



BRIEFING PAPER

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Sexual harassment in education

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Contents:

1. Schools and colleges (education to age 18)
2. Further and higher education (post-18 education)



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Summary

Schools and colleges

All schools in England must have a child protection policy in place, including measures in relation to protecting children from sexual harassment, whether from staff members or their peers. Relevant policies are in place relating to behaviour at school, bullying, and the Public Sector Equality Duty.

A consultation on reformed safeguarding guidance for schools and colleges, including new advice on sexual harassment and sexual violence in schools, was published in December 2017, and is open until February 2018.

The Government has legislated for statutory Relationships and Sex Education, and created a power to make personal, social, health and economic education (PSHE) statutory in future, under the *Children and Social Work Act 2017*. The Government published a call for evidence on how to proceed in teaching RSE and PSHE in December 2017.

This briefing provides an overview of the relevant policies schools are expected to have in place, and recent policy developments.

The same guidance for schools also applies to colleges, but some different considerations may apply where the students involved have turned 18, depending on context. Issues relating to over-18s are explored further in later sections.

Education policy is a devolved area, and this briefing focuses on the position in English schools. Links are provided to relevant policies in place in Scotland, Wales, and Northern Ireland.

Further and Higher Education

Universities and FE colleges face different challenges to schools with regard to the welfare and protection of students as most students are adults. The situation is further complicated on campuses where students are living and socialising together. Higher and further education institutions have a duty to ensure that students have a safe environment in which to live and work. They also have a duty under the *Equalities Act 2010* to eliminate discrimination, to promote equality and to foster good relations between groups. These duties however must be implemented whilst allowing adult students freedom and autonomy. This can be a difficult balance to achieve.

There have been concerns that sexual harassment is increasing in universities. The NUS has blamed this partly on the rise of 'lad culture'. This situation has been taken seriously by the higher education sector and higher education institutions (HEIs) and Universities UK have convened taskforces on sexual harassment and created guideline for HEIs to help them draft policies to address this issue. Most colleges and universities now have processes and procedures in place to address harassment (including sexual harassment), violence and hate crime.

This paper gives an overview of the issue of sexual harassment in colleges and universities and sets out the legal duties of institutions and their responses to the problem of rising incidents of sexual harassment and violence.

1. Schools and colleges (education to age 18)

Education policy is a devolved area, and this briefing focuses on the position in English schools, although some sections (such as relating to equality legislation) are more widely applicable. Section 1.6 provides links to relevant policies in place in Scotland, Wales, and Northern Ireland.

The same guidance for schools also applies to colleges, but some different considerations may apply where the students involved have turned 18, depending on context.

1.1 Keeping Children Safe in Education: Government guidance

All schools must have a child protection policy in place.

The Schools Minister, Edward Timpson, set out an overview of the measures in place to safeguard children from sexual harassment in response to a [Parliamentary Question](#) on pupil-on-pupil sexual assault in February 2017:

Keeping Children Safe in Education is the statutory guidance to which all schools and colleges in England must regard when carrying out their duties to safeguard and promote the welfare of children. The guidance places a responsibility on all staff to provide a safe environment, in which children can learn and to consider at all times what is in the best interests of the child.

The guidance requires schools and colleges to have an effective child protection policy, which includes procedures to minimise the risk of peer on peer abuse and sets out how allegations of peer on peer abuse will be investigated. The policy should reflect the different forms that peer on peer abuse may take and make clear that abuse should never be tolerated or passed off as banter or part of growing up. The policy should also be clear as to how victims of peer on peer abuse will be supported. The guidance is clear that children's social care and the Police should be involved as appropriate.

Following the recent Women and Equalities [Committee] report into sexual harassment and sexual violence in schools, the Department for Education has committed to reviewing existing departmental guidance, including Keeping Children Safe in Education. An advisory group has been set up to support the department in this work.¹

The most recent version of [Keeping Children Safe in Education](#) was published in September 2016.

Consultation: revisions and new advice for schools

The Government published a [consultation with proposed revisions to Keeping Children Safe in Education](#) in December 2017.

¹ [PQ 64615 \[Sexual offences: pupils\], 28 February 2017](#)

The consultation was published alongside advice for schools on [Sexual violence and sexual harassment between children in schools and colleges](#). The revised version of Keeping Children Safe in Education includes a summary of the advice on sexual harassment and violence as part of its Annex A.

The consultation asks for comment on the quality of this advice, and its summary, and whether this approach to publishing the advice should remain as it is or be altered by making the advice a part of Keeping Children Safe in Education.

The consultation is open until 22 February 2018.

Advice for schools: Sexual violence and sexual harassment

The advice for schools on [Sexual violence and sexual harassment between children in schools and colleges](#) published in December 2017 sets out more direct information for schools and colleges on how to deal with incidents and allegations.

The advice provides definitions of sexual violence and sexual harassment, and also of harmful sexual behaviours. It sets out schools' and colleges' relevant duties, and how schools should approach prevention: for instance in the curriculum or safeguarding training for teachers.

