

# Our response to the Office for Students' consultation on a new approach to regulating harassment and sexual misconduct in English higher education

Universities UK (UUK) is the collective voice of 140 universities in England, Scotland, Wales, and Northern Ireland. Its mission is to create the conditions for UK universities to be the best in the world, maximising their positive impact locally, nationally, and globally. Universities UK acts on behalf of universities represented by their heads of institution.

This document outlines UUK's response to the [Office for Students \(OfS\) consultation](#) on a new approach to regulating harassment and sexual misconduct in English higher education.

## Background

The Office for Students (OfS) has invited responses to a consultation on its proposed new approach to the regulation of harassment and sexual misconduct affecting students in registered higher education providers.

### **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.**

We disagree with the proposal to introduce a new condition of registration. Tackling harassment and sexual misconduct in higher education is vital to ensuring all students

can live, work and study in a safe environment. UUK has been committed to this goal for many years, including by developing our [‘Changing the Culture’ guidance](#), which provides a strategic framework to support universities in preventing and responding to violence against women, harassment, and hate crime. Our members share this commitment and have undertaken significant work in recent years.

Whilst we agree that the sector must continue to do more to tackle harassment and sexual misconduct, we do not believe these issues represent a suitable matter for OfS regulation. A continuation or evolution of the current collaborative, self-regulatory approach would be far more appropriate than opting to expand the OfS’ already wide remit.

UUK’s own guidance outlines the importance of institutions taking context-specific approaches to tackling harassment and sexual misconduct. OfS’ proposals demonstrate the inherent difficulties in reducing this issue to a detailed and standardised set of ‘rules’, intended to apply to a wide diversity of over 400 registered providers and their students – studying in very different ways (often with the involvement of third-party partners), living in different contexts, and with a wide range of ages and backgrounds. There is already a strong legal basis for universities to tackle harassment and sexual misconduct, and the proposed condition of registration does not usefully add to this. Conversely, tackling harassment goes beyond the introduction of systems, policies and processes, and regulation cannot account for many of the cultural factors conducive to tackling harassment and sexual misconduct, such as leadership commitment.

While those who do not take sufficient steps to prevent and respond to harassment and sexual misconduct should be held to account, OfS must recognise the complexity and challenge involved in tackling these issues, which differ substantially in nature to issues covered in many other conditions of registration. The introduction of an enforcement-led approach is likely to inhibit an open culture whereby OfS and the sector can work together in a spirit of continuous improvement to find solutions to complex, shared challenges, as has been the case for several years.

Finally, the introduction of regulation inevitably incurs a cost for our members, which will require trade-offs with other important areas of focus. Especially in the context of sector concerns about the growing regulatory burden associated with OfS compliance, we consider that the introduction of a condition of registration is likely to have significant resource impact - resource which would need to be diverted from other important areas, without necessarily leading to an improvement in the issue at hand.

If the OfS does introduce a condition of registration, it is crucial that this is proportionate, provides the flexibility for institutions to act in a context-specific way, and minimises unnecessary burden and bureaucracy. OfS must also produce clear guidance, with precise expectations of institutions, and be clear about what would constitute successful outcomes.

**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.**

We believe that universities taking a self-regulatory approach to tackling harassment and sexual misconduct is the optimum way to solve this issue. We are disappointed that the Office for Students only gave higher education providers ten months to implement the voluntary 'statement of expectations' before commissioning an evaluation. Although the sector clearly has further to go, this independent evaluation did find evidence of significant progress, especially in relation to senior leadership commitment, and improvements in universities' systems, policies, and processes. This progress is testament to the self-regulatory approach led by UUK, OfS and other sector groups.

OfS should clearly define what would constitute a successful institutional approach, and could consider an option whereby those who fail to demonstrate sufficient progress within a certain timeframe would be subject to a condition of registration, while others remain under the self-regulatory approach. This would help strike a balance between protecting students from harassment and sexual misconduct, and reducing regulatory burden on higher education providers.

Relatedly, we think the OfS should develop a mechanism to review its regulation, so that where the sector has taken control of an issue it can move away from strictly enforcement-led approaches. If the OfS does enact its proposal for a new condition of registration on harassment and sexual misconduct, this is an area where we would recommend such a review.

