

## UA submission to the OfS consultation on a new approach to regulating harassment and sexual misconduct in English higher education

### About UA

University Alliance (UA) unites the UK's leading professional and technical universities: the places where the knowledge and skills that will power the UK's future are built. We are always looking for new and exciting ways to teach and research, and working hand in glove with business, industry, and public services to keep the UK at the cutting edge. Alliance universities promote the best of British higher education worldwide, with campuses and partnerships across the globe, while remaining rooted in their local communities. The Alliance is committed to driving regional prosperity and social mobility, and our universities have the power to deliver growth across the UK.

### Summary

- University Alliance disagrees with the introduction of a new ongoing condition relating to harassment and sexual misconduct. Whilst we strongly support the principle that all higher education students should be protected from harassment and sexual misconduct, we do not think a new registration condition is the best way of achieving this.
- The proposals are also unworkable within the timescales outlined, particularly those pertaining to mandatory universal interactive training for students and staff.
- Tackling these widespread social ills which are not unique to higher education is a complex and challenging endeavour which requires effecting behavioural change. Any interventions from the OfS related to harassment and sexual misconduct should seek to:
  - Incentivise providers to implement innovative, evidence-based solutions in close collaboration with students; and
  - Target those providers that have made insufficient progress in implementing the [Statement of Expectations for Preventing and Addressing Harassment and Sexual Misconduct affecting Students in Higher Education \(SoE\)](#).
- Our preferred approach would be for the OfS to monitor compliance with a renewed SoE, which sets out clearly the standards higher education providers are expected to meet. It takes a balanced approach to harassment and sexual misconduct, recognising staff, students, and visitors. It gives providers the freedom to innovate and find the solutions best suited to their context.
- Providers who do not take sufficient steps to prevent and respond to harassment and sexual misconduct should be held to account.

**Proposal A: Introduce new ongoing condition E6 (harassment and sexual misconduct), which would place regulatory requirements on all registered providers. Proposals B-F describe the proposed content of condition E6.**

**Q1a 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.**

University Alliance disagrees with the introduction of a new ongoing condition relating to harassment and sexual misconduct. We strongly support the principle, enshrined in the OfS' [Statement of Expectations for Preventing and Addressing Harassment and Sexual Misconduct affecting Students in Higher Education](#) (April 2021), that all higher education students should be protected from harassment and sexual misconduct from other students, staff and visitors. However, we do not think a new registration condition is the best way of achieving this aim. There is little evidence provided in the consultation to demonstrate that the proposals will be effective. Moreover, the top-down, one size fits all regulatory approach outlined is likely to be counterproductive and burdensome at a time of financial hardship for the sector. The proposals are also wholly unworkable within the timescales outlined, particularly those pertaining to mandatory universal training for students and staff.

**Q1b Do you have any alternative suggestions to the proposal to introduce a new general ongoing condition relating to harassment and sexual misconduct? If so, please explain and provide reasons for your view.**

Universities already have legal obligations to address harassment and sexual misconduct. Tackling these widespread social ills which are not unique to higher education is a complex and challenging endeavour which requires effecting behavioural change. We agree that higher education providers have a vital role to play, but their influence over student behaviour is primarily indirect. This area therefore differs substantially from the other areas governed by the OfS' conditions of registration. Any interventions from the OfS related to harassment and sexual harassment should seek to a) incentivise providers to implement innovative, evidence-based solutions in close collaboration with students and b) target those providers that have made insufficient progress in implementing the Statement of Expectations (SoE), of which UA is a major champion. Our preferred approach would be for the OfS to monitor compliance with a renewed SoE which achieves both these aims. The SoE commands widespread support from the sector and sets out clearly the standards higher education providers are expected to meet. It takes a balanced approach to harassment and sexual misconduct, recognising staff, students, and visitors. It gives providers the freedom to innovate and find the solutions best suited to their context; UUK's [Changing the Culture](#) initiative has emphasised the importance of context-specific approaches to tackling harassment and sexual misconduct. As the consultation notes, most providers already have processes in place to address harassment and sexual misconduct – or are in the process of developing them, and significant progress has been made. The OfS should focus its efforts on identifying providers who are failing to implement the SoE, rather than imposing a regulatory requirement on the whole sector. Providers who do not take sufficient steps to prevent and respond to harassment and sexual misconduct should be held to account. However, imposing a new registration condition is not in line with the OfS' commitment to a risk-based, proportionate approach to regulation and would unnecessarily expand its already wide remit.

