

# Student Minds response to the Office for Students (OfS) consultation: sexual misconduct and harassment

*May 2023*

[Link to full consultation document](#)

## **Background**

Student Minds is committed to supporting students through their mental health and wellbeing, as well as encouraging the sector to take a whole-university approach to improving the student experience. Within this whole-university framework comes the sector's approach to sexual misconduct and harassment. The University Mental Health Charter (Hughes and Spanner, 2019) states that:

“Evidence indicates that hate crime, harassment and discrimination, sexual violence or violence motivated by ethnicity, sexuality, disability or gender, can have a negative impact on mental health”

In the year ending March 2020, it was estimated that 1.6 million women aged 16 to 74 years in England and Wales experienced domestic abuse (ONS, 2021). Sexual assault cases dipped during initial Covid-19 lockdowns but risen significantly since April 2021 (ONS, 2023a). The ONS further report that sexual assault has demonstrable impact of mental health of survivors: an estimated 63% experience ‘emotional or mental problems’ and one in ten report they have attempted suicide (ONS, 2021).

Universities are further attempting to tackle these issues in the face of very poor prosecution and charge rates across the England and Wales.; For the year ending June 2022, the ONS recording a record 194,683 sexual offences, yet just 4,466 rape cases were referred to the CPS (End Violence Against Women, 2022). For the year ending September 2022, 17.1% of 16-19 year olds had experienced non- sexual harassment, with 9.9% of 20-24 year olds having done so (ONS, 2023b).

Beyond the general population, there is evidence that students are disproportionately affected by sexual misconduct and harassment. As this consultation correctly states, students are more likely than any other occupational group to experience sexual harassment. Since the seminal NUS (2011) ‘Hidden Marks’ report, there has been further research from the NUS to attempt to portray the severity of sexual violence in higher education. Their report from 2019 found that:

“Half (48 per cent) of respondents had experienced unwanted sexual remarks on at least one occasion and over a third (37 per cent) had received such comments via media (social media or text message). Three in 10 students participating in our survey (28 per cent) felt they had been pressured to establish an unwanted sexual or romantic relationship, and one in six respondents (17 per cent) told us they had been stalked.” (NUS, 2019)

There is further harrowing evidence that around 80-90% of student cases of sexual harassment in UK universities are perpetrated by someone known to victim-survivors (Humphreys and Towl, 2020), and that there is significant underreporting of cases in the UK (Towl and Walker, 2019). The OiA (2022) concluded in their Annual Report that “it can be very hard for students who have experienced unwanted behaviours to make a complaint” due to poorly communicated procedures.

It must therefore be acknowledged that sexual misconduct and harassment in UK universities are systemic issues which require further regulation embedded into a whole university approach. This consultation response is informed by input from Student Minds’ advisory board of students, who feed into all aspects of our work and ensure student voices are heard within the sector.

**Question 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.**

Student Minds is aware of the need to introduce greater regulation in tackling sexual misconduct and harassment at universities in England. As such, we are strong in our belief that more must be done in this area to achieve effective, long-term change and we feel these proposals outline some useful steps for higher education institutions to make progress. However, we are cautious of a one-size-fits-all approach to tackling sexual misconduct and harassment, given the serious, complex and broad nature of these issues. Therefore, although Student Minds supports this proposal in principle, we are unsure that treating harassment and sexual misconduct as a singular issue is the best approach.

Whilst there have been multiple attempts to set recommendations for universities on how to tackle sexual misconduct and harassment (see UUK [2022] & OfS [2023]) in recent years, there are few regulatory obligations and limited information on “how to implement these recommendations in practical terms” (Towl and Humphreys, 2020, p.41). We therefore welcome guidance to restructure and prioritise processes and policies in higher education institutions to improve the support available to students who experience sexual misconduct or harassment, whilst also implementing activities aimed at preventing such incidents.

We brought this consultation to our Student Advisory Committee, a 20-strong panel made up of current students, recent graduates, and students’ union sabbatical officers, who feed into all aspects of our work. Our committee advised us that students need to be protected further from sexual misconduct and harassment and agreed that further regulation should be introduced in principle. There were, however, concerns over implementation and workload, including the potential impact upon students’ unions; the logistics surrounding widespread delivery and development of *mandatory* training; and the need for greater clarity around student-staff relationships. Each will be discussed in greater detail in further responses below.

**Question 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 a manner we are proposing? Please give reasons for your answer.**

The importance of effective and accessible policy procedures is clear. Being able to access and understand policies and processes can improve a students' access to support, whilst also improving their ability to self-advocate and their confidence to report incidents. We also echo Towl and Humphrey's (2020) view that an effective procedure policy for harassment cases can act as a deterrent for potential perpetrators, as would an increase in convictions.

As noted above, however, we are wary of conflating sexual misconduct and harassment into one single document, given the broad, complex and serious nature of these issues. Sexual misconduct, and indeed all forms of harassment, are unique and specific, and thus require specific responses to dealing with them (Bull et al., 2022). Student Minds is concerned that by combining these issues, there is a risk that some issues become lost or de-prioritised.

Our Student Advisory Committee further voiced concerns that including all relevant policies and procedures in a single document could limit accessibility (it may be too long or complex, especially if it is covering all forms of harassment alongside sexual misconduct). This could result in the reverse of the intended impact, by making it more difficult for some students to engage with and understand the document. Despite this, Student Minds recognises the need for clarity in reporting, investigation, and outcome processes, and can see the value in a single document which is transparent and consistent for all parties. We further recognise that developing separate documents for every form of harassment is unrealistic and even undesirable, due to the complexities and confusion it may cause.