**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.**

We are supportive of the decision to define harassment as set out in section 26 of the Equality Act 2010. We understand this definition is already commonly being used in

the sector. If any changes are made to the Equality Act 2010, the OfS should support the sector to respond to these.

On the decision to also use the Protection from Harassment Act 1997, our understanding is that this is currently not as commonly used among our membership to define harassment. Although we are supportive of the intention to broaden the definition of harassment beyond the protected characteristics, there is a risk that the use of two definitions could be difficult in practice and cause confusion for students. OfS must provide an unequivocal explanation of how the use of two definitions, and the nuances between them, should be navigated in practice, to ensure consistency of response. For example, it would be useful to have clarity on whether a certain definition of harassment should be applied depending on the case eg in a case regarding harassment on the basis of a protected characteristic, whether the university only refer to the Equality Act 2010 definition.

It is also important that the OfS makes clear that the definitions set out in the condition are a minimum rather than a constraint on universities who may already have broader definitions eg to ensure policies are presented in accessible language to students. This is to prevent the unintended consequence of establishing a minimum approach, and to ensure universities retain the autonomy to develop and apply their own broader definitions.

The OfS should also clarify how the definitions interact with the proposals relating to free speech, particularly regarding the OfS' stated concern that some universities are defining 'harassment' too broadly. This should include explicit consideration of 'grey areas' such as microaggressions.

**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.**

We are supportive of this definition, and welcome the consistency with the definition set out in the statement of expectations as many universities will already be working on this basis. We welcome the decision not to include any offence defined in the Sexual Offences Act 2003 to avoid duplication of regulation.

We also welcome the decision not to include reference to all possible sexual offences due to the reasons set out in paragraph 3. Universities are able to make credible judgements about what constitutes sexual misconduct and being too prescriptive could lead to a continually changing or updating definition and lack of flexibility in responding to the widest possible variety of sexual offences.

However, we feel there is a risk of the use of criminal terms (eg 'rape') in definitions being confusing to students and leading to inappropriate expectations of their university. For example, universities cannot be the judge of whether a specific criminal offence, such as rape, has occurred, and can only make a judgement on whether sexual misconduct is likely to have occurred. Universities do not replace judicial systems and processes, and OfS should make this clear in their expectation of the issues they expect universities to be able to manage.

With regard to domestic abuse in particular, we are aware that some of our members do include domestic abuse in their harassment definitions. We understand the OfS' rationale for not including it in the definitions used here, but the OfS should make clear to universities that including domestic abuse in their definitions and policies would be permissible under the new regulations, just not mandatory. The proposed definitions set out by OfS should not prevent universities from responding to domestic abuse and supporting student victim-survivors.

**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.**

No.

**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.**

We are supportive of this proposal's intention to make information about tackling harassment and sexual misconduct prominent and easily accessible to students and prospective students. We agree that this not should be behind a password or security check. We are also supportive of the proposal to require providers to communicate this information with students and staff.

However, we have concerns about how accessible the single document would be to students in practice. Given the minimum content requirements set out in the consultation proposals, especially OfS' expectation that the document must include all relevant policies in full (not just signposting to them), many universities would be likely to have an extremely long single document (possibly hundreds or even thousands of pages). This would not be accessible or useful to students in practice, especially in a time of crisis, and we encourage the OfS to consult with students on what they would find most helpful. The approach set out seems to be at odds with the approach taken on other OfS regulatory matters eg access and participation plans (APPs) where a short, accessible summary for students is required. If the single document is intended to aid the OfS by compiling relevant information related to this condition, this is a separate purpose to making information accessible to students, and these two things may need to be approached differently. It is unlikely that a single document can meet both aims of supporting OfS' monitoring and making information genuinely accessible for students.

The requirement to include all information in a single document will also create additional burden and workload for universities, both in its initial creation and maintaining the document over time. The OfS should be clear about how often they expect the document to be updated. As well as this, universities have policies that cover both staff and students, or that may be only applicable to certain types of students (eg students on work placements). The OfS should also be clear on whether it expects universities to include all of the content of those policies within the primary document, as there is a risk that this could lead to confusion amongst students.

