

# GUIDANCE FOR ALLEGATIONS OF STUDENT MISCONDUCT



## IMPLEMENTATION OF THE UNIVERSITIES UK / PINSENT MASON'S GUIDANCE ON HOW TO HANDLE ALLEGED STUDENT MISCONDUCT WHICH MAY ALSO CONSTITUTE A CRIMINAL OFFENCE

### INTRODUCTION

In 2016, a taskforce set up by Universities UK (UUK) to address all forms of harassment, hate crime and gender-based violence, recommended a review of the Zellick guidelines on how to handle student misconduct which may constitute a criminal offence. The recommendation was taken forward and new [guidance](#) was prepared by Pinsent Masons on behalf of UUK, and published in October 2016. The guidance provides universities with a framework to support them in responding to all types of student misconduct – with specific recommendations made in relation to sexual misconduct – and forms part of a package of support provided by UUK to support universities in enhancing their responses to all forms of harassment.

While the principles and framework set out in the revised guidance have been widely welcomed by the sector, it has been challenging for institutions to make the changes required to implement the recommendations, and this has been an area of continued focus for UUK.

In 2017, UUK held a roundtable discussion with senior managers, expert practitioners, external organisations and legal advisers, along with Nicola Bradfield, author of the guidance, to explore whether additional guidance and practical support for the sector might be helpful. At the roundtable, institutions raised a number of challenges faced when implementing the guidance, including:

- ensuring procedures are in place to facilitate reporting
  - ensuring support, advice and assistance is also available for responding students
  - developing centralised and robust systems for recording (noting the need to comply with the new General Data Protection Regulations from May 2018 in terms of how long information should be retained)
  - how to respond when a victim/survivor comes forward but asks the institution not to take any action, which could include going to the police
  - ensuring that misconduct/discipline policies, student codes of conduct (and/or university statutes, regulations, terms and conditions) are clear with offences, and sanctions articulated in a way that allows cases to be dealt with effectively by an institution, for example, if an institution wanted to take precautionary action to protect both parties while an investigation is taking place, this would need to be reflected in the disciplinary policy/procedure
  - how to ensure that all students are aware of the misconduct/discipline policies, student codes of conduct (and/or university statutes, regulations, terms and conditions)
  - assistance in how proceedings, panels and investigations are set up and managed
  - what language to use, noting that some police forces now refer to victims/survivors and alleged perpetrators as a 'reporting student' and 'responding student'
- how to respond to a first disclosure
  - how to ensure that an institution can provide specialist support for victims/survivors of sexual misconduct and violence, recognising that specialist skills may be needed

- how to respond when criminal investigations take a long time and the police fail to provide regular updates on the progress of the case

Middlesex University London is working with UUK to collate the learning from a number of institutions who have already incorporated the Pinsent Masons guidance into their student discipline processes. The objective of the work is to share practices and gather feedback on approaches, and to examine the implementation of the guidance on student cases presented in this academic year. The universities currently involved include the University of Bath, Keele University, the University of Liverpool, and the University of St Andrews. For further information, please contact David Malpas, Director of Student Affairs at Middlesex University London: [D.Malpas@mdx.ac.uk](mailto:D.Malpas@mdx.ac.uk). The findings from this research will be shared with the sector later in 2018.

Given there was no precedent or ‘off-the-shelf’ solution to assist with the implementation of the guidance, UUK agreed to work in partnership with Coventry University to provide some practical support for institutions. As an effective response to a case is likely to involve many functions within and across the institution, Coventry University is developing a case management system which will support the whole process end to end.

The project will provide information on:

- I. establishing a **case management system** to facilitate the reporting process for incidents that could constitute a criminal offence (including sexual misconduct), and enable the institution to capture evidence and provide support to the reporting and responding student

- II. The development of a **toolkit** which will include template documentation and guidance notes to assist an institution at each stage of the process from end-to-end, which can be customised according to an institution’s own context

The pilot project will be completed in the autumn of 2018. Given that many universities are already implementing the guidance, updates will be published as the case management process is developed. The first update note provides guidance on dealing with the initial disclosure of an incident. A two-stage approach is proposed, and this note focuses on the first stage which involves basic training for staff so that they can identify a first disclosure and take the steps required to ensure that reporters move to the second stage. A further note will be published next month describing stage two of the process, which will cover the role of a case manager.

