

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

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## Personal information

What is your name?
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What is the name of your organisation, if relevant?
Durham Students' Union

Which of the following best describes you?
An employee of a student representative body

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.

Agree - The very nature of an ongoing condition for registration ensures that policies won't be reversed or neglected, budgets clearly defined, and with a greater degree of external monitoring and oversight. Additionally, focusing on prevention (Proposal B, iv and C) and not just responding is a step in the right direction.

1b: 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.

In addition to the existing proposal, allow for tailored university-specific issues; this could include a specific condition of registration for a particular institution which focuses on improving work on those identified specific issues, as well as timeframes to deliver on those points.

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.

Agree partially - The definition should include Domestic Abuse/Violence; Durham University is already providing training: (<https://www.durham.ac.uk/colleges-and-student-experience/student-support-and-wellbeing/student-conduct/sexual-misconduct-violence/education/staff/>) as well as online/cyber sexual harassment: <https://commonslibrary.parliament.uk/research-briefings/cbp-8743/>

2b: 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.

No

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.

Agree partially - it should include the full definitions clearly outlined, including online harassment, abuse, and domestic violence. An example of "how to" could be found in chapter 5, page 72: Humphreys, Clarissa J., and Graham J. Towl. Addressing Student Sexual Violence in Higher Education : a Good Practice Guide. First edition. Bingley, UK: Emerald Publishing, 2020.

3b: 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.

Condition E6 should include the detailed definition in full for the sake of clarity and to eliminate room for interpretation. A fully stated definition will also help international students avoid additional issues as they may need to become familiar with terminologies and concepts. At the same time, this kind of clarity and transparency prevents the risk of extra harm if the definition is changed in the Equality Act. Intent and impact should also be considered when defining and handling Sexual Harassment and Misconduct cases. When should the perpetrators' intent and their impact be considered? How should someone lacking malign intent but with a severe impact on a victim/survivor be handled? How should attempted Sexual harassment and/or Misconduct be handled? The proposal should regulate university policy on all sexual harassment and misconduct cases, regardless of the outcome, and introduce a standardised practice in handling such cases. Point 22 introduces the term "objectivity", which is not necessarily suitable in this case. The regulation must balance creating a standard across the sector while catering for nuance and lived experiences for different groups and individual intersectionality.

## 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.

Agree -

1. Communication is a critical element. We have institutional experience of the difficulty of clear communication, and the importance of connecting work done in different business units of the University, as evidenced in our recent work on mental health provisions.
2. A single comprehensive document ensures that everyone in the organisation is aware of what is and isn't acceptable behaviour and how to respond to incidents of harassment and sexual misconduct. This can help to create a culture of respect and support for victims of such behaviour.
3. The document should be easily accessible to everyone in the organisation and make it clear that the organisation takes incidents of harassment and sexual misconduct seriously.
4. It should be consistent across the organisation, with everyone, both staff and student, held to the same standards.
5. Clear, brief explanation of institutional policy in an executive summary to enable faster dissemination and understanding of the critical points of the policy within the institution and beyond

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

It's important to ensure that the document is comprehensive and covers all aspects of the organisations' policies and procedures on harassment and sexual misconduct training and signposting too. It should also be regularly reviewed and updated to reflect any changes in the law or best practices. There should be a maximum time limit for reviewing and a designated person responsible for the task, who is named to the OfS as the main institutional contact on sexual harassment and misconduct matters.

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.

Agree - An easily accessible and comprehensive document that provides clarity and transparency to everyone in the organisation about what is and isn't acceptable behaviour and how to respond to incidents of harassment and sexual misconduct. As a result, it strengthens reporting culture and establishes consequences for perpetrators, providing students with a sense of safety and faith that the institution will take such actions seriously.

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

1. The minimum content requirements should be flexible enough to allow for variations depending on the specific characteristics of an organisation (for example, the size and type of organisation) while still ensuring that it covers the essential aspects of addressing incidents of harassment and sexual misconduct.
2. They should also be regularly reviewed and updated to reflect law or best practice changes.
3. It would be beneficial to involve the students' perspective in creating the document of each university, particularly those involved in Liberation groups. This might function in a similar fashion to the Teaching Excellence Framework (TEF) student submission, through an optional document created by students' unions on the work with their institution in this area.
4. Provide guidance on the key principles that should be considered when creating a single document on harassment and sexual misconduct while specifying a set of minimum content requirements.
5. Point b: about the ways in which students, staff and other persons can report behaviour that may amount to harassment and/or sexual misconduct to the provider: Durham University has a Report + Support team. However, that's not the case with every University. Universities that don't have such teams/departments should incorporate them in their Student Support and Wellbeing directorates.
6. Point d: Bystander training should take priority because it is the most efficient when it comes to prevention. However, consent education is still beneficial as the education students receive before coming to university (if it exists) is inadequate.
7. Systematization of training for student reps on disciplinary committees around wellbeing structures in place; supporting students on these bodies who may have to deal with traumatic information in dealing with cases is critical not only to individual wellbeing but also the continued operation of these structures.
8. Points g and h: Policy differences exist between cases where the responding party is a student against when the responding party is a staff member regarding investigation results. If the reporting party is a student and the responding party is a staff member, the student is not informed about the outcome of an investigation, this promotes the omission of such behaviour and renders staff members virtually untouchable; this is similar to the impact of NDAs. There should be guidance on how universities can navigate these issues (e.g., HR restrictions).