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

We suggest that the OfS consults with students on their views on the single document. We suggest that instead of a single document this proposal is split into two requirements, one which is the provision of a set of links or copies of relevant policies to the OfS, and one which fulfils the intention of providing accessible information to students. Many universities have already established approaches to this (eg student-facing webpages about harassment) and these are more accessible for students and less burdensome for universities to develop and maintain than what is proposed in the consultation. Universities know their own students best and can

make judgements about making information accessible and with the sufficient level of detail.

**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.**

We support the proposal that minimum content requirements should be specified for the single document for providers to maintain. This will promote consistency across the sector and make information more accessible for students and prospective students. As set out in question 4, we question the utility and accessibility of the single document in practice, and OfS should allow universities to demonstrate how they have made information accessible to students in other ways eg through student-facing webpages.

If the requirement for a single document is part of regulatory requirements, we would encourage OfS to provide further guidance and/or a template for providers to use. This will help encourage consistency and reduce burden on providers.

We are concerned by the idea set out in the consultation that single documents will be used by students to compare providers' approaches and inform decisions about where to study. While we recognise that students are likely to value providers who take harassment and sexual misconduct seriously, it is vital that OfS and the sector share the message that students should be able to expect to be safe wherever they study, and do not need to make calculations on the likelihood of them experiencing harassment and sexual misconduct based on their chosen place of study's policies. Harassment and sexual misconduct occur in higher education as it does in wider society, and we would discourage OfS from perpetuating a narrative that it can be reliably 'avoided' if the 'right' provider is chosen. Single documents would also need to be carefully written and positioned to avoid causing undue distress or implying that university campuses are unsafe.

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

No.

**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.**

We are broadly supportive of the minimum content requirements proposed for the single document and welcome the requirement's alignment with the statement of expectations.

However, as outlined in response to question 4, we are concerned about the level of detail that providers are required to provide in the single document. The inclusion of all the listed information in a single document is likely to be extremely long if it must include providers' full policies and procedures. In practice, providers often have policies that overlap or are only relevant to certain groups of students, and not allowing these to be signposted rather than included in full is likely to yield unwieldy, inaccessible documents. Given that the target audience for the single documents is students, onerous length is likely to be off-putting and prevent their utility. This approach seems to be inconsistent with the OfS' approach to access and participation plans (APPs) and the expectation for providers to create a short, accessible summary of their APP for students.

The minimum content requirement about mandatory training for all students (point d) has particular resource implications for universities and should be carefully considered. Not all universities have the specialist resource to deliver such training in-house and this needs to be factored into expectations, as well as recognition that this will be time consuming, particularly for universities with very large student bodies. A proposal for how this could be implemented more effectively is set out in our response to question 12.

We also note that training is an area that was identified in the SUMS Consulting evaluation of the statement of expectations where further research is required to establish 'what works'. We call on the OfS to conduct this research, including a consideration of what is effective for different types of university (eg small and specialist) and different groups of students. We would also encourage OfS to engage with specialist training providers already operating in the sector, to understand how training could be implemented most effectively.

The requirement to share decisions and reasons for them (point h of the minimum content requirements) requires further clarification. Although the OIA is clear that students should be informed of the resolution to their complaint (ie whether or not it has been upheld), UUK's [guidance on sharing personal data in harassment cases](#) sets out that sharing further information (such as about sanctions) must be considered on a case-by-case basis and within the legal framework. We encourage providers to share this information when appropriate to do so, but OfS should avoid setting a blanket expectation around this.



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

We suggest allowing providers to provide links to existing content eg policies as part of their single document, rather than having to include this in full. The minimum content requirements could still be met, with the provider setting out their approach to each, but with the ability to signpost more extensive information, such as full policies. This will make the documents more user-friendly and accessible to students as well as being easier to maintain and update.

We also suggest that the single document should be split into two requirements: one which is the provision of a set of links or copies of relevant policies to the OfS and one which fulfils the intention of providing accessible information to students. This is likely to be less burdensome for universities as well as more accessible for students. On training, the OfS should clearly set out its expectations around the mandatory training for all students, and what is and isn't considered acceptable eg around delivery of online training. In doing so, they should be mindful of the diversity of higher education providers and support institutions' autonomy to deliver training via the most appropriate means for their context (which is likely to include online delivery in some instances).

