

# **The 1752 Group and McAllister Olivarius Recommendations for Disciplinary Processes into Staff Sexual Misconduct in UK Higher Education**

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## Recommendations for Disciplinary Processes into Staff Sexual Misconduct in UK Higher Education

This is drafted as a consultation document that will be amended in response to input from invited sector bodies and experts.

The aim of the guidelines is to ensure a fair and transparent disciplinary process for dealing with staff sexual misconduct (though with the aim of being applicable to other forms of bullying and harassment). These guidelines have been formulated by The 1752 Group and McAllister Olivarius. They can be used to inform the reform of existing policies or formulation of new policies in the area of sexual misconduct disciplinary processes in higher education. They should exist as part of wider cultural and policy reform, including consideration of professional boundaries, institutional culture change and support for complainants.

### Definitions

**Disclosure** refers to a member of the university community telling anyone within the university about their experience of sexual misconduct. Students who disclose may not wish to make a formal report. This guidance does not recommend or support mandatory reporting of disclosures in order to ensure the student disclosing remains in control of their experience and further actions.

**Report or Complaint** refers to a student formally notifying the institution of their experience in order to trigger action by the institution.

**Sexual Misconduct** We use the term sexual misconduct to describe forms of power enacted by academic, professional, contracted, and temporary staff in their relations with students (this can also occur in relations with other staff members) in higher education. Sexual misconduct can include sexual or gender-based harassment, assault, grooming, coercion, bullying, sexual invitations and demands, comments, exclusion, non-verbal communication, creation of atmospheres of discomfort, and promised resources in exchange for sexual access. The term 'sexual harassment' captures only some of the possible abuses of power that may occur within a higher education institution. Sexual misconduct impacts students of all gender identities and sexualities and prevents equal access to education for all (definition taken from The 1752 Group). See Appendix 1 for a more detailed definition.



## A) Initial submission of complaint and risk assessment

**Key Point A1: A named, trained first point of contact (the Safeguarding Lead or deputy) must be clearly signposted.**

- Different staff within the university may receive disclosures or reports of staff sexual misconduct.
- All members of the university community need to be aware of who they should contact if they receive a report or disclosure of staff sexual misconduct. This person should be the Safeguarding Lead or should report directly to the Safeguarding Lead, and should be a named individual with contact details easily available online. They should have training in dealing with disclosures of sexual misconduct and detailed knowledge of investigations processes and referral pathways within the university. Reports should be shared with other named interested parties such as legal services, student services and HR, to ensure the oversight of complaints. HR and student services must have established links to ensure the coherent management of staff-student complaints. The Safeguarding Lead remains party to the process until its conclusion, and ensures the safeguarding of all students/staff, not just the complainant.<sup>1</sup>
- Institutions should be aware that students may only wish to disclose their experiences to a member of staff who shares a similar identity to them, for example trans or non-binary students may wish to disclose to a staff member who is trans or non-binary. Institutions should have staff who are representative of their student population available and trained in receiving disclosures of sexual violence and the steps to follow.

**Key Point A2: There must be clear ownership for informing, supporting and regularly updating complainants of the progress of any process.**

- There must be one point of contact for the disciplinary process within each university whose responsibility is to keep student complainants well updated. For staff complainants this will be a member of HR staff, but we recommend that the point of contact for student complaints sits within student services, with close links with HR, and reporting to the Safeguarding Lead. This person must also have training in dealing with disclosures and supporting survivors of sexual violence.

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<sup>1</sup> All institutions should have a dedicated safeguarding lead in a senior position within the institution and this person should be notified of all reports of staff-student sexual misconduct. There should also be a member of the Board of Governors with responsibilities for safeguarding and student welfare.



- A clear timeline should be given to all parties at the start of the complaints process. An appropriate timeline would be four weeks for investigation and report; four weeks from investigation report to tribunal hearing; one week to issue written outcome decision, with one week for parties to seek a review; four weeks to reach final review decision; and two weeks for the Vice-Chancellor/President to implement final action. Every effort should be made to follow this timeline, including sourcing a tribunal panel in advance of decision. It may be that in order to follow these timelines it becomes appropriate for an institution to hire dedicated officers for investigating and project managing complaints (see below). If the timeline given at the start of proceedings is not followed, the Office for the Independent Adjudicator (OIA) should be able to recommend compensation.
- The student/complainant should be provided with an advocate who has expertise in the investigatory/disciplinary process, and also has a high level of training in supporting survivors of sexual violence and sexual harassment. This should draw on the model of Independent Sexual Violence Advisors, who support witnesses through the criminal justice system.<sup>2</sup> This is an advocacy role, which is different to a bystander intervention officer or a counselling role. The ISVA should be funded by the institution but may sit within a local sexual violence organisation such as Rape Crisis or the Survivors' Trust, to ensure they have some level of independence from the institution, and to ensure that they are linked into specialist sexual violence support services for the student/complainant.