Clearly, there are both strengths and challenges associated with a single-document approach. We recognise that examples of good practice already exist which do not take this approach, such as at institutions where separate documents exist in a single area of a website. This enables students, staff and visitors to access the relevant policy and procedure documents in a single place, removing potential barriers otherwise associated with a multiple-document approach. Requiring an institution to develop a new, single document outlining this work therefore could become an unnecessary duplication of existing work.

We therefore do not wholly support the prescriptive approach of requiring all institutions to develop a single document outlining their approach to tackling sexual misconduct and harassment. Although we do believe this may be beneficial and effective in some institutions, we do not feel such a one-size-fits-all approach will work across the sector, and there is a risk that such documents could become inaccessible (due to length and complexity) and have the opposite of the desired impact.

We do support the requirements set out in section 41 of the consultation - that all relevant documents should be clearly displayed on a university's website and shared with students and staff at least once a year. This should (at minimum) be at the beginning of the academic year, which has been shown to be when the highest rates of sexual assaults occur (Kimble et al, 2010).

**Question 11a: Assuming that the OfS introduces a new condition of registration E6 (subject to the outcome of this consultation), which option discussed in proposal F do you think should be included in condition E6?**

Option F - none of the above. Whilst we are supportive of further guidance on student-staff relationships, we seek clarification below before supporting any of the specific options proposed.

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

Staff sexual misconduct is a well-documented and researched area within higher education, with an increased impetus on online misconduct in recent years (Bull 2022; Bull and Page, 2021). NUS's 2018 report found that 41% of students surveyed had experienced sexualised behaviour from staff. The report further found that certain demographics were at greater risk of staff misconduct, with women more likely to report that staff had made sexualised remarks than men. Gay, queer, and bisexual women were twice as likely to experience this than heterosexual men. The UCU (2021, p.14) further emphasises these inequalities through their 2021 report, which stated that "black students and other racially minoritised students are more likely to be targets of 'laddish' practices". Staff are also often subjected to sexual misconduct, with the same UCU (2021, p.27) report finding that 39% of staff in tertiary education had "directly experienced sexual violence, or indirectly experienced it as a witness, or as a confidante to someone who had experienced it".

Student Minds recognises that staff-student relationships inherently involve a power imbalance, which shifts the context within which we can understand these relationships and the issue of consent. We also recognise that this dynamic can discourage students to report sexual misconduct and harassment, or disclose relationships, and can directly or indirectly impact the educational experience of students involved. Thus, we agree that more must be done to regulate relationships between staff and students and to tackle staff misconduct where it occurs.

Our Student Advisory Committee also agrees that these relationships need to be regulated, however argue that greater clarity on roles and responsibilities is needed and disagree with an outright ban due to the possibility of unique cases. Examples provided by our advisory committee included cases between a staff or student and a PhD candidate who teaches, as well as relationships which existed prior to one party becoming a staff member or student. Whilst these are specific examples and do not mitigate the need for greater transparency and regulation in staff-student relationships, they highlight the need for a nuanced approach in dealing with them.

Student Minds, therefore, holds two major concerns over student-staff relationships and their regulation: power imbalances, and conflicts of interest (i.e. unfairness to those both within and outside the relationship). Further work needs to be done to identify where these conflicts of interest arise and how they feed into power abuses, and we believe additional guidance would be helpful in outlining processes for those who may be both students and staff, for example.

We are further concerned over the handling and storage of data when student-staff relationships are disclosed. Ethically, we do not support the proposal that universities should hold information about a students' personal relationships. It could be the case that the holding of information would discourage students or staff from disclosing information due to concerns over data storage (e.g. how long the

information would be held and who would have access to it), employment rights, and invasion of privacy. This could also create a barrier to accessing support if needed, should someone be concerned that their information would be added to a university-owned register. Student Minds therefore does not support this proposal in its current format and suggests the OfS considers offering further clarity over the storage of information and data if students and staff were forced to disclose their personal relationships.

**Question 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.**

Whilst Student Minds shares the view that timely implementation is necessary, due to the vitally important nature of this work, we have some concerns around workload and the importance of continuous improvement in achieving long-term, cultural change. This requires a genuine commitment from senior leadership within a university; the right structures and pathways to create and sustain change; and a strategic approach to embedding both preventative and responsive activities to tackle sexual misconduct and harassment. We therefore do not believe that this work can or should be rushed. Rather, universities should be empowered to work towards the changes proposed in this condition without fear of punitive measures and without compromising their support for students.

A recent Westminster Hall debate on the Office for Students noted that one higher education provider “estimated the cost of £1.1m in 22/23 on regulatory activities”, and others believed that the OfS should take a more collaborative approach to implementing regulation. We therefore encourage additional consultation with higher education providers to further understand the resources available to universities regarding sexual misconduct and harassment procedures.

**Question 14: Are there any aspects of the proposal you found unclear? If so, please specify which, and tell us why.**

We believe that further clarification on the following would help to support institutions to create the changes necessary:

- Who should be responsible for organising and running the mandatory training outlined in the minimum content requirements and where should the funding stem from?
- How the training for “all students and all staff” would be implemented, and at what stage of study?
- The role of students, students’ unions, and staff in the creation of a single document, storage of data, and training

To conclude, Student Minds is pleased to see the OfS taking further steps to tackle sexual misconduct and harassment in higher education. Safety and security are key to our students' wellbeing and a whole-university approach to mental health, and the sector needs to redouble its efforts on tackling harassment and sexual misconduct to make sure no student feels at risk, on or off of campus.

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