**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.**

We agree with this proposal.

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

No.

**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.**

We agree with the principle that all higher education providers should be appropriately resourcing work to tackle harassment and sexual misconduct, and this should not be considered an 'optional extra'. UUK has been clear about this point in our own guidance on tackling harassment and sexual misconduct.

However, we note that the existing condition of registration D (part iv) requires universities to have the necessary financial resourcing to comply with all conditions of registration. We would take this to include resourcing for staff capacity, so introducing this as a specific requirement of condition E6 is unnecessary. It risks unnecessary duplication and starts to create overly prescriptive requirements on how resourcing is managed across a provider.

In addition, higher education providers are diverse, and ‘necessary capacity and resourcing’ will look very different in different institutional contexts. It is crucial that providers continue to have the autonomy to judge the specific resourcing requirements in their own institution, in light of their model of education delivery and the nature of their relationship with their students. The factors influencing a providers’ resourcing requirements are varied and complex; for instance, a large provider with high numbers of registered students in franchise provision may not need to dedicate as much resource to this issue as a mid-size institution whose students have a higher degree of vulnerability. Should OfS introduce this specific proposal as a condition of registration, they must be very clear about how they will assess what constitutes a ‘necessary’ amount of resourcing, and how this will take into account a diversity of institutions, including small and specialist providers.

We note that the consultation document proposes a link between the prevalence of incidents of harassment and sexual misconduct at a provider and their resource allocation. While we agree that resourcing decisions should be informed by the nature and scale of incidents, we would note that there need not always be a direct correlation between the two, and an increase in reported incidents does not automatically entail a need to increase resourcing. Conversely, increased resourcing may actually lead to increased reporting, if such increased resourcing has, for instance, enabled a provider to communicate information about its reporting channels more effectively. On this point, we would also welcome further clarification from OfS on how their proposal to introduce a sector-wide prevalence survey of sexual misconduct will interact with the condition of registration (see question 14); our strong preference is that the two interventions remain distinct, while recognising the need to work in tandem.

We would also like to reiterate that the cost and resourcing of regulatory compliance with the OfS is already significant for many of our members, particularly in smaller institutions. We would encourage the OfS to work with the sector to explore where and how burden can be further reduced elsewhere. In the case of these proposals, this should include ensuring all guidance is clear on what is required to demonstrate compliance, and reducing the requirements of the ‘single document’ to make them less onerous (as outlined in question 4).

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

We note that our members are currently under significant financial pressure, due to a combination of factors including: high inflation; reduced income from capped tuition fees and teaching and capital grants; increased costs (including energy bills); and the need to cross-subsidise research funding. As outlined at question 1a, implementing such requirements inevitably incurs a cost for universities, which will require trade-offs with other important areas of focus unless burden is reduced elsewhere.

**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.**

We welcome OfS explicitly addressing the relationship between harassment and free speech. Our members are committed to promoting free speech and academic freedom and take their responsibilities in this area seriously. We do not see work to promote free speech and work to tackle harassment as being inherently in tension but acknowledge that the balancing of duties needs careful consideration.

Universities need to be supported to enact this proposal in practice, including through guidance, good practice information and case studies. What is set out in the consultation is helpful but needs to be supported by further detail as the landscape around harassment and free speech is legally complex, and constantly evolving. For example, universities have been encouraged by the government and the OfS to sign up for the International Holocaust Remembrance Alliance (IHRA) definition of antisemitism, and the OfS should consider how this relates to free speech requirements and protecting students from harassment, and how this will work in practice – especially in the context of concerns that universities may be defining harassment too broadly.

On this point, the points in paragraph 69 around defining harassment too broadly are inaccessibly written and may be difficult to interpret, especially for providers who have less resource in this area. Hypothetical examples should be shared with the sector in advance of the condition coming into force, including clear guidance on the objective and subjective elements of defining harassment.

As well as this, ahead of the Higher Education (Freedom of Speech) Bill coming into force the OfS should provide more support to universities to balance their duties regarding free speech, academic freedom, and harassment as well as equality,

diversity and inclusion more broadly. The contentious issues that are likely to dominate discourse around freedom of speech are closely related to harassment, and it is vital for universities to understand how they can prioritise both protecting marginalised students from harm and promoting free speech.

