



## BRIEFING PAPER

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# Sexual harassment in education

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### Contents:

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



# Contents

|   |           |
|---|-----------|
| <b>Summary</b>  | <b>3</b>  |
| <b>1. Schools and colleges (education to age 18)</b>                        | <b>4</b>  |
| 1.1 Keeping Children Safe in Education: Government guidance                 | 4         |
| Advice for schools: Sexual violence and sexual harassment                   | 4         |
| 1.2 Behaviour and bullying policies   | 5         |
| 1.3 Women and Equalities Committee report                                   | 6         |
| Launch and Fixers report  | 6         |
| Committee report  | 6         |
| Government response   | 7         |
| Evidence session with Ministers (October 2017)                              | 8         |
| 1.4 Relationships and sex education and PSHE                                | 9         |
| Current position  | 9         |
| Statutory RSE: Children and Social Work Act 2017                            | 9         |
| Health education  | 10        |
| 1.5 Allegations against teachers or other pupils                            | 10        |
| 1.6 Schools in Scotland, Wales, and Northern Ireland                        | 12        |
| Scotland  | 12        |
| Wales   | 12        |
| Northern Ireland  | 12        |
| <b>2. Further and higher education (post-18 education)</b>                  | <b>13</b> |
| 2.1 Is there a problem with sexual harassment in colleges and universities? | 13        |
| 2.2 Legal duties of further and higher education institutions               | 15        |
| 2.3 Initiatives to tackle sexual harassment in universities and colleges    | 15        |
| 2.4 Institutional policies on sexual harassment                             | 18        |
| 2.5 Parliamentary debate on sexual harassment in universities               | 22        |

## Summary

### Schools and colleges

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

[Keeping Children Safe in Education](#) is the statutory guidance to which all schools and colleges in England must regard when carrying out their duties to safeguard and promote the welfare of children. The most recent version came into force in September 2019.

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

Statutory Relationships Education at primary school, and Relationships and Sex Education at secondary level, become compulsory in all English schools from September 2020. [Statutory guidance](#) on the reforms has been published and schools are encouraged to use the reformed programmes ahead of their becoming mandatory.

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

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

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

### Further and higher education

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

There have been concerns that sexual harassment is increasing in universities. A BBC report in 2019 showed that **reports of rape, sexual assault and harassment at UK universities had trebled in three years**. In 2015 Universities UK set up the Taskforce on Sexual Violence and Harassment which published guidelines to assist HEIs with drafting policies on sexual harassment and hate crime. Most colleges and universities now have processes and procedures in place to address harassment (including sexual harassment), violence and hate crime.

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

# 1. Schools and colleges (education to age 18)

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

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

## 1.1 Keeping Children Safe in Education: Government guidance

All schools must have a child protection policy in place.

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

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

The guidance requires schools and colleges to have an effective child protection policy, which includes procedures to minimise the risk of peer on peer abuse and sets out how allegations of peer on peer abuse will be investigated. The policy should reflect the different forms that peer on peer abuse may take and make clear that abuse should never be tolerated or passed off as banter or part of growing up. The policy should also be clear as to how victims of peer on peer abuse will be supported. The guidance is clear that children's social care and the Police should be involved as appropriate.<sup>1</sup>

The most recent version of [Keeping Children Safe in Education](#) came into force in September 2019.

### Advice for schools: Sexual violence and sexual harassment

The advice for schools on [Sexual violence and sexual harassment between children in schools and colleges](#) published in May 2018 sets out more direct information for schools and colleges on how to deal with incidents and allegations.

The advice provides definitions of sexual violence and sexual harassment, and also of harmful sexual behaviours. It sets out schools' and colleges' relevant duties, and how schools should approach

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

prevention: for instance, in the curriculum or safeguarding training for teachers.

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

## 1.2 Behaviour and bullying policies

### Behaviour

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

### Bullying

The gov.uk website provides information on the law as it relates to [bullying at school](#), and also information on reporting bullying to schools and (in some instances) to the police. As it sets out, by law, all state schools must have a behaviour policy in place that includes measures to prevent all forms of bullying among pupils. This policy is decided by the school. All teachers, pupils and parents must be told what it is.