It should be noted that these updates do not constitute legal advice and will not be appropriate for every type of case that may arise.

UUK acknowledges that as independent autonomous bodies, institutions will devise their own processes to implement the guidance and will be at different stages in the implementation process. Nonetheless, we hope that the notes produced by Coventry University will be helpful in supporting institutions in taking the guidance forward.

Alongside this project, LimeCulture Community Interest Company – a national sexual violence and safeguarding organisation – is working with Keele University to evaluate the case management process introduced by the university. Reflections and learning points from this process will be shared at a UUK seminar in July 2018.

# UPDATE NUMBER 1: RESPONDING TO FIRST DISCLOSURES

## INTRODUCTION

The Universities UK/Pinsent Masons guidance published in 2016 represents a significant departure from the position taken in the 'Zellick guidelines', which recommended that universities should not undertake any disciplinary action in relation to alleged misconduct which could also constitute a serious criminal offence. The previous view was that such matters could only be dealt with by the police, and so if the victim decided not to report the incident to the police or if the police decided to take no action, then that would be an end to the matter.

By contrast, the new guidance asserted that it was no longer appropriate for higher education institutions to do nothing in serious cases of alleged student misconduct, and so provided a framework to assist universities in the handling of sensitive and complex matters, while ensuring that the rights of the reporting and responding students were protected and upheld.

While the principles and framework have been widely welcomed by the sector, the challenge has been for institutions to make the changes required to implement the recommendations. Universities must take a risk-based approach when balancing their various duties and obligations to the reporting student, the responding student and other members of the university community, and this means that each decision has to be taken on a case-by-case basis. In addition, practical implementation is difficult as it requires changes to structures, systems, processes and procedures, for which there is no precedent nor 'off-the-shelf' solution.

Coventry University is one of the institutions implementing the new guidance. Not long after it was published, the author, Nicola Bradfield, joined the university as Group Director Legal Services, and is working with UUK and a core team of staff to create a new, integrated case management system, to facilitate the reporting and management of incidents, with a particular focus on alleged misconduct that is sexual or motivated by a prejudice.

The interests and duties of numerous stakeholders have been taken into account in the development of the new system, and the interaction of civil and criminal law is key. As a consequence, Coventry University's core team consists of five individuals possessing expertise in the relevant areas – Nicola Bradfield; Jane Osmond (project lead); Chris Haycock (expert in criminal law and process); Tara Hepworth (specialist in student matters); and Rachel Drinkwater (systems analyst).

The development and implementation of the system is at an early stage and will take a number of months to complete. UUK will therefore publish updates from time-to-time about Coventry University's progress, to assist other institutions who are embarking on the same journey.

The first issue considered is how institutions should deal with the initial disclosure of an incident. Please note that the following does not constitute legal advice and will not be appropriate for every type of case that may arise.

## FIRST DISCLOSURES

It is essential that when an incident is first reported by a student or staff member (**‘first disclosure’**) it is dealt with appropriately by institutions. Failure to provide the correct advice and support and/or take the relevant action at this initial stage could result in detrimental outcomes for the reporting person (**‘reporter’**), the person who the matter is reported to (**‘recipient’**), and the institution.

For example, the reporter may be dissuaded from taking the matter further when they would otherwise have done so; the recipient may make a record which prejudices any future criminal prosecution; or the recipient may fail to take relevant action and the misconduct may escalate.

The difficulty which arises is that any employee of a university could be the recipient of a first disclosure, and institutions have high numbers of employees who work in a wide variety of roles. The challenge therefore is to ensure that first disclosures are dealt with appropriately.

One solution would be to provide specialist training to all staff, but staff turnover and the nuances associated with different roles makes this almost impossible to achieve.

Another solution would be for staff to refuse to take a first disclosure and, instead, direct the reporter to someone within the university who has received the specialist training. However, given the nature of the incident, reporters will often wish to tell someone that they know and trust. To suggest that the reporter should be ‘turned away’ in that scenario or that the recipient should ‘not listen’ would not be appropriate.