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

No.

**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.**

While fully noting the importance of this issue, Proposal E risks becoming overly prescriptive which is at odds with the OfS' commitment to principles-based regulation. It could potentially set an unhelpful precedent for the level of detail in future regulation, and we encourage OfS to consider alternative options such as aligning regulatory requirements directly with the Higher Education (Freedom of Speech) Bill (see response to question 10b).

However, we are supportive of the principle of prohibiting contractual provisions that prevent or restrict someone from disclosing information about an allegation of harassment or sexual misconduct which affects students. UUK has been clear that we do not support the use of confidentiality clauses in agreements related to harassment and sexual misconduct and that victim-survivors should not be prevented from speaking about their experiences. We know that many of our members do not use NDAs in this way, if indeed they ever have, with many signing up to the 'Can't Buy My Silence' pledge.

It will be vital to clearly set out the scope of this requirement, and to ensure that this aligns with the provisions set out in the Higher Education (Freedom of Speech) Bill to avoid confusion or unnecessary burden for providers. For example, we understand that the NDA amendment in the Higher Education (Freedom of Speech) Bill refers only to preventing complainants from being asked to sign an NDA. It would be useful to clarify if this is also the case for the requirement as part of this condition.

The OfS should also make it clear that this requirement does not apply to confidentiality requests made by universities to maintain neutrality and impartiality

during investigation processes. We also urge the OfS to provide guidance on disclosure of the outcome of staff investigations under staff disciplinary procedures following a concern raised by students, in line with Acas best practice on maintaining confidentiality in relation to disciplinary warnings or dismissal.

The OfS should provide guidance on the requirement to ‘take all reasonable steps to ensure no other person places or enforces restrictions on the disclosure of information’, including what third parties are deemed to be in scope of this requirement and what is expected of universities here. It is likely to be very difficult for them to prevent third parties from using NDAs in practice. For example, for a university with a large number of students undertaking work placements, this type of requirement would be difficult to enforce in practice, as not all employers may be willing to agree to not use NDAs in their employment practices. Universities’ obligations in this area are further complicated by the fact that if a student does sign an NDA with a third party, this is likely to contain provisions preventing the student from informing the university.

Finally, we are aware that there are very occasionally cases where a complainant may ask to sign an NDA. The OfS should clarify how those cases should be handled by providers once this condition is in force, and consider allowing universities to make an exception in extreme cases and circumstances.

**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.**

We support option b set out in paragraph 83. If the Higher Education (Freedom of Speech) Bill has been passed by the time the OfS makes final decisions following the consultation, we would strongly urge the OfS to align regulatory requirements with statutory obligations. This will reduce confusion and burden on universities, and provide clarity for students and potential 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:**

- A. Option A as proposed;
- B. Option B as proposed;

C. An option similar to Option A but with some changes (in which case please set out the changes that you would suggest in the next question);

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);

E. Any of the alternative options considered in this proposal;

F. None of the above.

Whilst fully noting the importance of tackling staff-student sexual misconduct, Proposal F risks becoming overly prescriptive, which is at odds with the OfS' commitment to principles-based regulation, and could set an unhelpful precedent for the level of detail in future regulation. Many of our concerns with the specifics of this proposal demonstrate the difficulties of seeking to apply overly detailed, prescriptive regulation to a diverse range of higher education providers, without allowing institutions the flexibility to tackle important issues in the most suitable way for their context.

However, should OfS introduce a condition of registration, we believe an option more aligned with Option A would be more proportionate and reasonable. We note some concerns about specific elements of the proposal as currently worded, which are set out in our response to question 11b.

On a practical point, it would be helpful for OfS to provide clearer guidance about what is likely to constitute 'emotional and romantic intimacy', as we have received feedback that this could currently be difficult to understand. We would also welcome clarification on whether and how familial relationships (eg parent-child) are in scope, given that such relationships may involve an element of financial dependency, as well as whether and how the proposals would apply to students' union sabbatical officers.

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

The recommendation of Option A broadly aligns with the recommendation of UUK's own [evidence-based guidance on tackling staff-student sexual misconduct](#), which is that personal relationships between university staff and students should be strongly discouraged, and any conflicts of interest managed to mitigate against possible abuses of power. Many of our members already have, or are in the process of developing, policies to this effect.