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

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

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

### Public Sector Equality Duty

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

The Government's response to the Women and Equalities Committee report on sexual harassment in schools (see section 1.3) set out the

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

relevant implications of the Act for schools, in introducing the Public Sector Equality Duty (PSED):

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

### 1.3 Women and Equalities Committee report

#### Launch and Fixers report

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

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

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

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

#### Committee report

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

The report included evidence that:

- almost a third (29%) of 16-18 year old girls say they have experienced unwanted sexual touching at school

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

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

- nearly three-quarters (71%) of all 16-18 year old boys and girls say they hear terms such as "slut" or "slag" used towards girls at schools on a regular basis
- 59% of girls and young women aged 13-21 said in 2014 that they had faced some form of sexual harassment at school or college in the past year<sup>5</sup>

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

The Committee's recommendations included:

- Legislation to ensure every school takes appropriate action to prevent and respond to sexual harassment and sexual violence, with support from Government including clear national guidance.
- Ofsted and the Independent Schools Inspectorate to assess schools on how well they are recording, monitoring, preventing and responding to incidents of sexual harassment and sexual violence.
- Making sex and relationships education (SRE) a statutory subject for all children at primary and secondary school.<sup>7</sup>

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

## Government response

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

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

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

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

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

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

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

The response noted that Ofsted had amended its School Inspection Handbook to address concerns about safeguarding and harassment. The 2019 [School Inspection Handbook](#) states that Ofsted inspectors will require from schools:

- records and analysis of sexual harassment or sexual violence
- records and analysis of bullying, discriminatory and prejudiced behaviour, either directly or indirectly, including racist, sexist, disability and homophobic/biphobic/transphobic bullying, use of derogatory language and racist incidents<sup>9</sup>

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

The [Committee stated](#) that the Government needed to go “much further” in dealing with sexual harassment in schools, and that it intended to return to the subject in 2017.<sup>10</sup>

### Evidence session with Ministers (October 2017)

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

During the session, Mr Gibb confirmed that the Government would consult on revised *Keeping Children Safe in Education* guidance in November 2017.<sup>11</sup>

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

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

**Mr Gibb:** No, it does not.

**Q62 Jess Phillips:** Is there any reason for that?

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

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

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<sup>9</sup> Ofsted, School Inspection Handbook, November 2019, p16

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

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



guidance in order that this one could also be underpinned with the same principle?

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

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

## 1.4 Relationships and sex education and PSHE

### Current position

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

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

### Statutory RSE: Children and Social Work Act 2017

On 1 March 2017, the then Education Secretary, Justine Greening, [announced](#) her intention to put 'Relationships and Sex Education' (RSE) – rather than SRE – on a statutory footing. She also announced her intention to create a power to make personal, social, health and economic education (PSHE) statutory in future, following further work and consultation. The necessary legislation was passed shortly before the dissolution of parliament for the 2017 General Election.

The relevant sections of the [Children and Social Work Act 2017](#) require:

- All primary schools in England to teach age-appropriate 'relationships education'; and
- All secondary schools in England to teach age-appropriate 'relationships and sex education'

These changes apply to all schools in England – local authority maintained, academies and independent.

The changes further involve:

- Reformed statutory guidance, following consultation
- Retaining the parental right of withdrawal from sex education, with new rights for children to 'opt-in' as they approach age 16
- Flexibility for schools in their approach, including for faith schools to teach within the tenets of their faith

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<sup>12</sup> Ibid., Q61-64

[\*The Relationships Education, Relationships and Sex Education and Health Education \(England\) Regulations 2019\*](#) confirm that these changes will come into force in September 2020. Statutory health education in schools is being brought in as part of these changes. Schools may bring in the changes in advance of this date if they choose to do so.

Final statutory guidance on [Relationships education, relationships and sex education \(RSE\) and health education](#) was published by the Department for Education in June 2019.

The DfE also published a [FAQs briefing](#) on the changes.

More information on RSE, including more detail on the planned new curriculum, can be found in the Library briefing [Relationships and Sex Education in Schools \(England\)](#), CBP 6103.

## Health education

Justine Greening's March 2017 [announcement](#) also set out the Secretary of State's intention to create a power to make personal, social, health and economic education (PSHE) statutory in future, following further work and consultation. Section 35 of the [Children and Social Work Act 2017](#) provides for PSHE to be made statutory at all schools in England through regulations.

The Department for Education announced alongside the publication of the consultation on RSE that it would not be proceeding with the introduction of statutory Personal, Social, Health, and Economic Education, but that statutory Health Education would be introduced alongside the RSE changes.