<b>Q2a</b>	<b>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.</b>
<p>The definition from the Equality Act 2010 is appropriate, as it imposes specific duties on higher education providers in respect of their staff and students. Its use is widespread throughout the sector. However, the same is not true for the Protection from Harassment Act 1997, so we do not support its use. It is important to note that the application of legal definitions in investigations risks institutions acting as a proxy for law enforcement. Providers do not have the competence, resources, or training to investigate statutory criminal offences, which require the highest standard of proof (beyond reasonable doubt). They should be expected to address issues as they arise in line with established policies, procedures, and codes of conduct, but not act as police or courts of law. As with other areas, where there is reasonable evidence that a crime has been committed, they should engage the police.</p>	
<b>Q2b</b>	<b>Do you have any alternative suggestions to the proposal in question 2a that you think may be more appropriate? If so, please explain and give reasons for your view.</b>
<p>There is value in having a shared set of definitions, but it is vital that these do not refer to criminal law. We recommend that the OfS use the definitions adopted by UUK in its <a href="#">October 2016 Guidance</a> which are widely used across the sector. Institutions should also continue to be entitled to use definitions that reflect their own policies, procedures, and codes of conduct, if they are in line with their legal and regulatory obligations. They should be free to consult with students to ensure they use language that is clear and empowering. For example, some UA members have worked with student groups to establish definitions that are accessible for students.</p>	
<b>Q3a</b>	<b>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?</b>
<p>As in Q2a, we support use of the Equality Act definition, but not the Sexual Offences Act for the same reasons outlined above.</p>	
<b>Q3b</b>	<b>Do you have any alternative suggestions to this proposal that you think may be more appropriate? If so, please explain and give reasons for your view.</b>
<p>See Q2b above.</p>	
<p><b><i>Proposal B: Impose a requirement for a provider to develop and publish a single document explaining its approach to tackling harassment and sexual misconduct. It is proposed that this document includes information about:</i></b></p> <ul style="list-style-type: none"> <li data-bbox="248 1270 2045 1335"><b><i>i. Multiple steps a provider is taking that could make a significant and credible difference in protecting students from harassment and sexual misconduct</i></b></li> </ul>	

	<p><i>ii. A provider's arrangements for handling disclosure and reporting of harassment and sexual misconduct incidents, including how information will be handled, investigation undertaken and any decision made in respect of how incidents are communicated to relevant individuals</i></p> <p><i>iii. A provider's arrangements for supporting students who have experience incidents of harassment or sexual misconduct</i></p> <p><i>iv. A provider's arrangements for training students and staff in relation to harassment and sexual misconduct</i></p>
<b>Q4a</b>	<p><b>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 matter we are proposing? Please give reasons for your answer.</b></p>
<p>We agree that it is essential for providers to make their policies and procedures related to harassment and sexual misconduct clear and accessible to current and prospective students, staff, and other relevant groups such as visitors and placement providers. Indeed, many already do so, and this is a requirement of the SoE. Many UA members have invested in the Report and Support platform, which includes definitions, articles and subject matter relating to harassment and sexual misconduct all in one place. We disagree that all policies and procedures need to be placed into a 'single document'. This requirement is overly prescriptive and inconsistent with principles-based regulation. Providers would be likely to be forced to produce a very long and unwieldy document that is difficult to navigate, and duplicates information found elsewhere. In addition, requiring a 'single document' for only one form of serious misconduct and not others is likely to be confusing for students and could diminish the significance of other forms of serious misconduct.</p>	
<b>Q4b</b>	<p><b>Do you have any alternative suggestions to the proposal in question 4a? If so, please explain and provide reasons for your view.</b></p>
<p>We favour the approach used in the OfS' Access and Participation Plans and would recommend that providers be required to publish an accessible summary of key information with links to the detailed policies and procedures. This is particularly important for students who are in distress and need to be able to find information quickly.</p>	
<b>Q5a</b>	<p><b>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.</b></p>
<p>We are comfortable with the principle of minimum content requirements for an accessible summary document, but we do not agree with all of those which have been proposed (see Q6a below).</p>	
<b>Q6a</b>	<p><b>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.</b></p>
<p>a. Disagree. Providers should be encouraged to come up with a risk- and evidence-based action plan to tackle harassment and sexual misconduct, but this should be separate to the 'single document' or the high-level summary document that we are proposing.</p> <p>b. Agree</p>	