**Key Point A3: There should be no time limit for making a report of sexual misconduct, or restriction on who can make a report.**

- Policies should not include a time period within which a complaint can be made internally to the university, but should make it clear that there are legal avenues of redress which do have deadlines, sometimes as short as three months from the date of the last incident complained of. Instead, it should be recognised firstly, that the effect on the victim of sexual offences is such

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<sup>2</sup> The [Home Office guidance on the ISVA role](https://www.gov.uk/government/publications/the-role-of-the-independent-sexual-violence-adviser-isva) (https://www.gov.uk/government/publications/the-role-of-the-independent-sexual-violence-adviser-isva) states that their role includes, but is not limited to the following:

- tailor support to the individual needs of the victim or survivor
- provide accurate and impartial information to victims and survivors of sexual violence
- provide emotional and practical support to meet the needs of the victim or survivor
- provide support before, during and after court
- act as a single point of contact
- ensure the safety of victims and survivors and their dependants
- provide a professional service



that they will be unlikely to make a complaint immediately; and secondly, that it is in the interests of the institution to hear about complaints so that other students can be protected. Therefore, this should be one of many measures to encourage complaints. Sexual misconduct is often a serial offence committed by staff members over many years and universities have a duty to fully investigate evidence whether historical or current.

- Complaints by alumni about members of staff who are still in post should be dealt with in the same way as complaints by current students, with no time limit in place.
- If a complainant does not want to go forward at the time, their report/disclosure should be kept on file, so that they can be contacted if further reports/disclosures are made. Some students may wish to make a complaint in the future if they are informed of other students coming forward.

**Key Point A4: Mediation should not be required in cases of sexual misconduct.**

- Once a complaint is submitted, it should first be reviewed to ensure it is attached to the correct procedure. This includes a decision as to whether it is appropriate (as per both parties' agreement) for conciliation or mediation. Policies must not require or pressure students/complainants to go through mediation in order to make a formal complaint. Mediation is unlikely to be an appropriate option in cases of staff sexual misconduct.

**Key Point A5: Safeguarding actions in the event of a report that suggests a risk must be clearly set out and followed.**

- A safeguarding risk assessment should be carried out immediately after a complaint is received to decide if safeguarding measures should be put in place, including suspension of the staff member or contact restrictions. The suspension policy must be clearly stated, including what happens to the duties of the staff member once a complaint is made; and at what point the suspension takes place. Whether a disclosure should also trigger a risk assessment is a matter for further discussion, as this would constitute mandatory reporting and risk removal of control and confidentiality from the complainant.
- If there are safeguarding concerns about a current member of staff in the absence of a report, it is the university's responsibility to assess the need for further investigation, for example by contacting potential witnesses and complainants, and implementing potential safeguarding measures, regardless of a formal complaint.
- Who should be allowed to contact witnesses and whether it is ever appropriate for the accused or complainant to contact witnesses, is a matter for further discussion.



## B) Third party and anonymous reporting

- Third party and anonymous reports should be part of the reporting system of an institution and have the power to launch an investigation, as is already the case at some universities in the UK.<sup>3</sup> This is a crucial part of a robust process for safeguarding students as very often students may fear the outcome of making a complaint about a staff member who has a high level of power over their lives. This does not replace or endanger a fair process, instead it acts simply as an alternative entry into the same process.
- Third party reporting should be included in any policies which touch on sexual misconduct, including staff-student relationship policies.
- Such policies on third party reporting should state that a concern about another staff member's behaviour must be reported to that staff member's head of department who must log it centrally with the Safeguarding Lead at the university or it may be reported directly to the Safeguarding Lead.
- Where investigations are launched after third party or anonymous reports, students and staff have no obligation to participate in the investigation process or to give evidence to a hearing. It is entirely up to individuals whether they feel safe to do so, and they must be reassured of this. But, equally, the university must have in place and inform students and staff of measures to protect them from retaliation or harassment for having chosen to participate. It must be explained to students and staff that a failure to participate in the process may jeopardise the fairness of its outcome, or the ability of the university to take effective action.
- Anonymous reports must be kept on file by the Safeguarding Lead and HR (see data recording and management section, below).