Universities are free to choose their own policy, and some currently have an outright ban on staff-student relationships. However, we consider that this would be difficult to implement at a sector-wide level, and risks being overly intrusive into the private lives of students and staff. We accept that staff-student relationships will likely still occur in some cases, and it is preferable for universities to handle this with transparency that allows them to mitigate against possible negative impacts, rather than introducing a ban that makes such relationships completely hidden and more open to abuse.

OfS should be clear about whether they will require providers to develop a register of staff-student relationships if their institutional policy already prohibits these from occurring.

We recognise that creating a 'register' of personal relationships between staff and students has implications for personal privacy, including the implications of staff potentially being required to 'out' themselves at work, and must be considered carefully in light of data protection legislation. We also urge OfS to fully consider the implications of this requirement applying to overseas campuses, especially in countries which may prohibit intimate relationships between unmarried couples and/or same-sex relationships.

In addition, we are concerned about the proposed requirement that universities are specifically required to dismiss any relevant member of staff who refuses to disclose a personal relationship with a student, rather than taking any other form of disciplinary action. While dismissal could be a reasonable option for failing to comply with institutional policies, this may not always be the case in every situation. Under employment law and Acas guidance, providers are required to follow fair disciplinary processes when considering allegations of misconduct, and depending on the facts of the case, this may not always result in staff dismissal, even in cases of serious or gross misconduct. At the least, we would ask OfS to reframe this requirement, to require providers to treat failure to disclose a relationship as a serious disciplinary matter. Furthermore, several of our members have noted that implementing this proposal is likely to carry a particular administrative burden, given the need to amend several staff policies, as well as create the 'register' and develop a data retention schedule. This is likely to be time-consuming, especially given the requirement to consult with trade unions on any changes. OfS should extend the time period for providers to fully implement this requirement to at least twelve months. Further detail on this is outlined in our response to question 12.

Finally, should OfS proceed with developing this condition, we would urge them to engage closely with UCEA and Acas, given the significant overlap with staff matters

and universities' position as employers. This would ensure any condition, and its associated guidance, reflects employment best practice.

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

While having robust policies, processes and systems are important in tackling the issue of staff-student sexual misconduct, they are not a 'magic bullet' solution, and education and culture change remain crucial aspects of prevention. Should OfS introduce the condition of registration, we recommend they also point to clear guidance for providers on the need to educate staff and students about appropriate professional boundaries – such as that developed by UUK.

**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.**

While we do not support the introduction of Option B, if this were to be implemented, we would propose a broader range of exemptions. This should include an exemption for co-habiting couples, as well as relationships where a couple (or former couple) are parents of a child/children. In this instance, it would be reasonable for there to be some degree of relationship and/or financial dependency between the two parties, even if they are not married or a romantic relationship has ended.

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

Whilst our members are already meeting many of the requirements proposed within the new condition of registration, certain elements are likely to represent a significant change, which will take time to implement effectively. Allowing three months for providers to implement the entire condition will therefore be too short, and our preference is for a staggered implementation approach, lasting at least twelve months. We recognise OfS' desire to move quickly, but believe it is preferable for providers to take time to get things right, rather than move quickly and risk getting it wrong.

**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.**



As outlined above, we believe that a three-month period is too short for our members to effectively implement all aspects of the condition of registration, and a staggered approach would be preferable. In particular, we consider that the requirements to implement mandatory training for all students and relevant staff, and update policies (especially in relation to introducing a register of staff-student relationships), would take longest to implement. OfS must allow providers at least twelve months to implement these requirements.

Not all universities have the resourcing to deliver mandatory student training on such specialist areas in-house, and we believe the requirement for all providers to implement this within the same three-month period will lead to high demand for outsourced training, which we understand expert, specialist training providers fear they will struggle to cope with. This creates the risk that providers may feel forced to procure training from less suitable or qualified providers than they may otherwise have chosen. In addition, while there is likely to be merit in smaller providers taking a partnership or consortium approach to procuring and delivering training, such arrangements would typically take longer than three months to put in place. Recruitment of specialist staff at individual providers may also be difficult to achieve within three months.