The advice also provides information on how schools should respond to accusations of sexual violence or harassment, and subsequent steps that should be taken, including how to safeguard the victim and the alleged perpetrator, including whether they should be placed in classes together.

As noted in the previous section, this advice being considered is part of a wider consultation on safeguarding guidance open until 22 February 2018. It is in place pending any updates that may come as part of that consultation.

1.2 Behaviour and bullying policies

Behaviour

All schools should, as set out in the DfE's advice on [Behaviour and Discipline in Schools](#), have a behaviour policy in place. This will include a range of measures that may be used by teachers and head teachers as appropriate, including in more severe cases fixed-term or permanent exclusions. The DfE's [guide for schools on exclusions](#) focuses on the disciplinary background to exclusions and ensuring they are implemented legally.

Bullying

The gov.uk website provides information on the law as it relates to [bullying at school](#), and also information on reporting bullying to schools and (in some instances) to the police. As it sets out, by law, all state schools must have a behaviour policy in place that includes measures to

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prevent all forms of bullying among pupils. This policy is decided by the school. All teachers, pupils and parents must be told what it is.

The site sets out the matters that should be [reported to the police](#). These include:

- violence or assault
- theft
- repeated harassment or intimidation, e.g. name calling, threats and abusive phone calls, emails or text messages
- hate crimes

The Department for Education has published non-statutory advice for schools on [Preventing and Tackling Bullying](#). This includes advice on prevention and intervention, and makes clear that schools can discipline pupils for bullying outside of school.

Public Sector Equality Duty

Schools also have duties introduced by the *Equality Act 2010* related to sexual harassment. The 2010 Act makes it unlawful for a school to discriminate against a pupil or prospective pupil by treating them less favourably because of a protected characteristic.²

The Government's response to the Women and Equalities Committee report on sexual harassment in schools (see section 1.3) set out the relevant implications of the Act for schools, in introducing the Public Sector Equality Duty (PSED):

The Act introduced the Public Sector Equality Duty (PSED) in 2011 which applies to all schools, including maintained and independent schools, academies, and maintained and non-maintained special schools. Under the PSED Schools have a general duty to have regard to the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity between different groups and foster good relations between different groups. The duty applies to all protected characteristics and means that whenever significant decisions are being made or policies developed, thought must be given to the equality implications, such as the elimination of sexual harassment.³

1.3 Women and Equalities Committee report

Launch and Fixers report

In April 2016, the House of Commons Women and Equalities select committee [launched an inquiry](#) into sexual harassment and sexual violence in schools.

² The protected characteristics listed in [section 4 of the Act](#) are age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation.

³ House of Commons Women and Equalities Committee, [Sexual harassment and sexual violence in schools: Government response to the Committee's Third Report of Session 2016–17](#), First Special Report of Session 2016–17, November 2016, HC 826, p4

The inquiry sought, among other aims, to establish the scale of the problem, and in advance of launching the inquiry commissioned a series of workshops run by the charity Fixers, which reported that young people had experienced that:

- schools are not playing their part in recognising the pressures young people are under when dealing with matters of sexual harassment and sexual bullying
- teachers may brush off incidents of sexual assaults or sexually threatening behaviour because of students relatively young ages
- many incidents go unreported because students are worried that victims will be punished as well as perpetrators.⁴

The full Fixers report, [The Trouble with...Sex in Schools](#), was published alongside the inquiry launch.

Committee report

The Women and Equalities Committee [published its report](#) in September 2016.

The report included evidence that:

- almost a third (29%) of 16-18 year old girls say they have experienced unwanted sexual touching at school
- nearly three-quarters (71%) of all 16-18 year old boys and girls say they hear terms such as "slut" or "slag" used towards girls at schools on a regular basis
- 59% of girls and young women aged 13-21 said in 2014 that they had faced some form of sexual harassment at school or college in the past year⁵

The Committee highlighted evidence from young people that "sexual harassment has become a normal part of school life," and found "an alarming inconsistency in how schools deal with sexual harassment and violence, which is mostly targeted at girls, a disregard for existing national and international equality obligations, and a lack of guidance and support for teachers."⁶

The Committee's recommendations included:

- Legislation to ensure every school takes appropriate action to prevent and respond to sexual harassment and sexual violence, with support from Government including clear national guidance.
- Ofsted and the Independent Schools Inspectorate to assess schools on how well they are recording, monitoring, preventing and responding to incidents of sexual harassment and sexual violence.

⁴ House of Commons Women and Equalities Committee, [Sexual harassment and sexual violence in schools inquiry launched](#), 20 April 2016

⁵ House of Commons Women and Equalities Committee, ['Widespread' sexual harassment and violence in schools must be tackled](#), 13 September 2016

⁶ Ibid.

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- Making sex and relationships education (SRE) a statutory subject for all children at primary and secondary school.⁷

More detail is available in the [full report](#).

Government response

The [Government's response](#) to the Committee's report was published in November 2016.