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<sup>3</sup> Third party reporting refers to reports by members of the university community or people connected to the university community, about sexual misconduct they have witnessed or been told about. Anonymous reporting refers to reports that are made without a named complainant. Anonymous reports should enable an institution to act and investigate the report. However, anonymous reporting currently available at some UK universities prevents students from providing sufficient data for any direct action to be taken.



## C) The investigation

- It is likely that investigations into staff-student sexual misconduct will need to be carried out by an independent investigator from outside the university, given the time constraints, as well as the impartiality and expertise that is required. At present, investigations tend to be carried out by a senior member of academic staff, who are rarely truly independent. This is inappropriate because the member of staff is likely to have prior knowledge of the student or staff member, which constitutes a conflict of interest. They are also unlikely to have the skills and expertise to carry out such an investigation, which may include the need to interview survivors of sexual and/or gender-based violence. Therefore, Universities UK or the Office for Students should provide a list of recommended independent investigators for universities to draw on in such cases, who have appropriate training and experience in working with survivors of sexual misconduct.
- The investigator defines the issues to be investigated and the range of outcomes and meets with the student/complainant to agree these at the outset.
- The investigator carries out a proportionate investigation, which may include interviewing staff and/or students. The investigator should try to minimise the number of interviews or communications with each witness (including a complainant), in order to minimise trauma and inconvenience, subject always to seeking the most complete evidence available. This may require gathering evidence via the advocacy worker. The witness should have adequate notice of such meetings, with counselling support offered by the institution and travel expenses reimbursed where necessary.
- The investigator writes up an investigation report setting out an evidence review, and conclusions drawn with reasons and recommendations.
- The student/complainant and staff member should both receive copies of the investigation report and the evidence considered pertaining to them.
- Complainants must be treated throughout as a party to the process equal to that of the staff member, and not as a third party witness.



## D) Action on the investigation: The complaints-handling procedure

Following such an investigation, the investigation report should be submitted to a panel for final determination.

- The names and titles of panel members should be provided in advance to both parties, giving both parties three days to raise issues of conflict.
- Panels should be independent and fairly constituted, for example with a gender balance and vetted for conflicts of interest (for example, a panel should not include members of the same department as the staff member under consideration in the process). The panel should also include an independent union representative, a member of HR and a member of academic staff senior to the subject of the complaint, or as senior in cases where it is not possible to find a more senior member of academic staff.
- If a hearing is held, the complainant should not be required to be in the same room or be questioned by the subject of the complaint. Instead, questions from either party for the other or for any witness should be submitted to the panel in advance, who will carry out the questioning at the hearing.
- The complainant and subject of the complaint should be given advance notice of the time and place of the hearing; both parties should be given equal rights to propose witnesses to the panel and then submit questions in advance for any witness called to the hearing; to view evidence and to access legal representation and advocacy support. It is the responsibility of the panel Chair to ensure that the questioning does not involve bullying of witnesses, and to prevent any party bringing witnesses or evidence that are not relevant to the investigation.
- The final outcome should be written and provided to the complainant and subject of the complaint along with:
  - Notification of the right to go to the review stage.
  - Grounds to seek review (such as procedural irregularity during the formal stage; unreasonable outcome; new material).
  - The review procedure, which should be equally accessible for both parties.
  - Where and how to access support, both within and outside of the university.





- Where the complaint is resolved or the process is ended at this stage, the institution should provide a Completion of Procedures Letter to the student/complainant and explanation of legal rights to both parties, as well as information on the Office for the Independent Adjudicator for Higher Education. This will include early resolution such as a dismissal of the complaint in the first stages, or where the complainant has failed to trigger the review process in time. The Completion of Procedures Letter allows a student complainant to access complaints services such as the Office of the Independent Adjudicator or a legal avenue.
- It is never acceptable for the university to settle a complaint by agreement between itself and the subject of the complaint: rather the complainant must be made a party; and must approve the agreement.