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.

Agree partially – Agree in principle that there should be training and evidence-based training and support; however, the timing in which universities are expected to provide it is not enough.

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

Point 52 see question 5b about differences in policy regarding reports against students and reports against staff.  
It is important to define credible evidence of evaluation; evidentiary standards as well as clear baseline guidance would be welcome, especially for institutions which may have relatively immature information-gathering processes.

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.

Agree

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

Define point a: explain the phrase "contradict, undermine, or conflict with the minimum content requirements".

## 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.

Agree – a regulation without the means to enforce it is not useful either to students or the institution; especially where this issue has the potential to impact every student and staff member of an institution.

8b: Do you have any alternative suggestions for the proposal in question 8a? If so, please explain and give reasons for your view.

Establish protected resources and personnel and review annually in relation to the criteria stated in point 63.  
Set a minimum spend weighted per student. The budget can vary but can never fall below the minimum spend; this would ensure that institutions spent sums which are appropriate to properly protect student populations of a given size.

## 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.

Disagree - The suggestion that a preventative policy against Sexual Harassment and Misconduct affects Freedom of Speech principles seems widely loose. In what context does Freedom of Speech trump prevent Sexual Harassment and misconduct? While Freedom of Speech is a fundamental human right that allows people to express their opinions and challenge those in power, it is not absolute. Sexual harassment and misconduct are serious forms of discrimination that violate the dignity and equality of the victims and create a hostile and unsafe environment for them. Therefore, freedom of speech can never trump the prevention of sexual harassment and misconduct, as the former must be exercised with respect for the rights and freedoms of others, while the latter must be eliminated to ensure a fair and inclusive society for all.

9b: Do you have any alternative suggestions to the proposal in question 9a? If so, please outline and give reasons for your view.

Adjust other policies to comply with the prevention of Sexual Violence and misconduct and make sure that it is the prioritised policy against any others (for example, give explicit examples of how a university should prevent individuals and groups to take advantage of "Freedom of speech" to cause harm).

## 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.

Agree – Prohibiting any contractual provisions that prevent or restrict someone from disclosing information about an allegation of harassment or sexual misconduct which affects one or more students is a necessary measure to protect the rights and dignity of the victims. NDA and confidentiality contracts only aim to silence victims and cover up inappropriate behaviour or misconduct. They create a culture of distrust and fear in the workplace and educational environment and discourage people from speaking up or seeking help.

10b: 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.

Additional proposals:

1) Point 79 and 80: Durham is not using NDAs but faces an HR issue with the same impact. The issue consists of GDPR restrictions to informing the reporting party about the outcome of an investigation regarding an employee. This policy doesn't apply when the responding party is a student. At the same time, student outcomes are (anonymously) published on this page: Disciplinary Outcomes - Durham University when staff outcomes are not even published anonymously. This policy fuels a culture of distrust and fear, as without transparency, students are getting the message that their complaints or experiences don't matter. At the same time, there is no way to ensure that the situation was handled properly and that the issue wasn't swiped under the carpet to protect the university or an individual's reputation.

2) It is important to create policies and procedures to protect the reporting party if the responding party goes public about the investigation and/targets the reputation and character of the reporting party. This doesn't imply support for the use of NDAs. It is a separate issue that needs to be discussed, as intimidation and character attacks are scaremongering practices to force victims into not reporting or dropping out of reporting.

## 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.

We chose option D: as experienced professionals on SVM have advised that a ban is the most efficient way of Sexual Harassment and Misconduct prevention; as discussed in Humphries & Towl (2022)<sup>1</sup>. As a Students' Union, we agree with a ban on Staff-Student relationships; there is a risk that by permitting relationships this creates "grey areas" which enable misunderstanding and misinterpretation, as well as abuse of power dynamics, often at students' expense. We also feel that the creation of a register both poses its own risks in terms of misuse, as well not in itself providing any protection or support for students as it would not and could not actually prevent misconduct.