The response did not commit to further legislation, citing existing requirements, but did announce a review of the relevant guidance:

21) Despite these recent revisions [to the Keeping Children Safe in Education guidance], we recognise that the findings of the inquiry suggest we may need to reconsider the specific focus the guidance gives to this issue. We will invite sector specialists to join an advisory group to review existing DfE guidance including KCSIE and behaviour and bullying guidance and consider how the committee's concerns and recommendations can be taken on board. We will convene the group at the earliest opportunity and look to review both sets of guidance as a priority.

22) We will also ask the advisory group to consider what further advice and guidance schools might need to help them understand how their existing responsibilities fit together to provide a basis for tackling sexual harassment and sexual violence, and what those sources of advice might be.⁸

The response noted that Ofsted had amended its [School Inspection Handbook](#) in September 2016, so that, as part of an inspection:

[...] inspectors will request that the following information is available at the start of the inspection: "records and analysis of bullying, discriminatory and prejudicial behaviour, either directly or indirectly, including racist, sexist, disability and homophobic bullying, use of derogatory language and racist incidents."⁹

The response did not contain a commitment to statutory SRE or PSHE, although this position has since changed (see section 1.4).

The [Committee stated](#) that the Government needed to go "much further" in dealing with sexual harassment in schools, and that it intended to return to the subject in 2017.¹⁰

Evidence session with Ministers (October 2017)

In October 2017, the Women and Equalities Committee held an [evidence session](#) with Anne Milton, the Minister for Women, and Nick Gibb MP, Minister for Equalities and also for schools.

During the session, Mr Gibb confirmed that the Government would consult on revised *Keeping Children Safe in Education* guidance in November 2017.¹¹

⁷ Ibid.

⁸ House of Commons Women and Equalities Committee, [Sexual harassment and sexual violence in schools](#), November 2016, p4

⁹ Ibid., p9-10

¹⁰ Women and Equalities Committee, [New law needed to protect children from sexual harassment and violence](#), 29 November 2016

¹¹ Women and Equalities Committee, [Oral evidence: Work of the Government Equalities Office, HC 356](#), 11 October 2017, Q45

Mr Gibb also responded to questions from Jess Phillips on perpetrators being placed in classrooms with their victims, and stated that interim advice would be issued on peer-on-peer abuse:

Q61 Jess Phillips: The guidance that you just read out does not explicitly say anywhere, “Do not put a perpetrator back in a classroom with a victim”.

Mr Gibb: No, it does not.

Q62 Jess Phillips: Is there any reason for that?

Mr Gibb: This guidance cannot anticipate every single possible circumstance that could occur, so it is written in general terms. It says that the policies of the school “should be clear as to how victims of peer-on-peer abuse will be supported”. That, to me, would include issues of not putting those two children in the same class. [...]

Q64 Jess Phillips: I understand that every case is completely different. However, I would say that it is a fairly basic presentation of all victims’ laws for the past 20 or 30 years that you try to remove a victim from a situation, for example, in court or in health services; keeping a victim and perpetrator separate, has pretty much underpinned every single victim piece of legislation for the past 30 years. Would the Minister consider updating the guidance in order that this one could also be underpinned with the same principle?

Mr Gibb: ...we are going to revise this guidance and the start of that process will happen this November, but also we are going to issue interim advice about peer-on-peer abuse more urgently, as you say.¹²

The [advice](#) was published in December 2017 and the Government is consulting on whether it should be revised. More information is provided in section 1.1.

1.4 Relationships and sex education and PSHE

Current position

Local authority maintained schools in England are obliged to teach sex and relationships education (SRE) from age 11 upwards, and must have regard to the Government’s [SRE guidance](#). Academies and free schools, the majority in secondary education in England, do not have to follow the National Curriculum and so are not under this obligation. If they do decide to teach SRE, they also must have regard to the guidance.

Parents are free to withdraw their children from SRE if they wish to do so. The only exceptions to this are the biological aspects of human growth and reproduction that are essential elements of National Curriculum Science.

Statutory RSE: Children and Social Work Act 2017

On 1 March 2017, the Education Secretary, Justine Greening, [announced](#) her intention to put ‘Relationships and Sex Education’ – rather than SRE – on a statutory footing. She also announced her

¹² Ibid., Q61-64

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intention to create a power to make personal, social, health and economic education (PSHE) statutory in future.¹³

Following consultation, the RSE proposals would be put in place for teaching to start in September 2019.

The proposals involve:

- All primary schools in England teaching 'Relationships Education'
- All secondary schools teaching 'Relationships and Sex Education'
- Reformed statutory guidance, following consultation
- Retaining the parental right of withdrawal from sex education
- Flexibility for schools in their approach, including for faith schools to teach within the tenets of their faith

Legislation to make RSE statutory was passed shortly before parliament dissolved for the 2017 General Election. Section 34 of the [Children and Social Work Act 2017](#) provides for relationships and sex education to be taught in all schools in England. Section 34(1) states:

(1)The Secretary of State must by regulations make provision requiring—

(a) relationships education to be provided to pupils of compulsory school age receiving primary education at schools in England;

(b) relationships and sex education to be provided (instead of sex education) to pupils receiving secondary education at schools in England.