- c. Agree
- d. Disagree. Whilst training can play an important role in effecting cultural change, and is a component of the SoE, it is not a magic bullet. The requirement to implement universal mandatory interactive training on harassment and sexual harassment, with a bystander component, is overly prescriptive and infringes on provider autonomy. It has significant time and resource implications for both providers and students which in many cases could be better spent on targeted and evidence-based interventions (for example on point a above). Bystander training alone typically takes around eight hours to complete. Furthermore, it is not clear which training programmes and/or providers are most effective, and whether there is currently sufficient capacity in England to deliver it to every student in higher education. UA is not currently aware of a single higher education provider that has successfully trained all its students in the manner required by the proposals. The independent evaluation of the SoE found that further research is required to establish 'what works'. We call on the OfS to conduct this research, and ideally commission a package of training that the whole sector could use.
- e. Agree, with the understanding that there are limits regarding the support a university can/should be expected to provide in relation to such incidents. It may sometimes be most appropriate to signpost victims to specialist external support.
- f. Agree in principle that staff training is fundamental, but a flexible and evidence-based approach needs to be taken. See (d) above.
- g. Agree, but with an understanding that providers are not quasi-judicial bodies and should not be treated as such.
- h. Agree, but further clarity is required regarding data protection and what should/should not be shared in different circumstances (including with external services such as the police without a victim's consent). UUK's [guidance on sharing personal data in harassment cases](#) advises that sharing further information must be considered on a case-by-case basis and within the legal framework.

**Q6b | Do you have any alternative suggestions to the proposal in question 6a? If so, please explain and give reasons for your view.**

Most of this information is already contained in existing documents, and it would be more effective to signpost to these in the summary document rather than creating a confusing, and very long new 'single document'.

Any training that providers undertake in this area should be carefully chosen following the development of a risk-based provider action plan that is backed by evidence of what works. Training staff and students should be strongly encouraged, as in the SoE, but not a universal regulatory requirement.

**Q7a | 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.**

Disagree. This is a wholly unnecessary requirement.

**Q7b | Do you have any alternative suggestions to the proposal in question 7a? If so, please explain and give reasons for your view.**

No.

<b><i>Proposal C: Impose a requirement for a provider to have the capacity and resources necessary to facilitate compliance with this condition</i></b>	
<b>Q8a</b>	<b>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.</b>
<p>We disagree with this proposal, as it is unnecessary and not required by other OfS conditions of registration. Indeed, registration condition D of the Regulatory Framework already requires providers to have the necessary financial resourcing to comply with all conditions of registration, and this would apply automatically to the proposed condition E6. Proposal C could have the perverse effect of incentivising providers to prioritise E6 over other registration conditions. That said, we agree with the principle that tackling harassment and sexual misconduct must be properly resourced and not considered as an 'optional extra'. We think the SoE makes this clear, as does UUK guidance on harassment and sexual misconduct.</p>	
<b>Q8b</b>	<b>Do you have any alternative suggestions for the proposal in question 8a? If so, please explain and give reasons for your view.</b>
<p>Our preferred approach is for providers to be monitored and held to account against the statement of expectation (SoE). It is self-evident that providers will need to ensure they have the necessary capacity and resources to do this. The OfS should be given the power to act where the SoE is not being met.</p>	
<b><i>Proposal D: Impose a requirement for a provider to comply with condition E6 in a manner consistent with the freedom of speech principles set out in the condition.</i></b>	
<b>Q9a</b>	<b>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.</b>
<p>We disagree that there is need for Proposal D. Like Proposal C, it is unnecessary because it is already a requirement. Providers will always need to take account of the full breadth of their statutory and regulatory duties and ensure they are balancing these appropriately. They are already required to comply with a range of requirements related to harassment and sexual misconduct in a manner that it is consistent with their legal obligations to protect academic freedom and free speech, along with a wide range of other requirements, for example human rights, health and safety, equalities, and environmental legislation (to name just a handful). That said, balancing freedom of speech principles with other legal responsibilities is notoriously complex and challenging, and providers would benefit from guidance in this area, particularly once the forthcoming freedom of speech bill becomes law and the OfS has enhanced powers in this area.</p>	
<b>Q9b</b>	<b>Do you have any alternative suggestions to the proposal in question 9a? If so, please outline and give reasons for your view.</b>
<p>We recommend that the OfS publishes guidance for higher education providers on balancing freedom of speech requirements with other legislative requirements that have the potential to be complex and contradictory.</p>	