Furthermore, the sheer number of students requiring mandatory, interactive training in many providers (40% of our English members have over 20,000 students) means this training will inevitably take significant time to deliver, especially if the three-month window does not align with periods such as student induction. In addition, several proposals – especially relating to staff-student relationships – will require universities to update their policies (eg privacy notices, staff policies relating to professional conduct, personal relationships, and disciplinary and grievance procedures, student policies, FOI publication scheme). Again, this will take time, especially when considering the need to consult with trade unions, allow CMA consideration for student-facing policies, and go through senior and/or committee sign-off processes. We therefore urge OfS to allow a longer period for providers to update and fully implement relevant policies.

Additionally, a longer implementation period would also allow institutions more time to pilot and refine new initiatives before committing to their full roll-out. Finally, it will also be important to align the implementation of this condition of registration with the introduction of other regulatory requirements, including those associated with the Higher Education (Freedom of Speech) Bill. This will reduce the burden of implementing new regulation on higher education providers.

**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.**

Please see our response to Question 12b.

In addition, even for elements of the proposals that can be implemented within a three-month period, it will be important that this avoids the summer holiday period. This is a time when many universities are focussed on other important activities (eg facilitating admissions), and it is more difficult to liaise with student representatives. It will also be important for OfS to introduce clear, timely regulatory guidance, to enable universities to comply with any requirements.

**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.**

As outlined in our response to question 1, we do not see this as a suitable area for OfS regulation. We foresee potential for at least four unintended consequences arising from these proposals.

Firstly, tackling harassment and sexual misconduct goes beyond the introduction of systems, policies, and processes, and requires culture change, which often necessitates innovative, creative solutions. Not all actions conducive to tackling harassment and sexual misconduct are explicitly mentioned in the condition of registration (eg visible senior leadership commitment), and it will be important that the sector does not lose sight of these. If OfS do introduce a condition of registration, we call on them to take a holistic approach to tackling harassment and sexual misconduct, in recognition of the cultural factors that can be harder to measure through a regulatory framework, as well as in response to issues that are not directly in scope of the condition of registration but may be particularly relevant to certain institutions (eg domestic abuse, so-called honour-based abuse). While we believe many institutions will continue to take a holistic approach to tackling harassment and sexual misconduct, there is a risk that some providers (especially those whose resources are constrained) may only feel able to focus on achieving areas specifically mentioned within the condition, meaning the development of initiatives in other areas is stifled.

Linked to this, there is a further risk that the introduction of regulation creates a reluctance for providers to openly discuss the challenges they face in tackling harassment and sexual misconduct, due to fear of ‘falling foul’ of the regulator. Established good practice is still emerging in some areas, and several complex issues

remain unresolved – for instance, concerns relating to the sharing of personal data about student misconduct between different higher education institutions. We call on OfS to take a supportive, rather than punitive, approach to higher education providers who can demonstrate they are actively seeking to tackle issues of harassment and sexual misconduct robustly. This will contribute to a culture whereby OfS and the sector can continue to work together in a spirit of continuous improvement to find solutions to shared challenges, as has been the case for several years.

In addition, there is a risk that, without proper guidance, the proposals around freedom of speech may inadvertently restrict universities' work on tackling harassment and sexual misconduct, due to confusion over the legal landscape and the perception that the two areas are in tension, or that free speech must be prioritised over and above other duties placed on universities. This relates to the complex and changing legal landscape, as mentioned in response to question 9. To help mitigate this, we call on OfS to set their expectations clearly, and issue clear guidance for the sector, including hypothetical examples, that aligns with the requirements of the Higher Education (Freedom of Speech) Bill.

Finally, while we welcome the fact that OfS' proposals apply equally to all forms of harassment and sexual misconduct, we sense that the current framing has led to a perception that providers must prioritise tackling sexual misconduct above other forms of harassment. This could lead to higher education providers continuing to focus on tackling sexual misconduct at the expense of other forms of harassment, something both UUK and the independent evaluation of the statement of expectations have already identified as an issue in the sector. It would be helpful for OfS to 'over-correct' this narrative in further guidance.