Call for evidence

The Department for Education published a [call for evidence on relationships and sex education](#) in December 2017.¹⁴

The call for evidence asks for the subjects interested parties believe should be priorities for teaching relationships education at primary level and relationships and sex education at secondary level, as well as online issues that might be important to include, and how best to provide information for parents.

The call for evidence is open until 12 February 2018.

Further information

More information on RSE can be found in the Library briefing [Sex and Relationship Education in Schools \(England\)](#), CBP 6103.

Statutory PSHE?

Justine Greening's March 2017 [announcement](#) also set out the Secretary of State's intention to create a power to make personal, social, health and economic education (PSHE) statutory in future, following further work and consultation:

¹³ Department for Education, [Policy Statement: Relationships Education, Relationships and Sex Education, and Personal, Social, Health, and Economic Education](#), March 2017

¹⁴ Department for Education, [Education Secretary launches RSE call for evidence](#), 19 December 2017

The amendments [to the *Children and Social Work Bill*] also create a power enabling the Government to make regulations requiring PSHE to be taught in academies and maintained schools – it is already compulsory in independent schools. By creating a power on PSHE, we are allowing time to consider what the right fit of this subject is with Relationships Education and Relationships and Sex Education.¹⁵

It is intended that the announced changes to Relationships and Sex Education would be in place for teaching to begin in September 2019. No indication has been given of a timetable for the potential introduction of statutory PSHE.

Section 35 of the [Children and Social Work Act 2017](#) provides for PSHE to be made statutory at all schools in England through regulations.

A [Policy Statement](#) published alongside the announcement indicated that PSHE would be reviewed, in the context of statutory Relationships and Sex Education, to determine what the subject's makeup could be with statutory status, under the following 'broad pillars':

- Healthy bodies and lifestyles, including keeping safe, puberty, drugs and alcohol education;
- Healthy minds, including emotional wellbeing, resilience, mental health;
- Economic wellbeing and financial capability;
- Careers education, preparation for the workplace and making a positive contribution to society.¹⁶

Call for evidence

The Department for Education's [call for evidence on relationships and sex education](#) in December 2017, discussed in the previous section, included questions on the most important subjects to cover as part of primary and secondary level PSHE, and how much flexibility schools should be given in their provision.

The call for evidence is open until 12 February 2018.

Further information

Further information can be found in the Library briefing on [Personal, social, health and economic education in schools \(England\)](#), CBP 7303.

1.5 Allegations against teachers or other pupils

Allegations against teachers

Schools, along with other bodies, should have clear policies for dealing with allegations against staff members. A clear distinction should be made in such policies between an allegation, a concern about the quality of care or practice and a complaint.

¹⁵ [HC Deb 1 March 2017, HCWS509](#)

¹⁶ Department for Education, [Policy Statement: Relationships Education, Relationships and Sex Education, and Personal, Social, Health, and Economic Education](#), March 2017

Chapter 4 of the Library briefing [Safeguarding in English schools](#) provides a summary of the procedures that should be followed.

The procedure followed will depend heavily on the circumstances of a particular case and can range from no action being taken, to a multi-agency strategy discussion, a criminal investigation and/or dismissal of the staff member concerned.

Chapter 4 of the statutory [Keeping Children Safe in Education](#) provides more detailed guidance.

Allegations against pupils

The statutory [Keeping Children Safe in Education](#) guidance, applicable to schools and colleges, sets out the following information on allegations of abuse made against other children, and the child protection policies schools should have in place to address them:

76. Staff should recognise that children are capable of abusing their peers. Governing bodies and proprietors should ensure their child protection policy includes procedures to minimise the risk of peer on peer abuse and sets out how allegations of peer on peer abuse will be investigated and dealt with. The policy should reflect the different forms peer on peer abuse can take, make clear that abuse is abuse and should never be tolerated or passed off as “banter” or “part of growing up”. It should be clear as to how victims of peer on peer abuse will be supported.

77. Peer on peer abuse can manifest itself in many ways. Governors and proprietors should ensure sexting and the school or college’s approach to it is reflected in the child protection policy. The department provides searching screening and confiscation advice for schools. The UK Council for Child Internet Safety (UKCCIS) Education Group has recently published sexting advice for schools and colleges.

78. Governors and proprietors should ensure the child protection policy reflects the different gender issues that can be prevalent when dealing with peer on peer abuse. This could, for example, include girls being sexually touched/assaulted or boys being subject to initiation/hazing type violence.¹⁷

The December 2017 advice for schools on [Sexual violence and sexual harassment between children in schools and colleges](#) provides more detailed advice on how schools and colleges should respond to different allegations. As discussed in section 1.1, this advice is in place but also part of a consultation on revised safeguarding guidance for schools open until February 2018, and may be amended as a result.