The statutory guidance on [Relationships education, relationships and sex education \(RSE\) and health education](#) sets out the changes that will be formally in effect from September 2020. As with RSE, schools are free to teach the reformed subject matter prior to this date.

More information on health education is provided in the Library briefing on [Personal, Social, Health and Economic Education in schools \(England\)](#), CBP 7303.

## 1.5 Allegations against teachers or other pupils

### Allegations against teachers

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

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

The procedure followed will depend heavily on the circumstances of a particular case and can range from no action being taken, to a multi-

agency strategy discussion, a criminal investigation and/or dismissal of the staff member concerned.

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

### **Allegations against pupils**

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

97. All staff should recognise that children are capable of abusing their peers. All staff should be clear about their school's or college's policy and procedures with regard to peer on peer abuse.

98. Governing bodies and proprietors should ensure that their child protection policy includes:

- procedures to minimise the risk of peer on peer abuse;
- how allegations of peer on peer abuse will be recorded, investigated and dealt with;
- clear processes as to how victims, perpetrators and any other child affected by peer on peer abuse will be supported;
- a clear statement that abuse is abuse and should never be tolerated or passed off as "banter", "just having a laugh" or "part of growing up";
- recognition of the gendered nature of peer on peer abuse (i.e. that it is more likely that girls will be victims and boys perpetrators), but that all peer on peer abuse is unacceptable and will be taken seriously; and
- the different forms peer on peer abuse can take, such as:
  - sexual violence and sexual harassment. Part five of this guidance sets out how schools and colleges should respond to reports of sexual violence and sexual harassment;
  - physical abuse such as hitting, kicking, shaking, biting, hair pulling, or otherwise causing physical harm;
  - sexting (also known as youth produced sexual imagery): the policy should include the school's or college's approach to it. The department provides [Searching Screening and Confiscation Advice](#) for schools. The UK Council for Internet Safety (UKCIS) Education Group has published [Advice for Schools and Colleges on Responding to Sexting Incidents](#); and
  - initiation/hazing type violence and rituals.

The advice for schools on [Sexual violence and sexual harassment between children in schools and colleges](#) published in May 2018 sets out more direct information for schools and colleges on how to deal with incidents and allegations.

The advice provides information on how schools should respond to accusations of sexual violence or harassment, and subsequent steps that should be taken, including how to safeguard the victim and the alleged

perpetrator, including whether they should be placed in classes together.

Governors should also ensure that sexting, and the school's approach to it, is reflected in the child protection policy. Further guidance is available in [advice on searching, screening and confiscation](#) published by the Department for Education and in [sexting advice for schools and colleges](#), published by the UK Council for Child Internet Safety Education Group.<sup>13</sup>

### 1.6 Schools in Scotland, Wales, and Northern Ireland

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

#### Scotland

- Scottish Government, [National Guidance for Child Protection in Scotland](#)
- Scottish Government, [Let's Stop Bullying: Advice for Parents and Families](#)
- Scottish Government, [Relationships, Sexual Health and Parenthood Education](#)

#### Wales

- Welsh Government, [Keeping Learners Safe](#)
- Welsh Government, [Providing help and advice about violence against women, domestic abuse and sexual violence](#)
- Welsh Government, [Anti-bullying guidance](#)
- Welsh Government, [Draft guidance on relationships and sexuality education](#)

#### Northern Ireland

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

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<sup>13</sup> Ibid.

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

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

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

Further education institutions which admit students under the age of 18 have to comply with the same safeguarding regulations as schools.<sup>14</sup>

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

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

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

Over two thirds of respondents (68 per cent) have experienced some kind of verbal or non-verbal harassment in and around their institution.<sup>15</sup>

The [2014 Annual Report](#) of the Office of the Independent Adjudicator (OIA) identified sexual harassment and 'lad culture' as an emerging issue of concern<sup>16</sup> and the [2015 report](#) stated that the OIA continued to receive a "small but steady" number of complaints about the handling of sexual harassment cases by universities.<sup>17</sup>

A 2018 survey into sexual violence<sup>18</sup> against students by Revolt Sexual Assault and the Student Room found that 62% of students had experienced sexual violence, this rose to 70% for women, and that only 1 in 10 students reported their experiences to the university or police.<sup>19</sup>

62% of all students and recent graduates surveyed have experienced sexual violence

[Students' Experience of Sexual Violence, Revolt Sexual Assault 2018](#)