In view of this, staff at Coventry have concluded that the best way to deal with first disclosures is to put in place a two-stage approach:

The **first stage** is to provide all staff with basic training and resources so that they can:

- identify a first disclosure
- be able to provide appropriate initial advice and support
- take steps to ensure that reporters move to the second stage

The **second stage** is to provide an individual(s) (case manager) with specialist training so that they can:

- provide substantive advice to the reporter in relation to the options available
- manage the case going forward

As part of the management of the case, the case manager will seek to identify appropriate support for the reporter and assist the reporter to obtain that support. This is likely to include the provision of support from the university’s counselling and health services and/or from external specialists such as Rape Crisis.

The rest of this briefing will describe the steps required to implement stage one of this process.

## STAGE ONE

Staff will be provided with basic training on how to identify a first disclosure, and what to do if a first disclosure is made. All materials will be available via an online case management system, and all records will be made and kept on that system.

Recipients will be asked to adopt the approach set out below.

1. Listen to the reporter but do not question him/her to elicit details of the incident.
2. Make a very brief note.

A template will be prepared to enable the recipient to make an appropriate record (this will be published in one of our subsequent updates).

The information to be recorded should be:

- the names of the individuals involved
- a brief note of the alleged incident (in the words of the reporter)
- a note of the advice given, and any action taken by the recipient

The main reasons for not taking a detailed note of the first disclosure at this stage are:

- the focus should be on listening and providing immediate assistance to the reporter
- the recipient could be required to disclose any notes that he/she takes to the police in any subsequent criminal proceedings
- at stage one, there is a high risk that any detailed note would not be accurate, comprehensive or in the correct form as the recipient will not have received the specialist training, and the reporter is likely to be upset, distressed, and potentially in shock

3. Explain to the reporter that the next step is to speak to/meet a case manager within the university, who will be able to set out the options available, and who will manage the case going forward. This will include identifying appropriate support for the reporter and assisting the reporter to obtain that support, either from an internal team, or an external specialist.
4. If possible, arrange a call/meeting with a case manager immediately. If not, explain that a case manager will be in contact within an agreed timescale and provide the reporter with a set of guidance notes which they can take away to consider. The guidance notes should include the following information:
  - a. details of specialist internal teams and external agencies where students/staff can obtain immediate support
  - b. details of any action which should be taken immediately, eg to preserve evidence by attending the nearest sexual assault referral centre or hospital
  - c. details of the options available to the reporter and their potential outcomes, and the process related to each option, making the difference between criminal and disciplinary processes and outcomes very clear. The main options will be:
    - i. make a report to the police
    - ii. take time to consider the options
    - iii. not make a report to the police but request that the university deals with the case under its disciplinary regulations
    - iv. take no further action

5. Note that at this stage, the reporter may decide that they do not want any action to be taken nor any further advice or support provided. The recipient should still record the first disclosure and that record will be checked by the case manager to ensure that all appropriate advice was given and all appropriate actions taken by the recipient, and that there is no overriding reason why further action needs to be taken, eg to protect the reporter or others from harm or to prevent a crime from taking place.

## ENSURING CONSISTENCY OF APPROACH

To ensure consistency of approach, staff will be required to log any first disclosures on the online system and to record the advice given and action taken. Apart from in the circumstances set out below, that report will automatically be sent to a case manager who will contact the reporter within an agreed timescale, and either take the matter forward, or undertake a check of the record if the reporter has decided that they do not want any action to be taken nor any further advice or support to be provided.

A complication arises if the reporter makes a first disclosure in confidence to the recipient and refuses to take the matter any further. A record should still be made for the reasons set out above, but institutions should comply with the reporter's request and not pass the information onto the case manager unless there is an overriding reason why disclosure of that information is required, eg to protect the reporter or others from harm or to prevent a crime from taking place. If confidentiality is not maintained, this could undermine the relationship of trust and confidence between the recipient and the reporter, and potentially result in the reporter declining any further support or assistance. However, the recipient will not have been trained to make the decision about whether any further disclosure of the information should be made and so should be encouraged to contact the university's legal team to obtain advice.