The advice provides information on how schools should respond to accusations of sexual violence or harassment, and subsequent steps that should be taken, including how to safeguard the victim and the alleged perpetrator, including whether they should be placed in classes together.

Governors should also ensure that sexting, and the school’s approach to it, is reflected in the child protection policy. Further guidance is available in [advice on searching, screening and confiscation](#) published by the

¹⁷ Department for Education, [Keeping Children Safe in Education](#), September 2016, p19

Department for Education and in [sexting advice for schools and colleges](#), published by the UK Council for Child Internet Safety Education Group.¹⁸

1.6 Schools in Scotland, Wales, and Northern Ireland

Education is a devolved policy area, and as a result decisions on many relevant areas are taken by the Governments of Scotland, Wales, and Northern Ireland. This section provides links to key relevant information.

Scotland

- Scottish Government, [Safe and well: Good practice in schools and education authorities for keeping children safe and well](#)
- Scottish Government, [Let's Stop Bullying: Advice for Parents and Families](#)
- Scottish Government, [Relationships, Sexual Health and Parenthood Education](#)

Wales

- Welsh Government, [Keeping Learners Safe](#)
- Welsh Government, [National Strategy on Violence against Women, Domestic Abuse and Sexual Violence – 2016–2021](#)
- Welsh Government, [A Whole Education Approach to Violence against Women, Domestic Abuse & Sexual Violence in Wales](#)
- Welsh Government, [Respecting others: anti-bullying guidance](#)
- Welsh Government, [Sex and relationships education in schools](#)

Northern Ireland

- Department of Education, [Publications and guidance on child protection issues for schools](#)
- Department of Education, [Relationships and Sexuality Education](#)
- NI Direct, [Dealing with bullying and getting support](#)

¹⁸ Ibid.

2. Further and higher education (post-18 education)

2.1 Overview

Universities and FE colleges face different challenges to schools with regard to the welfare and protection of students as most students are over 18 and are adults. Different issues also arise in situations where students are living and socialising together. Higher and further education institutions therefore have the difficult task of balancing the need to ensure that students have a safe and equal environment with allowing students freedom and autonomy.

The main focus of attention in this area has been on universities and higher education institutions, but the same issues and legal framework apply to further education institutions.

Further education institutions which admit students under the age of 18 have to comply with the same safeguarding regulations as schools.

Is there a problem with sexual harassment in colleges and universities?

In recent years there have been growing concerns about the welfare of students in universities and colleges in the UK and it has been suggested that sexual violence and harassment in HEIs is increasing.

Since 2010 the NUS has carried out research into 'lad culture', sexual harassment and sexual assault in colleges and universities. Their report [*Hidden Marks A study of women students' experiences of harassment, stalking, violence and sexual assault*](#), 2010 found that:

Over two thirds of respondents (68 per cent) have experienced some kind of verbal or non-verbal harassment in and around their institution.¹⁹

The [2014 Annual Report](#) of the Office of the Independent Adjudicator (OIA) identified sexual harassment and 'lad culture' as an emerging issue of concern:

Sexual harassment and the 'lads' culture'

The NUS and many providers have taken a close interest, both in the UK and overseas, in sexual harassment on campus. Student and national media carry frequent stories about what is euphemistically termed 'laddish' behaviour, often from sports clubs and other student societies. There are disturbing reports of what one student newspaper called the 'rape culture'. One student committed suicide in 2014, following allegations of persistent sexual harassment.

The OIA receives a small number of complaints each year from students who may be victims, or who are alleged or convicted perpetrators, of harassment and sexual assault. Some of these cases relate to crimes for which perpetrators have been convicted by the courts. Others cover incidents that have been dealt with

"incidents of sexual violence and sexual harassment are prevalent within wider society. Universities are a microcosm of society and are therefore affected by these same problems.

Universities need to foster a culture which does not accept the normalisation of this behaviour"

Universities UK, [*Challenging the Culture*](#) p17 para 22

¹⁹ NUS, [Hidden Marks A study of women students' experiences of harassment, stalking, violence and sexual assault](#), 2010 p3

internally under a provider's disciplinary regulations, but do not lead to criminal charges. Some of the students involved struggle to understand that behaviour that they wrongly believe is acceptable breaks disciplinary codes, and sometimes laws, that have been put in place to protect others.

It should be of concern to everyone working and studying in higher education that cases occur of unwanted physical contact, unwanted advances, initiation ceremonies, sexual innuendo and threats. We have made, and providers have implemented, recommendations about improving support and strengthening processes to help students, and also staff, involved in such cases. The OIA's role is not to judge the behaviour but to look at how the providers dealt with complaints or disciplinary cases. One case concluded in 2014 confirmed that a provider's decision to expel a student following complaints about indecent exposure was reasonable, but only after it was required to re-run the disciplinary process having mishandled the case first time around.