<sup>14</sup> DfE, [Sexual violence and sexual harassment between children in schools and colleges Advice for governing bodies, proprietors, headteachers, principals, senior leadership teams and designated safeguarding leads](#), December 2017

<sup>15</sup> NUS, [Hidden Marks A study of women students' experiences of harassment, stalking, violence and sexual assault](#), 2010 p3

<sup>16</sup> Office of the Independent Adjudicator, [Annual Report 2014](#), p20

<sup>17</sup> Office of the Independent Adjudicator, [Annual Report 2015](#), p21

<sup>18</sup> "Sexual violence" is generally taken to mean acts ranging from what is referred to as "everyday sexism", such as sexist comments, to the most serious of sexual crimes.

<sup>19</sup> [Students' Experience of Sexual Violence](#), Revolt Against Assault, 2018

## **Guardian 2017 investigation into sexual harassment in universities**

In March 2017 the *Guardian* published the results of an investigation into sexual harassment in universities. The investigation was based on a series of Freedom of Information (FOI) requests sent to 120 universities across the UK asking for information on allegations of sexual misconduct against academic and non-academic staff. The responses to the request showed that students had made at least 169 allegations of sexual misconduct against academic and non-academic staff from 2011-12 to 2016-17. At least another 127 allegations about staff were made by colleagues.<sup>20</sup>

As well as uncovering the scale of the problem, the investigation also suggested that universities had opaque and complex procedures and inconsistent record-keeping of incidents. The *Guardian* therefore suggested that the total number of recorded cases was likely to be conservative and that universities' records underestimated the scope of sexual misconduct.<sup>21</sup>

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

"There is no obligation on universities to record or report these issues, which means there will be many cases which just fall below the radar of this sort of inquiry. We know that institutions which take tackling sexual harassment and violence seriously, and have policies and systems in place to encourage reporting and train staff to deal with complaints as they arise, report higher numbers. It's the universities which aren't dealing with this openly which perversely appear to have fewer problems."<sup>22</sup>

## **BBC report October 2019**

In October 2019 the BBC published answers to FOI requests from universities which showed that **reports of rape, sexual assault and harassment at UK universities had trebled in three years:**

Universities told the BBC they recorded 1,436 allegations of sexual harassment or sexual violence against students in 2018-19 - up from 476 in 2016-17.

The data, from 124 of 157 universities, shows not all have robust systems to prevent or respond to sexual violence.<sup>23</sup>

The report suggested that the increase in cases might be the result of some universities making it easier for students to report allegations and to receive support. A spokesperson for Universities UK responded to the BBC article saying more needed to be done:

Students and staff must feel able to report an incident with the confidence that it will be addressed, and an increase in disclosures

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<sup>20</sup> The results of the survey are available on the *Guardian* website at, "[Sexual harassment allegations: find figures for UK universities](#)", 5 March 2017

<sup>21</sup> "[Why the true scale of university harassment is so hard to uncover](#)", *Guardian*, 5 March 2017

<sup>22</sup> *ibid*

<sup>23</sup> "[Student rape survivor - 'It felt like I was being interrogated'](#)", *BBC News*, 3 October 2019

suggests more willingness to report as well as a growing awareness about what constitutes sexual misconduct.

Our own research shows that while universities are making progress, more must be done.

Since 2016, the vast majority have improved support for students reporting incidents and updated their disciplinary procedures.

## 2.2 Legal duties of further and higher education institutions

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

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

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

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

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

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

## 2.3 Initiatives to tackle sexual harassment in universities and colleges

Since 2010 a number of initiatives have been introduced to reduce incidents of sexual harassment in higher and further education. These schemes aim to educate students on inappropriate behaviour, create

policies and put in place procedures for dealing with incidents of sexual misconduct and harassment.