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

The proposals have not fully clarified the boundaries of higher education providers' responsibilities for preventing and responding to harassment and sexual misconduct affecting their students where these interact with the responsibilities of other bodies. This is an area that many of our members find challenging to operationalise, especially those who have high numbers of students on work placements, undertaking degree apprenticeships, or taking part in overseas exchanges. Each party in such an agreement will have their own policies and procedures, and it can be very challenging to determine how the two should interact in a particular set of circumstances. In addition, providers often face challenges in relation to sharing information with third parties, including private providers who operate halls of

residence. We call on OfS to provide further clarity on these points in their regulatory guidance.;

Relatedly, we believe the proposals do not clarify the extent to which higher education providers are responsible for preventing and/or responding to harassment that affects their registered students, but is not directly related to university activities - for instance, sexual harassment in local night-time economy venues, or experienced by students while away from the university on holiday. Many of our members have seen an increase in reports of harassment and sexual misconduct from students whose experience is not directly related to the university, but feel they have nowhere else to turn, often due to low confidence in the police and criminal justice system.

While universities will likely be able to support and signpost students in these circumstances, much of the situation will be outside their control, so we would welcome clarification on OfS' precise expectations. Universities should not be expected to take on a quasi-police or quasi-judicial role in relation to harassment and sexual misconduct affecting their students that is unrelated to the university; this would be a significant expansion of their core remit.

In addition, we consider the proposals do not sufficiently account for challenges in extra-territorial application where different legal and regulatory frameworks may apply. For example, if a university has an overseas campus in a country where same-sex relationships are illegal, what would be the implications of a student declaring harassment on the grounds of sexual orientation, or a member of staff declaring a same-sex relationship with a student? There are also different forms of student data collection and rules about what information can and cannot be gathered. For providers with multiple transnational education (TNE) partnerships, understanding appropriate applications in each context may be particularly burdensome.

Furthermore, the consultation proposals give little detail about how the condition of registration will interact with OfS' proposal to introduce a sector-wide prevalence survey of sexual misconduct. While we welcome OfS appearing to keep these two interventions distinct, we would welcome further engagement about how they can best work in tandem and whether OfS intend to use data gathered via the prevalence survey to inform regulatory monitoring. The proposals also provide very little information about how OfS will monitor compliance and enforce this condition of registration more generally, which will be important for providers to understand. The OfS should also ensure it is clear to both universities and students how this condition interacts with and differs from existing mechanisms, such as the OIA complaints process.

Finally, we recognise ongoing questions in the sector about whether a university has a 'duty of care' to its registered students in relation to harassment, and the precise

nature of this. We note that these consultation proposals do not rely on the notion of ‘duty of care’ and would not support the introduction of a statutory duty of care in relation to harassment and sexual misconduct. However, we would welcome OfS clarification on how a general ‘duty of care’ applies in this area.

**15. In your view, are there ways in which the policy objectives discussed in this consultation could be delivered more efficiently or effectively than proposed here?**

As outlined in our response to question 1, we believe that a self-regulatory approach is the optimum way to achieve the objective of ensuring universities and colleges prevent harassment and sexual misconduct and respond effectively when it occurs. This balances the need for a cohesive sector approach underpinned by consistent principles (eg by providing guiding sector frameworks and regular progress reviews) with allowing universities to more easily take individual, context-specific approaches and reducing regulatory burden.

However, as outlined above, should OfS introduce a condition of registration, we would encourage them to take a supportive approach that champions good practice and supports the sector to tackle challenging and/or emerging issues, rather than one which is wholly punitive. Tackling harassment and sexual misconduct can be challenging and complex, with areas of emerging practice, and it will be important for OfS to contribute to a continued climate of open discussion and continuous improvement in the sector (as begun by UUK and others), rather than one where fear of the regulator stifles honest discussion about shared challenges.

More generally, we call on OfS to take an active role in evaluating the implementation and impact of this condition of registration and its interaction with related areas (such as future condition(s) of registration relating to freedom of speech) and be responsive to the sector’s requests for good practice guidance and case studies.

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

The requirement for universities to balance upholding freedom of speech with tackling harassment often comes into sharp focus in relation to debates around protected characteristics. At present, we recognise a particular focus in public, political and media discourse about the rights of transgender people. As outlined in our response to Question 9, we urge OfS to be very clear in guidance about how

providers should balance these two requirements, especially in light of how to protect transgender and non-binary students.