These are not easy issues to deal with. The OIA is in early stages of discussions with the NUS and other stakeholders on joint working to provide additional guidance.²⁰

In its 2015 Annual Report, the OIA reported that it continued to receive a "small but steady" number of complaints about the handling of sexual harassment cases by universities.²¹

***Guardian* investigation into sexual harassment in universities**

In March 2017 the *Guardian* published the results of an investigation into sexual harassment in universities. The investigation was based on a series of freedom of information requests sent to 120 universities across the UK asking for information on allegations of sexual misconduct against academic and non-academic staff. The responses to the request showed that students had made at least 169 allegations of sexual misconduct against academic and non-academic staff from 2011-12 to 2016-17. At least another 127 allegations about staff were made by colleagues.²²

As well as uncovering the scale of the problem, the investigation also suggested that universities had opaque and complex procedures and inconsistent record-keeping of incidents. The *Guardian* therefore suggested that the total number of recorded cases was likely to be conservative and that universities' records underestimated the scope of sexual misconduct.²³

Rachel Kryss, co-director of the End Violence Against Women Coalition, commented on the under-reporting of cases:

"There is no obligation on universities to record or report these issues, which means there will be many cases which just fall below the radar of this sort of inquiry. We know that institutions which take tackling sexual harassment and violence seriously, and have

²⁰ Office of the Independent Adjudicator, [Annual Report 2014](#), p20

²¹ Office of the Independent Adjudicator, Annual Report 2015, p21

²² The results of the survey are available on the *Guardian* website at, "[Sexual harassment allegations: find figures for UK universities](#)", 5 March 2017

²³ "[Why the true scale of university harassment is so hard to uncover](#)", *Guardian*, 5 March 2017

policies and systems in place to encourage reporting and train staff to deal with complaints as they arise, report higher numbers. It's the universities which aren't dealing with this openly which perversely appear to have fewer problems." ²⁴

The *Guardian* investigation into sexual harassment in UK universities was reported in the following articles:

- [Calls for action by universities on 'epidemic' of harassment on campus](#), *Guardian*, 6 March, 2017
- [Editorial: The Guardian view on sexual harassment in universities: taking it seriously](#), *Guardian*, 6 March 2017
- [Sexual harassment allegations: find figures for UK universities](#), *Guardian*, 5 March 2017
- [Why the true scale of university harassment is so hard to uncover](#), *Guardian*, 5 March 2017
- [Sexual harassment 'at epidemic levels' in UK universities](#), *Guardian*, 5 March 2017

2.2 Legal duties of further and higher education institutions

The legal duties of colleges and universities in this area are mainly governed by provisions in the *Equality Act 2010*. Further and higher education institutions also have a well - established common law duty of care towards their students which might come into play in cases where negligence by the institution has been alleged.

Section 149 of the *Equality Act 2010* contains the Public Sector Equality Duty (PSED); this duty requires that public bodies must have regard to certain matters when exercising their functions:

- the need to eliminate discrimination and harassment of women;
- the need to advance equality of opportunity for people with particular protected characteristics, which includes gender;
- the need to foster good relations between different groups, in this case between women and men.

The governing bodies of higher and further education institutions are public authorities for the purposes of the PSED. Universities and colleges must therefore have due regard to the need to eliminate discrimination and harassment and the need to foster good relationships between different groups when they formulate policies and practices in areas such as: sexual harassment, governance of student societies and sports teams, campus security, housing, bars and social spaces. The duty applies to decisions on individual cases, as well as to policy decisions.

The PSED also applies to students unions and student societies if they carry out a 'public function' on behalf of a university, for example, if they are funded by the university to carry out pastoral care or other activities on the university's behalf.

²⁴ *ibid*

End Violence Against Women produced a briefing in 2015, [*Spotted: Obligations to Protect Women Students' Safety & Equality*](#), which detailed universities' obligations under the PSED and under the *Human Rights Act 1998*.

2.3 Universities UK (UUK) sexual violence and harassment taskforce

In September 2015, the then Business Secretary Sajid Javid and the Universities Minister Jo Johnson asked UUK to set up a taskforce to look into issues of harassment, hate crime, and sexual violence on campuses.²⁵ The remit of the taskforce was to:

- develop a code of practice for institutions to support cultural change
- explore how a kitemark scheme could be developed and awarded to successful institutions
- explore how better to engage with Crime Prevention Officers
- ensure best use of the existing complaints mechanisms such as the Equality and Human Rights Commission (EHRC) and, for students, the Office of the Independent Adjudicator
- encourage institutions to ensure that the right links are in place with existing local activity, including through the Home Office Violence Against Women and Girls Strategy

The taskforce collected evidence from universities on the scale of the problem and on the wide range of initiatives that were used by universities to prevent such incidents and to respond effectively to these incidents.