## Universities UK (UUK) sexual violence and harassment taskforce

In September 2015, the then Business Secretary Sajid Javid and the Universities Minister Jo Johnson asked UUK to set up a taskforce to look into issues of harassment, hate crime, and sexual violence on campuses.<sup>24</sup>

The taskforce published its first report in October 2016, [\*Changing the culture: Report of the Universities UK Taskforce examining violence against women, harassment and hate crime affecting university students\*](#). The report set out a framework to support HEIs to deliver improvements in tackling all forms of harassment; the framework was based on five pillars:

- The key role should be taken by the senior leadership team within higher education institutions
- The criticality of a holistic institution-wide approach
- Development of effective preventative strategies
- Development of effective responsive strategies
- Sharing good practice within institutions and the sector at large

The report made the following recommendations:

### PREVENTION

The Taskforce recommends that universities should:

- adopt an evidence-based bystander intervention programme.
- ensure that partnership agreements between the student and the university highlight up-front the behaviours that are expected from all students as part of the university community, set out disciplinary sanctions and state the university's commitment to ensuring the safety and wellbeing of students.
- embed a zero-tolerance approach across all institutional activities including outreach activities with schools and further education colleges, engagement with local bars and nightclubs, student inductions (including international student inductions), and student information.
- take meaningful steps to embed into their human resources processes (such as contracts, training, inductions) measures to ensure staff understand the importance of fostering a zero-tolerance culture and are empowered to take responsibility for this.

### RESPONSE

The Taskforce recommends that universities should:

The framework recognises that having policies and processes in place is not enough: policies and processes must also be underpinned by a shift in institutional culture.

UUK Changing the Culture Two Years On, October 2019

<sup>24</sup> Department for Business, Innovation and Skills Press Notice "[Business Secretary calls on universities to tackle violence against women](#)", 6 September 2015



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

In October 2016 UUK published a further document, [Guidance For Higher Education Institutions, How To Handle Alleged Student Misconduct Which May Also Constitute A Criminal Offence](#). The guidance reflected the recommendations of the taskforce and updated the Zellick guidelines<sup>25</sup> which had been in operation since 1994. In April 2018 UUK published a report on the implementation of this guidance, [Guidance for allegations of student misconduct](#), which stated that universities were all at different stages in implementation.

In March 2018 UUK published a report on the implementation of the task force's recommendations [Changing the culture: One year on](#). The report stated that "**significant but highly variable progress**" had been made across the higher education sector in tackling student-to-student sexual misconduct but that "generally, hate crime and **harassment has not been the primary focus of enhanced preventive strategies**".<sup>26</sup>

The most recent report on the Taskforce's work, [Changing the Culture Tackling gender-based violence, harassment and hate crime: two years on](#), October 2019 states that improvements are continuing:

progress continues to be made across many institutions in the sector. Universities provided evidence of a wide range of actions they have taken to prevent and respond to harassment, examples of which are referenced throughout this report. The findings demonstrate that the framework developed by the UUK taskforce and supported by Catalyst funding from the Office for Students (OfS), has been instrumental in acting as a stimulus to deliver improvements in higher education at an individual, community and institutional level.<sup>27</sup>

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<sup>25</sup> The non-statutory Zellick guidelines provided advice to universities on handling circumstances where a student's alleged misconduct would also constitute a criminal offence.

<sup>26</sup> UUK, [Changing the culture: One year on](#), March 2018 p6-7

<sup>27</sup> UUK, [Changing the Culture Tackling gender-based violence, harassment and hate crime: two years on](#), October 2019 p6

### Staff-to-student harassment

The primary focus of the UUK report was on student-to-student harassment, but the enquiry also received evidence relating to staff-to-student sexual harassment and violence.<sup>28</sup>

In a blog in February 2017 Nicola Dandridge, chief executive of UUK said that “staff-to-student harassment is a problem that also needs to be acknowledged and tackled”.<sup>29</sup> There are no national guidelines on how universities should respond to staff sexual harassment, or how to record it when it happens.<sup>30</sup>

In April 2018 the NUS published a report, [Power in the academy: staff sexual misconduct in UK higher education](#). The report was based on a survey of students and stated that “four in ten respondents who were current students (585 out of 1535) had experienced at least one experience of sexualised behaviour from staff”.<sup>31</sup>

The [1752](#) group (an organisation working to end staff-to-student sexual misconduct in higher education) has suggested that there is a lack of resources and expertise available for institutions in the area of staff-to-student harassment.

### Funding for initiatives to tackle sexual harassment in higher education

The Office for Students (OfS) Catalyst fund provides funding to support a range of projects to tackle hate crime and sexual violence and harassment; 108 projects have been awarded a total of £4.4 million since 2016. Projects are match-funded by providers and their partners, delivering an investment value of almost £10m.