## E) The review process

- An independent panel should be allocated to the review. This may include members from within the university but should not be from the same department as the staff member or student, and should be comprised of the same categories of panel member as the first-instance panel.
- The parameters of the review must be clearly explained to the complainant and subject of the complaint.
- Procedures should set out whether the reviewer can overturn the previous outcome and substitute a new decision, or simply refer the process back to the formal stage for reconsideration. We recommend full autonomy in the review to protect against outcomes being locked-in despite procedural errors.
- The outcome must be communicated in writing to the complainant and subject of the complaint within 28 days of instigation of the review, with a Completion of Procedures letter for a student complainant and explanation of legal rights to both parties. This must notify a student complainant of:
  - The right to submit a complaint to the Office of the Independent Adjudicator
  - The time limit for doing so (12 months from the date of the Completion of Procedures letter)
  - The right to take legal action under the Equality Act and other law, for which the deadlines can in some cases be as short as three months from the date of the incident complained of.
  - Where and how to access support, both within and outside the university.



## F) Vice Chancellor/President Approval

Where the final outcome or review decision upholds the complaint and recommends disciplinary action, this must be passed to the Vice Chancellor for approval and ratification, variation or rejection. The Vice Chancellor's actions on the decision, along with reasons for that action, must be recorded with the Safeguarding Lead, HR and notified to the subject of the complaint and the complainant. In order to ensure public accountability, if the recommended disciplinary action is rejected or amended, this should be made public and open to legal challenge and judicial review.

## G) Confidentiality of outcomes

- We recommend upheld outcomes and disciplinary sanctions applied should be shared with the complainant. There should also be further consideration of how and whether such outcomes could be made public. One or more of the options below should be considered:
  - University-wide public records of the outcome of an investigation.
  - Waiving of confidentiality at the end of the process for both parties.
- References for a staff member leaving during investigations must include the outcome of any investigation and/or existence of pending investigations. Universities UK and the Office for Students should provide guidelines that state that this is expected.

## H) Data recording and management

- Data relating to all formal and review stages must be recorded centrally within the institution, with identifying details removed. Regular analysis of trends should be carried out on this data by the Office for Students to identify systemic problems and the need for institutional change.
- Data on numbers of complaints, and non-identifying outcomes of complaints per faculty and per institution, should be provided to the Office for Students and published annually. This must include the number of reports (including complaints, third party reports, anonymous reports); number of investigations; category of investigation (staff-student, student-student, staff-staff, student-staff); and outcome category (informal, preliminary warning, final warning, or dismissal).



## About the Authors:

**The 1752 Group** is a UK based research and lobby organisation working to end staff-student sexual misconduct in higher education. As part of our research and institutional change activities we partner with UK and internationally based academics, support organisations, student unions and those working across the sector to ensure equal access to education for all. Visit: [www.1752group.com](http://www.1752group.com). Email: [contact@1752group.com](mailto:contact@1752group.com)

**McAllister Olivarius** is an American/British law firm, which helps people who face unfair treatment in their professional, and sometimes personal, lives. Our work with victims of discrimination and sexual abuse and "revenge pornography" has helped change the law and is an impetus for institutional change both in the US and the U.K. Visit: [www.mcolaw.com](http://www.mcolaw.com).

## Appendix one: Definitions

Staff sexual misconduct refers to forms of power enacted by any higher education staff towards undergraduate, postgraduate or professional students whereby the staff member exercises influence within the relationship for their own sexual or romantic gratification or exploits the power imbalance within the relationship by using sexualised or romantic behaviours to gain control over the student.

There are five main categories to this behaviour, but there may also exist forms of misconduct that do not fall into any of these categories:

- Sexual assault or rape
- Sexual harassment including sexualised touch, sexual jokes, comments or questions; coercion behaviours including promising or implying threats or rewards in return for sexual access
- Grooming behaviours that lead to the weakening of professional boundaries between staff and students, such as disclosure of intimate personal information by a staff member; encouraging a student to disclose personal information that is irrelevant to the professional relationship; setting up or attending meetings (especially where involving consumption of alcohol or outside of working hours) where this is unnecessary for the professional relationship; or attempting to control aspects of a student's personal life that are not relevant to their professional relationship with the student. These may or may not be innocuous but for the student they may constitute 'boundary crossings' that can lead to 'boundary violations'
- Sexual relationships between students and staff that are initially consensual but result in harm to the student either during the relationship or after the relationship ends.
- Sexual relationships between students and staff that the student appears to be consenting to because they do not have freedom to say no.