The taskforce published its report in October 2016, [*Changing the culture: Report of the Universities UK Taskforce examining violence against women, harassment and hate crime affecting university students*](#). The report made the following recommendations on preventing and responding to incidents of sexual harassment and hate crime:

PREVENTION

The Taskforce recommends that universities should:

- adopt an evidence-based bystander intervention programme.
- ensure that partnership agreements between the student and the university highlight up-front the behaviours that are expected from all students as part of the university community, set out disciplinary sanctions and state the university's commitment to ensuring the safety and wellbeing of students.
- embed a zero-tolerance approach across all institutional activities including outreach activities with schools and further education colleges, engagement with local bars and

²⁵ Department for Business, Innovation and Skills Press Notice "[Business Secretary calls on universities to tackle violence against women](#)", 6 September 2015

nightclubs, student inductions (including international student inductions), and student information.

- take meaningful steps to embed into their human resources processes (such as contracts, training, inductions) measures to ensure staff understand the importance of fostering a zero-tolerance culture and are empowered to take responsibility for this.

RESPONSE

The Taskforce recommends that universities should:

- develop a clear, accessible and representative disclosure response for incidents of sexual violence and rape, working with relevant external agencies where appropriate.
- take reasonable and practicable steps to implement a centralised reporting system.
- conduct a thorough assessment of which staff members need to be trained and what training needs to be provided. A clear, multi-tiered training strategy covering different types of incident can then be developed.
- build and maintain partnerships with local specialist services to ensure consistent referral pathways for students.
- establish and maintain strong links with the local police and NHS in order to develop and maintain a strategic partnership to prevent and respond to violence against women, harassment and hate crime affecting students.

In October 2016 Universities UK published a further document, [*Guidance For Higher Education Institutions, How To Handle Alleged Student Misconduct Which May Also Constitute A Criminal Offence*](#).

This guidance covered the issues of sexual harassment and should be used by HEIs when drafting policies in this area. The guidance reflects the recommendations of the UUK taskforce and updates the previous guidance – the Zellick guidelines²⁶ which had been in operation since 1994.

Staff-to-student harassment

The primary focus of the UUK report was on student-to-student harassment, but the enquiry also received some evidence relating to staff-to-student sexual harassment and violence.²⁷

The report said that many universities had policies and codes of conduct on staff-student relationships, but where there were allegations of staff-to-student harassment there could be difficulties and conflicts of interest in the area of investigating cases.

In a blog in February 2017 Nicola Dandridge, chief executive of UUK said that “staff-to-student harassment is a problem that also needs to

²⁶ The non-statutory Zellick guidelines provided advice to universities on handling circumstances where a student’s alleged misconduct would also constitute a criminal offence.

²⁷ UUK [*Changing the culture: Report of the Universities UK Taskforce examining violence against women, harassment and hate crime affecting university students*](#) October 2016 p19

be acknowledged and tackled".²⁸ There are no national guidelines on how universities should respond to staff sexual harassment, or how to record it when it happens.²⁹

The [1752](#) group is a research and lobby organisation working to end staff-to-student sexual misconduct in higher education. The group has suggested that there is a lack of resources and expertise available for institutions in the area of staff-to-student harassment. A list of articles and reports on this issue is available on their website at [Resources](#).

Funding for initiatives to tackle sexual harassment in higher education

The Higher Education Funding Council for England (HEFCE) provides funding through the [Catalyst Fund](#) to support a range of student and sector priorities, including innovation in higher education, efficiency and effectiveness, and student interest issues.

In 2016 HEFCE asked HEIs to bid for funding to tackle sexual harassment on campus. The bids were assessed by the Catalyst Safeguarding Panel and in March 2017 HEFCE announced that it would award grants worth just over £2.45 million to 64 projects in universities and colleges. The projects cover a wide range of activity, including training and awareness raising, digital innovation, and new approaches to prevention and reporting of sexual harassment. A list of the projects is on the HEFCE website at [Catalyst Fund: Student safeguarding](#).

2.4 Institutional policies on sexual harassment

It is not compulsory for higher and further education institutions to have sexual harassment policies in place but many do. These policies define harassment and set out procedures for reporting cases and dealing with complaints.

Further education

Further education institutions have different issues to higher education issues when formulating policies in the area of sexual harassment as many colleges admit students under 18 as well as adults.

Further education colleges and sixth-form colleges which admit students under the age of 18 have to comply with the same safeguarding regulations as schools – guidance on the requirements are set out in a Department of Education publication, [Keeping children safe in education Statutory guidance for schools and colleges](#).³⁰ Colleges will therefore need to have safeguarding or child protection policies in place and staff should receive training to deal with these issues. An example

²⁸ UUK blog, "[Sexual abuse and harassment by university staff against students – further work to address the issue](#)", 3 February 2017

²⁹ "[Why the true scale of university harassment is so hard to uncover](#)", *Guardian*, 5 March 2017

³⁰ Department for Education, [Keeping children safe in education Statutory guidance for schools and colleges](#) September 2016

of a [Safeguarding Policy](#) is available on the College of North West London website.

Colleges should also have policies and procedures in place to deal with over 18s including policies on: equality and diversity, drugs and alcohol, student conduct and complaints policies. Sexual harassment in colleges tends to be covered under policies to deal with bullying and general harassment.

Higher education

Universities have adopted a variety of approaches to dealing with sexual harassment.