The projects cover a wide range of activity, including training and awareness raising, digital innovation, and new approaches to prevention and reporting of sexual harassment. A list of the projects is on the OfS website at [Student safety and wellbeing, What are the projects?](#)

## 2.4 Institutional policies on sexual harassment

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

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<sup>28</sup> UUK [Changing the culture: Report of the Universities UK Taskforce examining violence against women, harassment and hate crime affecting university students](#), October 2016 p19

<sup>29</sup> UUK blog, [“Sexual abuse and harassment by university staff against students – further work to address the issue”](#), 3 February 2017

<sup>30</sup> [“Why the true scale of university harassment is so hard to uncover”](#), *Guardian*, 5 March 2017

<sup>31</sup> NUS, [Power in the academy: staff sexual misconduct in UK higher education](#), April 2018, p8

## Further education

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

Further education colleges and sixth-form colleges which admit students under the age of 18 have to comply with the same safeguarding regulations as schools – guidance on the requirements are set out in a Department of Education publication, [Keeping children safe in education Statutory guidance for schools and colleges](#), September 2019.<sup>32</sup> The guidance states that colleges should have safeguarding or child protection policies in place and that staff should receive training to deal with these issues. An example of a [Safeguarding Policy](#) is available on the College of North West London website.

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

In December 2017 the DfE issued specific guidance to colleges on dealing with sexual violence and harassment in a document, [Sexual violence and sexual harassment between children in schools and colleges](#), December 2017. The guidance outlines the legal responsibilities of colleges in this area and provides guidelines for colleges on best practice and on how to respond to alleged incidents of sexual harassment.

## Higher education

Universities have adopted a variety of approaches to dealing with sexual harassment. The OIA's [2017 Annual Report](#) stated that "some providers are developing more information and guidance on sexual harassment for staff and students"<sup>33</sup> and the UUK taskforce's Year Two report states that "substantive effort is being made by individual institutions to develop a more comprehensive, systematic and joined-up approach".<sup>34</sup>

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

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

In October 2016 Goldsmiths, University of London introduced a [10 point plan](#) to address sexual harassment and violence. This plan has subsequently been updated and a comprehensive [policy and procedure](#)

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<sup>32</sup> Department for Education, [Keeping children safe in education Statutory guidance for schools and colleges](#) September 2019

<sup>33</sup> Office of the Independent Adjudicator, [Annual Report 2017](#), p36

<sup>34</sup> UUK, [Changing the Culture Tackling gender-based violence, harassment and hate crime: two years on](#), October 2019 p65

[on sexual violence, sexual harassment, stalking, domestic violence and sexual misconduct](#) has been introduced.

### **Box 1: University of Oxford sexual harassment policy**

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

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

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

- unwanted physical contact, ranging from an invasion of space to an assault, including all forms of sexual harassment, including:
  - i. inappropriate body language
  - ii. sexually explicit remarks or innuendoes
  - iii. unwanted sexual advances and touching
- offensive comments or body language, including insults, jokes or gestures and malicious rumours open hostility, verbal or physical threats
- insulting, abusive, embarrassing or patronising behaviour or comments, humiliating, intimidating, and/or demeaning criticism
- persistently shouting at, insulting, threatening, disparaging or intimidating an individual
- constantly criticising an individual without providing constructive support to address any performance concerns
- persistently overloading an individual with work that s/he cannot reasonably be expected to complete
- posting offensive comments on electronic media, including using mobile communication devices
- threatening to disclose, or disclosing, a person's sexuality or disability to others without their permission
- deliberately using the wrong name or pronoun in relation to a transgender person, or persistently referring to their gender identity history
- isolation from normal work or study place, conversations, or social events
- publishing, circulating or displaying pornographic, racist, homophobic, sexually suggestive or otherwise offensive pictures or other materials.

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

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

### **Durham University Sexual Violence Taskforce**

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

The Taskforce report made the following recommendations:

The University will:

- Have specialist policies and procedures in place for investigating incidents of sexual violence.
- Ensure that every policy and practice is tested against the organising principle of empowering those who make such reports.
- Undertake a case management based approach in individually assessing and managing each report.
- Ensure that there are links with the safeguarding policies, procedures and practices of the University and cases of sexual violence.
- Ensure that there is a combination of external and internal specialist counselling support for all parties, responsive to their individual needs.
- Encourage greater reporting through communications to students and staff.
- Enact culture change through bystander intervention and consent workshops for all students.
- Undertake student leader and staff training on working with those who disclose sexual violence.
- Embed training messages across a number of sessions for students and staff.
- Launch a campaign to ensure the visibility of institutional policies and practices in supporting those who report.
- Ensure senior leadership engagement with operational oversight from a member of the University's Executive Committee.
- Ensure that reporting of sexual violence cases and action taken is included in the annual assurance report to the University's governing body, Council.

