male, female, non-binary, prefer not to say, other), age group (18-24, 25-29, 30-39, 40-49, 50-59, 60-65, Over 65), home/international student, and level of study (undergraduate year 1, year 2, year 3, year 4, placement year, masters, PhD and other).

81% of respondents were uncomfortable or very uncomfortable with staff having sexual relationship with students; 76% were very/uncomfortable with staff having romantic relationships with students, and 82% were uncomfortable/very uncomfortable with staff asking them out on a date. 83% were uncomfortable with staff telling them they were attracted to them. Only 7-8% of students stated they were comfortable with these behaviours.

In relation to other professional boundaries, a member of staff adding a student on social media was the most acceptable with 34% feeling comfortable with this and 39% feeling either somewhat uncomfortable or very uncomfortable. The next three behaviours between students and staff were arranging meetings outside of the academic timetable, sending private messages via social media to a student, and getting drunk with students. In all three cases students are generally either neutral, somewhat uncomfortable, or very uncomfortable with these behaviours.

Previous research with this questionnaire suggests these questions capture two underlying constructs capturing 'comfort with sexualised interactions' and 'comfort with personalised interactions'. Gender was a significant predictor of comfort with 'sexualised interactions' (the last five questions) with women students being substantially less likely than males to feel comfortable with sexualised interactions. Similarly, for 'personal interactions' - which includes interactions online - women students, and those who preferred not to disclose their gender were much less comfortable than male students.

We don't know the reasons why women students are less comfortable with these interactions but it seems likely that this reflects the higher rate of sexual and gender-based violence that women face more generally, and shows how women students feel the need to be more vigilant in their interactions with others, including staff. These gendered patterns suggest that for all students to feel safe and comfortable in their teaching and learning environment, clear professional boundaries need to be in place.

Proposal G: Proposed implementation

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

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

While we accept the urgency of the situation, we have concerns that asking HEIs to implement these changes within three months will lead to poor practice that is rushed through. There is some evidence that many HEIs are at a very early stage in carrying out this work; for example in one of the case study institutions in Bull and Shannon (forthcoming, 2023), at the time of interviews in 2021, the Pinsent Mason guidance had not yet been fully adopted; there was no specialist sexual violence support outside of the counselling service; and very few reports were being carried through to disciplinary panels. At the time of interviews in 2020-21, interviewees carrying out this work within the three (anonymised) case study institutions did not think all of their policies and processes in this area were as yet fit for purpose; while there were plans to revise some of these, this work may still be ongoing.

We suggest setting out steps that HEIs should take over the coming 12 months towards implementing changes to allow them time to do this work properly. For example, reporting on policies, processes, support, and data could be required 9-12 months after the OfS announces these changes. Changes to staff-student personal relationships policies – which may require changing employment contracts for staff – could be implemented within 12 months of the OfS' requirements being announced. This would also allow time for training and awareness-raising campaigns to be implemented, without which any change in policy is unlikely to be effective.

Bull A and Shannon E (2023) Higher Education After #MeToo: Staff and students' perspectives on challenges in institutional responses to reports of gender-based violence and harassment. The 1752 Group/University of York.