<p><b><i>Proposal E: Prohibit a provider from restricting the disclosure of information about an allegation of harassment or sexual misconduct that involves or affects one or more students. This section also proposes that a provider should not rely on or enforce pre-existing prohibitions, and should take all reasonable steps to prevent any other person from restricting the disclosure of information or relying on pre-existing prohibitions.</i></b></p>	
<b>Q10a</b>	<p><b>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.</b></p>
<p>We agree with the principle that an individual should not be prevented from disclosing harassment or sexual misconduct. However, providers are already subject to existing legal and regulatory requirements in this area, and the forthcoming freedom of speech legislation will soon impose additional requirements. We therefore do not think Proposal E is necessary. It is vital that the OfS does not seek to impose any requirements retrospectively, as this could put providers in breach of their contractual obligations. Seeking to regulate retrospectively goes against the rule of law and reputable regulatory practice.</p>	
<b>Q10b</b>	<p><b>Do you support any of the alternative options we have outlined or do you have any other proposals? If so, please explain and provide reasons for your view.</b></p>
<p>It is vital that the OfS aligns any regulatory requirements with the Higher Education (Freedom of Speech) Bill to avoid unnecessary confusion and burden.</p>	
<p><b><i>Proposal F: Impose requirements on a provider relating to personal relationships between students and relevant staff. Relevant staff are defined as a member of staff who has direct or indirect academic responsibilities, or other direct professional responsibilities in relation to a student. Two possible options are set out in this section:</i></b></p>	
<p><i>i. Option A: Require a provider to take all reasonable steps to: require any relevant member of staff to disclose any personal relationship with a student; and to dismiss and relevant member of staff where they refuse to disclose a personal relationship with a student. This is the OfS's preferred option.</i></p>	
<p><i>ii. Option B: Require a provider to take all reasonable steps to: prohibit any relevant member of staff from having a personal relationship with one or more students; and to take appropriate steps which would normally be dismissal of a relevant member of staff, where they refuse to end a personal relationship.</i></p>	
<b>Q11a</b>	<p><b>Assuming that the OfS introduces and 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:</b></p> <ul style="list-style-type: none"> <li><b>A. Option A as proposed;</b></li> <li><b>B. Option B as proposed;</b></li> <li><b>C. An option similar to Option A but with some changes (in which case please set out the changes that you would suggest in the next question)</b></li> </ul>