Many HEIs do not have separate policies in place to deal specifically with sexual harassment or violence – these issues tend to be dealt with by overarching policies on: bullying, harassment, equality, diversity, student conduct and staff-student relationships.

Some universities however such as the Universities of Oxford (see Box 1), [Loughborough](#), [Cambridge](#), [West of England](#), have implemented specific policies and procedures on sexual harassment and assault.

In October 2016 Goldsmiths, University of London introduced a 10 point plan to address [Sexual Harassment](#); this strategy was put in place following a series of complaints of sexual harassment and violence against staff.³¹ The policy includes the creation of a new post to undertake an institutional review and to improve the framework around reporting sexual harassment.

Box 1: University of Oxford sexual harassment policy

The University of Oxford has a comprehensive policy on sexual harassment and provides detailed information.

Information on processes for dealing with harassment are on the university's [Harassment Advice](#) website. The webpage [University Policy and Procedure on Harassment](#) sets out policy in this area. The policy states that "the University does not tolerate any form of harassment or victimisation and expects all members of the University community, its visitors and contractors to treat each other with respect, courtesy and consideration".

The policy defines harassment and gives examples of behaviour which **may** amount to harassment under the Policy :

- unwanted physical contact, ranging from an invasion of space to an assault, including all forms of sexual harassment, including:
 - i. inappropriate body language
 - ii. sexually explicit remarks or innuendoes
 - iii. unwanted sexual advances and touching
- offensive comments or body language, including insults, jokes or gestures and malicious rumours open hostility, verbal or physical threats
- insulting, abusive, embarrassing or patronising behaviour or comments, humiliating, intimidating, and/or demeaning criticism
- persistently shouting at, insulting, threatening, disparaging or intimidating an individual

³¹ ["New sexual harassment claims at Goldsmiths spark calls for inquiry"](#), *Guardian*, 6 March 2017

- constantly criticising an individual without providing constructive support to address any performance concerns
- persistently overloading an individual with work that s/he cannot reasonably be expected to complete
- posting offensive comments on electronic media, including using mobile communication devices
- threatening to disclose, or disclosing, a person's sexuality or disability to others without their permission
- deliberately using the wrong name or pronoun in relation to a transgender person, or persistently referring to their gender identity history
- isolation from normal work or study place, conversations, or social events
- publishing, circulating or displaying pornographic, racist, homophobic, sexually suggestive or otherwise offensive pictures or other materials.

The procedures for bringing a complaint of harassment are set out on the university's [Harassment Advice](#) website.

Other institutions, such as Durham University, have adopted high-level strategies to address violence against women, harassment and hate crime.

Durham University Sexual Violence Taskforce

In 2015 Durham University set up the [Sexual Violence Task Force \(SVTF\)](#). The Taskforce researched existing policy and practice around receiving, investigating and resolving complaints of sexual violence with the aim of embedding a culture where incidents of sexual violence and misconduct were not tolerated. The outcome of the enquiry provided guidance to HEIs seeking to address these issues.

The Taskforce report made the following recommendations:

The University will:

- Have specialist policies and procedures in place for investigating incidents of sexual violence.
- Ensure that every policy and practice is tested against the organising principle of empowering those who make such reports.
- Undertake a case management based approach in individually assessing and managing each report.
- Ensure that there are links with the safeguarding policies, procedures and practices of the University and cases of sexual violence.
- Ensure that there is a combination of external and internal specialist counselling support for all parties, responsive to their individual needs.
- Encourage greater reporting through communications to students and staff.
- Enact culture change through bystander intervention and consent workshops for all students.

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- Undertake student leader and staff training on working with those who disclose sexual violence.
- Embed training messages across a number of sessions for students and staff.
- Launch a campaign to ensure the visibility of institutional policies and practices in supporting those who report.
- Ensure senior leadership engagement with operational oversight from a member of the University's Executive Committee.
- Ensure that reporting of sexual violence cases and action taken is included in the annual assurance report to the University's governing body, Council.

The work of Durham University was cited as a case study in the UUK report, *Changing the Culture*.

Sexual consent classes

In response to the issue of sexual harassment some universities have established consent classes for students. The universities of Cambridge, Oxford and Durham have made consent classes obligatory for new students, other universities have introduced similar courses on an optional basis.

Processes for dealing with sexual harassment cases

Universities and colleges generally investigate allegations of sexual harassment and misconduct through their own internal complaints procedures, this may involve an academic interviewing an alleged victim and perpetrator, reviewing any evidence of misconduct, and writing a report. The complainant may be able to get support, but not legal advice, during this from their student services.

Complainants who are not happy with the outcome of a case can generally appeal their case through the institutions internal appeal process. If they are still unsatisfied there is a final route of appeal to the Office of the Independent Adjudicator for HE cases and to the Education and Skills Funding Education and Skills Funding Agency for FE cases. This appeal process examines whether universities and colleges have properly followed their own procedures.

In some universities complaints of staff sexual harassment may be dealt with by HR processes.

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