Postgraduate Research (PGR) students are of particular concern in this area as staff-student relationships are more likely at this level due to the intense nature of supervisory relationships – however this underlines the importance of protecting those students who are more likely to suffer from abusive relationships due to heightened power dynamics.

<sup>1</sup>Humphreys, C.J., & Towl, G.J. (Eds.). (2022). Stopping Gender-based Violence in Higher Education: Policy, Practice, and Partnerships (1st ed.). Routledge.

11c: Do you have any alternative suggestions to the options considered in Proposal F? Please give reasons for your answer.

No

11d: 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.

Clarissa Humphreys, Sexual Misconduct Prevention and Response Manager at Durham University and expert in the field and Graham Towl is Professor of Forensic Psychology at Durham University and a former Chief Psychologist at the Ministry of Justice, a ban in staff students' relationships is a no brainer. As they are mentioning in their book: Stopping Gender-Based Violence in Higher Education : Policy, Practice, and Partnerships: "It is interesting to note that other professions seem to have no problem with this being a normative expectation. For example, healthcare staff are not to have sexual relationships with patients and schoolteachers aren't to with their pupils (even if aged 18 so adults in law). The university world seems to have been less subject to scrutiny on such matters than elsewhere in the public sector."

Sunday Blake from WonkHE, created a list of how option B can exist and what exemptions could look like (tackling the "what about..." questions) <https://wonkhe.com/blogs/should-we-record-or-ban-staff-student-relationships/#comments>

Pre-existing relationships are, in our view, not a problematic issue as a mechanism for their exemption could be designed with the principle of minimising conflicts of interest; such examples exist in the United States: I'm an academic staff member in department X, and my long-term partner (no marriage or civil partnership) is starting a PhD in department Y. Can this relationship be approved? Yes – there is evidence of this relationship prior to enrolment and could be declared in a manner similar to conflict of interest declarations.

Issues with option A: It is unrealistic to expect a staff member to consult an HR policy if they wish to have a relationship with a student; at the same time, a student experiencing advances from a staff member alone is problematic due to power imbalances, putting aside other factors. It can impact how the student views themselves in the academic space – what determines their worth and the impact on their well-being in the long term. If the relationship occurs but then fails, that can exacerbate the issues with reference to how they view their worth in that space and their well-being, as well as potentially jeopardising academic life.

Students' unions are not regulated in this area by the OfS, which means that this part of the policy does not directly apply to Sabbatical Officers and SU staff as it is. However, the policy must be consistent across both universities and SUs and consider students in other organisations within university communities who are neither university nor SU affiliates and may not necessarily be classed as "students' unions".

## Proposal G: Proposed implementation

12a: Do you agree or disagree with the proposals for the implementation of any new condition of registration? Please give reasons for your answer.

Disagree – we believe the proposed timeframes for implementation to be unrealistic.

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.

What are universities expected to do first? Could the OfS guidance prioritise one item or establish an example timeline? Many institutions are not starting from nothing, however there are a variety of different levels of both policy and practice across the sector, which means that implementation period(s) need to take this into account.

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.

We would suggest allowing the universities to implement the changes gradually, prioritising the development of the policy within 3 months and then the implementation within 6 months – a total of 9 months. This would enable institutions time to bring policy into line, with additional time to secure staff or funding required for implementation, to ensure that any implementation is not simply a paper exercise. Moving with a shorter timeframe risks institutions seeking merely to meet the letter, rather than the spirit, of any regulation and thus taking forward only shallow solutions which aim to satisfy that regulation in the short term rather than truly protecting students in the long term.

## Other questions about the proposals

13: 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.

How will the freedom of speech section work alongside the provisions, and how will the OfS reconcile its different regulatory duties in this area practically?  
We also feel there is a possibility that by registering, rather than prohibiting, staff-student relationships institutions may appear to be endorsing these relationships as a concept; which is neither in the spirit of the regulation nor a safe outcome for students.

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

How does the freedom of speech section fit in this policy practically? This addition, risks adding undue complexity, which might pose risks for effective implementation and thereby harm student safety.

16: Do you have any comments about the potential impact of these proposals on individuals on the basis of their protected characteristics?

Generally, it will be beneficial as long as there is inclusive training, policy and policy language. This means ensuring an intersectional approach to all aspects of the new condition for registration that embarrasses all students regardless of background and ensures equal access to "report and support" mechanisms. The policy and training should be designed with inclusive language and scenarios, making sure that no aspect of student life falls in between the cracks and all students feel safe to seek support no matter their protected characteristics.