	<p><b>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)</b></p> <p><b>E. Any of the alternative options considered in this proposal</b></p> <p><b>F. None of the above.</b></p>
<p>We agree that tackling staff-student sexual misconduct should be an obligation for all higher education providers. <a href="#">UUK's guidance</a> recommends that personal relationships between university staff and students should be strongly discouraged, and any conflicts of interest managed to mitigate against possible abuses of power. Most UA members already have a Personal Relationships Policy in place. Some have chosen to ban sexual or romantic relationships between staff and students (other than pre-existing relationships, which must be declared). Others have gone for a disclosure requirement more akin to Option A. We do not agree that all providers should have to follow the same approach. We therefore find Proposal F overly prescriptive, and at odds with a principles-based approach to regulation and in danger of eroding institutional autonomy.</p>	
<b>Q11b</b>	<b>Please give reasons for your answer in question 11a above.</b>
<b>Q11c</b>	<b>Do you have any alternative suggestions to the options considered in Proposal F? Please give reasons for your answer.</b>
<p>Providers should be required regulate staff-student sexual misconduct in an effective and transparent manner, but they should have the autonomy to decide how they will do this. They should be given the flexibility to choose between an outright ban (with limited exceptions) and a disclosure requirement.</p>	
<b>Q11d</b>	<b>We would welcome views on whether Option B or any of the other options considered should allow for other exemptions. Please give reasons for your view.</b>
<p>If Option B is implemented, it is important that pre-existing personal relationships should be defined more broadly than marriage or civil partnership. For example, individuals may be in long term relationships (and have children together) without being married or in a civil partnership. Similarly, 'financial dependency' (as a form of personal relationship) could extend to the children of a staff member who enrol at the same institution.</p>	
<b>Q12a</b>	<b>Do you agree or disagree with the proposals for the implementation of any new condition of registration? Please give reasons for your answer.</b>
<p>We disagree with the implementation proposals. Three months is not enough time for the sector to implement a new registration condition with several resource-intensive elements, notably mandatory universal interactive training, and the production of a 'single document' related to harassment and sexual misconduct. If the OfS goes ahead with a new registration condition, we recommend a phased approach, with at least a year to roll out universal mandatory training and six months for the single document.</p>	



<b>Q12b</b>	<b>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.</b>
<p>Instead of a new registration condition, OfS should proceed with implementing and monitoring a renewed SoE, which could be implemented within three months.</p>	
<p><b><i>Proposal G: Subject to consultation responses, any new condition of registration would come into force on a date not less than three months from the data the OfS publishes its final decisions.</i></b></p>	
<b>Q12c</b>	<b>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.</b>
<p>See Q12a above.</p>	
<b>Q13</b>	<b>Do you foresee any unintended consequences resulting from the proposals set out in this consultation? If so, please indicate what you think these are and the reasons for your view.</b>
<p>We think that the proposals would be ineffective, costly, and ultimately a wasted opportunity to bring about lasting cultural change in this area for all the reasons we have outlined above.</p> <p>It is not clear that the OfS has considered how these proposals will apply to transnational education. We also urge OfS to fully consider the implications of imposing a registration condition with extra-territorial application where different legal and regulatory frameworks may apply – for example in countries which may prohibit intimate relationships between unmarried couples and/or same-sex relationships. It should be noted that the rules around student data collection differ in other jurisdictions.</p>	
<b>Q14</b>	<b>Are there aspects of the proposals you found unclear? If so, please specify which, and tell us why.</b>
<p>It is unclear how the proposals will interact with the OfS' plans to introduce a sector-wide prevalence survey of sexual misconduct. There is also very little information about how the OfS will monitor compliance and enforce this new condition of registration more generally.</p>	
<b>Q15</b>	<b>In your view, are there ways in which the policy objectives discussed in this consultation could be delivered more efficiently or effectively than proposed here?</b>
<p>Yes. UA strongly supports the 2021 Statement of Expectations (SoE) and higher education providers have made demonstrable progress against it. Whilst sector-wide improvement has not been fast or consistent enough, this could be remedied in part by making it clear that the OfS will be monitoring compliance. Providers were only given ten months to implement the SoE before the evaluation was commissioned. This is very little time for a sector that</p>	

operates on an academic calendar with lengthy governance processes to effect change in policy. Nonetheless the evaluation found evidence of significant progress, especially in relation to senior leadership commitment, and improvements in universities' systems, policies, and processes.

**Q16** | **Do you have any comments about the potential impact of these proposals on individuals on the basis of their protected characteristics?**

The proposals have the potential to negatively impact staff working outside of the UK involved in unmarried/same-sex relationships where these are prohibited by law.