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

### **Sexual consent classes**

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

An article in the Guardian in 2019 stated that almost two thirds of universities are teaching sexual consent classes to students:<sup>35</sup>

universities including Edinburgh, Kent, Durham, Oxford and Soas, University of London were conducting classes to train students in how to seek and recognise sexual consent. At some universities, the courses were mandatory in freshers' week.

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<sup>35</sup> ["Two-thirds of UK universities bring in sexual consent training – report"](#), the

### Processes for dealing with sexual harassment cases

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

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

In October 2018 the OIA published [guidance](#) for HEIs on dealing with complaints involving sexual misconduct and harassment.<sup>36</sup>

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

## 2.5 Parliamentary debate on sexual harassment in universities

The Government's approach to sexual harassment in higher education has been set out in PQs - below are examples:

**Students: Protection:** Written question - HL17194

**Lord Bassam of Brighton** on: 16 July 2019

To ask Her Majesty's Government when ministers last met representatives of the Office for Students to discuss the protection of students from sexual harassment, bullying and threats of violence at universities.

**Viscount Younger of Leckie** on: 24 July 2019

There is no place in our society, including within higher education, for hatred or any form of harassment, discrimination or racism.

Higher education providers have clear responsibilities, including under the Equality Act (2010). They should have robust policies and procedures in place to comply with the law and to protect against violence, bullying, discrimination and harassment.

The government has tasked the Office for Students (OfS) to tackle these important issues at a sector level and to make campuses places of tolerance for all students. The OfS was set up to champion students and it is right that they work closely with higher education providers on these issues.

The OfS and its predecessor body allocated £4.7 million for a safeguarding scheme to address harassment and hate crime in higher education, including 63 projects with a specific focus on sexual violence and misconduct.

The OfS has commissioned an external evaluation of this scheme and, in June this year, published its 'Catalyst for change' report,

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<sup>36</sup> [OIA briefing note: Complaints involving sexual misconduct and harassment](#), 31 October 2018

attached, which includes recommendations for providers on how they can address the issue of hate crime, sexual violence and online harassment alongside a range of resources on their website. The OfS has held several conferences on harassment issues to support providers and share good practice. It will hold a series of roundtables in 2019-20 to examine key issues relating to student welfare and safeguarding, including reporting, monitoring and evaluation of approaches.

Ministers and officials in the department regularly meet the OfS, stakeholders and representative bodies about a range of student experience issues, including student safeguarding. This includes specific quarterly meetings with the OfS to discuss how to tackle harassment and hate crime within the sector.

The government will continue to work closely with the OfS to prioritise the tackling of all forms of harassment and hate crime in higher education.

**[Universities: Sexual Harassment](#)**: Written question - 277111

**Mr Jim Cunningham** on: 15 July 2019

To ask the Secretary of State for Education, what assessment he has made of the adequacy of support provided to victims of sexual assault at universities.

**Chris Skidmore** on: 18 July 2019

There is no place in our society, including within higher education (HE), for any form of sexual harassment or violence. HE providers have clear responsibilities, including under the Equality Act (2010), and should have robust policies and procedures in place to comply with the law to investigate and swiftly address reports of sexual misconduct.

All students should be able to thrive in HE, free from barriers to both their academic and personal development. The government expects providers to address barriers preventing students from having a positive experience, and to ensure they have appropriate support in place.

The government is working closely with Universities UK (UUK) and the Office for Students to support work to address sexual harassment in HE, including implementing the recommendations of the UUK Taskforce on sexual violence and harassment, published in 2016.

Since these recommendations were published, further guidance has been published on sexual misconduct in HE. This includes the Pinsent Masons guidelines on how to handle student misconduct which may constitute a criminal offence, and separate briefings from the Office for the Independent Adjudicator for Higher Education on handling disciplinary procedures relating to sexual misconduct.

HE providers are autonomous institutions who have a duty of care to students, which includes all aspects of safeguarding and wellbeing. This is taken very seriously by providers. Providers will make decisions based on the needs of their student body, for example including support services for students facing issues relating to sexual violence and harassment. The UUK Taskforce clearly set out the need for providers to have clear care pathways and make it clear where students should be referred to within the university to access appropriate support.





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